

# **Merrill Township Zoning Ordinance**

**Adopted by the Merrill Township Board**

**Newaygo County, Michigan**

**Date: 11-11-2024**

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**MERRILL TOWNSHIP ZONING ORDINANCE  
NEWAYGO COUNTY, MICHIGAN  
PREAMBLE**

An Ordinance to establish zoning districts, provisions and regulations for the unincorporated portions of the Township of Merrill in Newaygo County, Michigan pursuant to the provisions of the Michigan Zoning Enabling Act, being MCL 125.3101 et seq. (Public Act 110 of the 2006, as amended) (the "Zoning Act"); to set forth regulations and minimum standards for the use and protection of lands and structures within each zoning district; to fulfill the purpose of this Ordinance and as described below; to establish provision's for the administration, enforcement and amendment of this Ordinance; to establish a Zoning Board of Appeal's; and to prescribe penalties for the violation of the provisions herein.

THE TOWNSHIP BOARD OF MERRILL TOWNSHIP (the "Township"), NEWAYGO COUNTY MICHIGAN, HEREBY ORDAINS AS FOLLOWS:

**ARTICLE 1**

**TITLE AND PURPOSE**

**Section 1.01     Short Title**

This Ordinance shall be known as the Merrill Township Zoning Ordinance and will be referred to herein as "the Ordinance" or the "Zoning Ordinance."

**Section 1.02     Purpose**

- A. This Ordinance is based upon the Merrill Township Master Plan and provides for the establishment of zoning districts and district uses, standards, and regulations designed to promote the public health, safety and general welfare; to encourage the use of land in accordance with its character and adaptability and limit the improper use of land; to conserve natural resources and energy, to meet the needs of the state's citizens for food, fiber and other natural resources, places of residence, recreation, agriculture, industry, trade, service and other uses of land; to ensure that uses of land shall be situated in appropriate locations and relationships; to avoid the overcrowding of population; to provide adequate light and air; to lessen congestion on the public roads and streets; to reduce hazards to life and property; to facilitate the adequate provision of a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public requirements; and to conserve the expenditure of funds for public improvements and services so as to obtain the most advantageous uses of land, resources and properties.
- B. This Ordinance is adopted with reasonable consideration, among other things, of the character of each zoning district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building and population development.

### **Section 1.03    Scope**

- A. Zoning affects all structures, buildings, and land uses within the Township.
- B. This Ordinance shall not repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws, ordinances or regulations, except those repealed herein by specific reference, or with private restrictions placed upon property by covenant, deed or other private agreement, or with restrictive covenants running with the land to which the Township is a party.
- C. Where this Ordinance imposes greater restrictions, limitations, or requirements upon the use of buildings, structures, or land; the height of buildings or structures; lot coverage; lot area; yards or other open spaces; or any other use or utilization of land than are imposed or required by such existing laws, ordinances, regulations, private restrictions, or restrictive covenants, then the provisions of this Ordinance shall control.
- D. Any use, activity, structure, or building not expressly authorized by this Ordinance is prohibited.

### **Section 1.04    Legal Basis**

This Ordinance is enacted pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended (the "Zoning Act").

## **ARTICLE 2**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

When not inconsistent with the context, words used in the present tense include the future, words used in the singular number include the plural; and words used in the plural include the singular; and the word “shall” is always mandatory and not merely directive. Any word or term not defined herein shall be used with a meaning or common utilization. For the purpose of this Ordinance certain terms and words are herewith defined.

#### **Section 2.01     Accessory Building or Structure**

A subordinate building or structure on the same lot with a main building or a portion of a main building and occupied or devoted to an accessory use; for example, a private garage used for the housing of automobiles owned by the residents of a dwelling to which the private garage is accessory. Where an accessory building is attached to a main building, such accessory building shall be considered part of the main building.

#### **Section 2.02     Accessory Use**

A use naturally, normally, and clearly incidental and subordinate to a principal use of the lot and located on the same lot as the principal use.

#### **Section 2.03     Adult Foster Care Homes**

The provision of supervision, personal care, and protection in addition to room and board for 24 hours a day for 5 or more days per week, and for 2 or more consecutive weeks, for aged or handicapped adults.

- A. Adult Foster Care Family Home is a private residence with the approved capacity to receive 6 or fewer adults for 5 or more days per week and for 2 or more consecutive weeks.
- B. Adult Foster Care Small Group Home is an adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.
- C. Adult Foster Care Large Group Home is an adult foster care facility with the capacity to receive at least 13 but no more than 20 adults to receive foster care.
- D. Aged is an adult whose chronological age is 60 years of age, or whose biological age as determined by a physician to be 60 years of age or older.

## **Section 2.04 Adult Uses/Adult Oriented Businesses**

### **Section 2.05 Agriculture**

The commercial cultivation, raising and storage of crops, animals and animal products, including, but not limited to, nurseries, hatcheries, apiaries, forestry, floriculture, vineyards, pasturing, and dairying.

### **Section 2.06 Agricultural Service Establishments**

Establishments that engage in performing agricultural, animal husbandry or horticultural services for a fee or contractual basis. This includes, but is not limited to, centralized bulk collection, refinement, storage, and distribution of farm products to wholesale and retail markets (such as grain cleaning and shelling; sorting, grading and packing of fruits and vegetables for the growers; and agricultural produce milling and processing); the sale and storage of seed, feed, fertilizer and other products essential to agricultural production; hay baling and threshing, crop dusting, fruit picking; harvesting and tilling; farm equipment sales, service and repair; veterinary services; and facilities used in the research and testing of farm products and techniques.

### **Section 2.07 Alteration of a Structure**

Any change, addition, or modification in construction or type of occupancy, or in the structural members of a building or structure, such as walls or partitions, columns, posts, beams or girders, any substantial change in the roof, or an addition to or diminution of a structure or building, or the removal, rebuilding, expansion, or relocation of a building.

### **Section 2.08 Automobile Service Station**

A building, structure, or land used for the retail sale of fuel, lubricants, grease, and other operating commodities for motor vehicles; and including the installation of such commodities on or in such vehicles. This includes space for storage, hand washing, minor repair and servicing of vehicles, but not including major automobile repair (as listed below) or bulk fuel distribution. Major automobile repair shall mean the general repair, rebuilding or reconditioning of engines, motor vehicles, or trailers, collision service, including body repair and frame straightening, painting, upholstering, vehicle steam cleaning and undercoating rust proofing.

### **Section 2.09 Automotive Sales Area**

An area used for the display, sale or rental of new or used motor vehicles, boats, trailers, construction equipment or motor homes in operable condition. This does not include the repair of such vehicles.

**Section 2.10     Basement**

A portion of a building or a portion of a room located wholly or partially below grade.

**Section 2.11     Bed and Breakfast Operations**

A use that is subordinate to the principal use of a house as a single-family dwelling unit in which transient guests are provided a sleeping room and board in return for payment. Bed and Breakfast Operations are considered a special use.

**Section 2.12     Billboards**

A structure or sign using graphic symbols or written copy specifically designed for the purpose of advertising, promoting or identifying any event, establishment, use, product, service, or display, and which structure or sign is located on a separate lot or at a separate location from the business, product, activity, service, or event that is being promoted, identified, or advertised.

**Section 2.13     Black Dirt**

A mixture of various organic components such as muck, peat or spoil from excavation of ponds, ditches, etc., and mixed with other materials such as sand, clay, etc. Such making of black dirt is an attempt to create a mixture that may be sold as topsoil.

**Section 2.14     Board**

Wherever the word "Board" is used it refers to the Merrill Township Board.

**Section 2.15     Boardinghouse, Rooming House**

A dwelling having one kitchen and used to provide room and board for compensation to more than two persons, who are not members of the family.

**Section 2.16     Building**

A structure erected or installed on-site, a mobile home or mobile structure, a prefabricated or pre-cut structure, above or below ground, temporary or permanent, designed primarily for shelter, support, or enclosure of persons, animals, or property of any kind.

### **Section 2.17 Building – Height**

The height of a building is measured from the average lot grade around all sides of the building to the highest point of the roof. In no event shall the height (or measurement thereof) exceed what would have occurred from the average lot grade in its natural state.

### **Section 2.18 Building Inspector**

The person or persons appointed by the Merrill Township Board to administer the building code or similar code adopted or administered by Merrill Township.

### **Section 2.19 Building - Principal Use**

A building in which is conducted the principal or main use of the lot on which it is situated.

### **Section 2.20 Building Setback**

The minimum distance from the front lot line (or road right-of-way), side property boundary or rear property boundary (whichever is applicable for a given measurement) to the nearest point of the exterior of the building or structure. For purposes of setbacks or open yard requirements, roof overhangs, soffits, bay windows, porches, decks and chimneys shall not be located in or encroach into the required building setback or open yard areas.

### **Section 2.21 Camp, Campground**

- A. Campground, Private — A facility for camping with sites for tents, trailers and/or camping recreational vehicles, which is either open to the general public for a fee or is operated by a bona fide nonprofit organization, church or similar organization. A use shall not be deemed a private campground unless it also meets all requirements of this ordinance. Hunting camps, camping by or for one family or a group of family or friends shall not be deemed a campground and shall be fully subject to the applicable requirements of this Ordinance.
- B. Campground, Public — A facility for camping operated by a governmental entity.

### **Section 2.22 Communication Tower**

A public or private device used for the transmission and/or receipt of commercial wireless telecommunication services including radio, television, sonar, computer, satellite, or other such communication signals.

A communications tower is characterized by, but is not necessarily limited to, a narrow, spire-type metal structure anchored to a concrete pad that is permanently affixed to the ground. The tower is maintained



in place by said anchorage and may include guy wires, expanded base, and/or other means for support of the tower.

A communications tower may or may not be regulated by the Federal Communications Commission or its successor. This definition shall include all appurtenances of a communications tower, including buildings.

### **Section 2.23 Concentrated Livestock Operations**

A concentrated livestock or poultry breeding, raising, holding, boarding, or feeding operation or business that meets the following criteria:

- A. 50 or more animal units as defined by Right to Farm /GAAMPs.

### **Section 2.24 Construction**

To form by combining materials, build or erect. The business or act of building.

### **Section 2.25 District (also called a Zoning District)**

A portion of the Township within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

### **Section 2.26 Dwelling**

A building used as a permanent residence or sleeping place by one or more persons. Dwellings shall include, but not be limited to one, two, and multiple family dwellings, modular homes, and prefabricated homes. Hotels, motels, or tourist cabins are excluded.

### **Section 2.27 Dwelling, Farm**

A dwelling unit located on a farm that is used or intended for use by the farm's owner, operator, or person employed thereon.

### **Section 2.28 Dwelling, Single Family Detached**

A building that is entirely surrounded by open space on its building lot, used, and designed for one family.

**Section 2.29 Dwelling, Multiple Family**

A building used or designed as a residence for three or more families living independently of each other, including apartments and condominiums.

**Section 2.30 Dwelling, Two Family or Duplex**

A detached building containing two dwelling units and designed for use by two families living independently.

**Section 2.31 Essential Services**

The erection, construction, alteration or maintenance by private companies or municipal department of public works including gas, electrical, steam, communication, safety, water supply and distribution systems, sanitary sewer systems. This definition shall not include sanitary landfills, recycling centers, nonpublic utility transfer stations, wastewater treatment plants or facilities (apart from one family use septic systems), communication towers, wind energy generating systems, or any building.

**Section 2.32 Excavate**

To make a hole or cavity, to hollow or dig out. To remove by digging or scooping.

**Section 2.33 Family**

An individual or group of two (2) or more persons related by blood, marriage or adoption, including those related as foster children, who are domiciled together as a single, domestic, nonprofit housekeeping unit in a dwelling unit; or, a collective number of individuals domiciled together in one dwelling unit whose relationship is of a continuing, no transient, distinct domestic character and who are cooking and living as a single, nonprofit housekeeping unit. This definition shall not include a penal institution, halfway house, correctional facility, society, club, boarding situation, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature or for an anticipated limited duration of a school term, jail or prison term, or terms of other similar determinable period.

**Section 2.34 Farm**

A commercial agricultural operation on one or more contiguous parcels of land directly farmed or used for commercial agriculture by the owner-operator, manager, or tenant farmer or with assistance of members of the household or hired employees. A farm includes a farm dwelling and accessory buildings necessary for the storage or housing of farm implements, products, or animals, or used for the operation of the farm. Farms may include greenhouses, nurseries, orchards, hatcheries, dairy farms, poultry farms, hog farms,

commercial feedlots, apiaries, truck farms, and forestry operations, provided, however, that such farm uses may be subject to specific regulations as provided for by this Ordinance.

#### **Section 2.35 Farm Animals**

Livestock, including beef and dairy cattle, goats, hogs, horses, poultry, sheep and other fur-bearing animals.

#### **Section 2.36 Fence**

A fence is an accessory structure intended for use as a barrier to property ingress or egress; a screen to block views or noise; a screen serving to separate incompatible uses; a screen to provide a barrier or buffer between uses; and/or a screen for decorative use. In addition to artificial material, a fence may include hedges, outdoor walls, shrubs, or other such plant material if so arranged, designed, and of a character suitable to accomplish the intended purpose of a fence. Fence shall also include any associated gate.

#### **Section 2.37 Flood Plain**

All areas adjoining a lake, stream, river, creek, or channel that are subject to inundation at the highest known flood water level.

#### **Section 2.38 Floor Area**

The finished area of all floors inside a building computed by measuring the dimensions of the outside walls of a building. Excluded are porches, patios, decks, terraces, breezeways, carports, verandahs, garages, unfinished attics, attic floor areas with less than five vertical feet from the floor to the finished ceiling, and all basements, including walkout basements.

#### **Section 2.39 Frontage**

Is the continuous linear distance along which a parcel of land or lot fronts on a public road or private street, measured along the line where the property abuts the public street right-of-way or private road easement or an area measured along the shoreline of a lake, river, or stream.

#### **Section 2.40 Garage – Private**

An accessory building or portion of a principal building used primarily for the storage of passenger vehicles or trucks.

**Section 2.41 Garage – Public**

A building used for commercial repair or storage of vehicles.

**Section 2.42 Greenhouses**

A building, 2001 square feet or larger in size, used primarily for starting, raising, or growing plants.

**Section 2.43 Greenbelt**

A planting or buffer strip at least 25 feet in width composed of deciduous and/or evergreen trees spaced not more than 30 feet apart and not less than one row of dense evergreen shrubs not less than 3 feet in height and spaced not more than 5 feet apart.

**Section 2.44 Inland Lake, River or Stream**

A natural or artificial lake, pond, impoundment, river, stream or creek that may or may not be serving as a drain, or any other body of water that has definite banks, bed, and visible evidence of a continued flow or continued occurrence of water.

**Section 2.45 Home Occupation**

An occupation or profession that is clearly a customary, incidental, and secondary use of a single-family residential dwelling unit and that does not negatively impact the single-family residential character of the neighborhood in which the home occupation is located and that also meets the Home Occupation requirements of this Ordinance.

**Section 2.46 Hotel**

A building in which lodging, and boarding are offered to the public for compensation. Boardinghouses, motels, motor hotels, and apartments are excluded.

**Section 2.47 Institutional or Public Uses**

Churches, schools teaching academic subjects, hospitals, convalescent or nursing homes, parks, civic centers, government buildings, libraries, and other public buildings or uses. This definition shall include all churches, schools teaching academic subjects, hospitals, convalescence or nursing homes, and parks, whether they are public, nonprofit, or private.

**Section 2.48     Junk or Salvage Yard**

An open area used for the collection, storage, dismantling, dumping, display, resale, exchange, baling, cleaning or handling of second hand, salvaged or used waste materials, machinery, vehicles, trailers, equipment, furnishings or parts thereof. The purchase or storage of used furniture and household equipment, used cars, boats, or trailers in operable condition are excluded if such uses are carried on in completely enclosed buildings.

**Section 2.49     Kennel**

Any lot on which four (4) or more dogs or cats six months of age or older are kept for any reason other than a lawful Veterinary Businesses, including boarding, breeding, and sale.

**Section 2.50     Keyhole Development (Funneling)**

The use of a waterfront property, parcel, or a lot for access to or use of a lake, stream, creek, or other body of water.

**Section 2.51     Lodging**

A temporary dwelling place and living quarters for transient dwellers either daily, weekly or monthly.

**Section 2.52     Lot**

A lawful parcel of land adjoining a dedicated public street or a recorded approved private street, and separated from other parcels by legal description, deed, or subdivision plat. The word "lot" shall include "plot" or "parcel." In the case of a development or use of land on the basis of condominium ownership (e.g., site condominium), "lot" shall also include the portion of the condominium project designed and intended for separate ownership in use and described in the master deed (e.g., a condominium unit).

**Section 2.53     Lot Corner**

A lot situated at the intersection of two or more streets.

**Section 2.54     Lot Coverage**

The percentage of a lot that is covered by structures including porches, arbors, breezeways, and patio roofs (whether open or closed). Fences, walls, hedges, and swimming pools are excluded.

#### **Section 2.55 Lot – Front**

That side of a lot other than a corner lot, abutting on a street right of way. The front of a lot abutting lakes and streams (where the stream is a lot boundary) shall be that portion of the lot nearest the water.

#### **Section 2.56 Lot - Front Setback Line**

The distance from the road right-of-way (or ordinary high-water mark of a lake with a lakefront lot) required to meet the front yard requirements of the respective zoning district.

#### **Section 2.57 Lot Line**

The lines bounding any lot as herein described.

#### **Section 2.58 Lot Lawfully Created**

Any lot which, when created, complied with all applicable provisions regarding lot dimensions in the Merrill Township Zoning Ordinance in effect on the date of the creation of the lot.

#### **Section 2.59 Lot of Record**

Any lot that when created (whether by being part of a recorded plat, recorded site condominium or recorded parcel) complied with all applicable state law requirements and provisions regarding lot dimensions and other requirements of the Merrill Township Zoning Ordinance in effect on the date of the creation of the lot. Also called a lawful nonconforming lot.

#### **Section 2.60 Mineral Extraction or Mining**

Mining or mineral extraction shall mean the excavation, digging, mining, removal and/or processing of peat, earth, gravel, sand, clay, top soil, stone or other soils or materials, including overburden, or the storage or transporting of such items on, to or from a mining site, or the reclamation of the site after removal or excavation of such items. For the purposes of this Ordinance, the following excavation or other activities are not included within the definition of mineral extraction or mining:

- A. Excavation approved and conducted by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or publicly operated utilities, drainage facilities, roads, or other publicly owned or operated improvements, where the excavation is limited solely to the public utility or improvement. Notwithstanding the preceding, any excavating, removal and/or processing of minerals which occurs in conjunction with the creation of a new public road or modification of an existing public road where the existing grade is modified or disturbed to more than three (3) feet from its present elevation or where such

mining in excess of 500 cubic yards will occur beyond the boundaries of the road right-of-way, shall be considered mineral extraction or mining.

- B. Excavation which by its nature is of limited scope and duration and which is undertaken primarily for the immediate use and development of the land excavated, such as for purposes of constructing or installing buildings, septic tanks, swimming pools, graves, etc., so long as no more than 1000 cubic yards of material are mined or excavated in total.
- C. Excavation in conjunction with bona fide farming operations conducted in accordance with generally accepted agricultural practices, including agricultural drainage work incidental to farming operations and irrigation or stock watering ponds, if no material is removed from the property.
- D. Other excavations not exceeding 5000 cubic yards in total where the Planning Commission determines, in its sole discretion, that the proposed excavation is unlikely to unreasonably interfere with the enjoyment of life or property and will not expose any person or property to the types of dangers inherent in mineral extraction or mining sought to be prevented by this Ordinance. The Planning Commission's determination may be based on a review of the purpose, location, extent or duration of the proposed excavation and other factors which may bear on the potential of any excavation activity to adversely affect the public health, safety, or general welfare of the community.
- E. The transport or storage of mined materials (or materials frequently associated with mining operations) shall not be deemed "mining" or part of a "mineral extraction(s)" if the materials transported or stored are not combined with minerals mined from the site to which the materials are transported or on which the transported materials are stored. The activity of transporting or storing mined materials that are not combined with other materials mined from the site to which the transporting occurs (or on which the transported materials are stored) shall constitute an industrial use and will not be considered mining or mineral extraction.

## **Section 2.61 Master Plan**

The Master Plan for Merrill Township, as amended, including graphic and written proposals, indicating the physical development of the Township, and includes any unit or part of such plan.

## **Section 2.62 Medical Marijuana Dispensary**

Any business, facility, association, cooperative, location, or operation, whether fixed or mobile, where medical marijuana is made available to, sold, grown, processed, delivered, or distributed by or to one or more of the following:

- A. A primary caregiver (as defined by Michigan Initiated Law 1 of 2008, as amended, being MCL 333.26421 et seq., as amended).

- B. A qualifying patient (as defined by Initiated Law 1 of 2008, as amended, being MCL 333.26421 et seq., as amended).

A medical marijuana dispensary shall also include any place, location, facility, or operation, whether fixed or mobile, where medical marijuana is smoked or consumed where either three or more persons are present and smoking or consuming medical marijuana, or such medical marijuana smoking or consumption is occurring on the property of a business, association, cooperative, or commercial operation or facility.

A medical marijuana dispensary shall not include the lawful dispensation of medical marijuana by a primary caregiver personally dispensing to not more than five (5) qualified patients (as defined by Michigan Initiated Law 1 of 2008, as amended, being MCL 333.26421 et seq., as amended) so long as the primary caregiver personally delivers the lawful amount of medical marijuana to the qualifying patient where the qualifying patient resides and it is done in full compliance with not only this Ordinance and any other applicable Township ordinances, but also all applicable Michigan and federal laws and regulations.

### **Section 2.63     Mobile Home**

A structure, transportable in one or more sections, that is built on a chassis and designed to be used as a dwelling with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. Mobile home does not include a recreational vehicle.

### **Section 2.64     Mobile Home Lot**

A designated site within a mobile home park for the exclusive use of occupants of a single mobile home.

### **Section 2.65     Mobile Home Park**

A parcel of land in single ownership that has been developed with all the necessary facilities and services in accordance with a site plan meeting all the requirements of this Ordinance as well as state regulations, and that is intended for the express purpose of providing a satisfying living environment for mobile home residents on a long-term basis.

### **Section 2.66     Modular Home**

A dwelling consisting of two or more transportable factory fabricated units designed to be assembled as a single residential dwelling on a permanent foundation as required by this Ordinance.



**Section 2.67 Motel, Tourist Cabin, Motor Hotel**

A building or group of buildings that has living or sleeping accommodations used primarily for transient occupancy and having individual entrances from the outside of the building to serve each unit.

**Section 2.68 Nonconforming Structure or Building (also called a lawful nonconforming structure or building)**

A structure or building lawfully existing at the time of adoption of this Ordinance and any amendment thereto and that does not thereafter conform to the regulations of this Ordinance or the zoning district in which it is located. A building or structure that is not licensed pursuant to law, or that violates any law or ordinance, is not a lawful structure.

**Section 2.69 Nonconforming Use (also called a lawful nonconforming use)**

A lawful use of a building, structure or lot prior to the adoption of this Ordinance and any amendment thereto and that does not thereafter conform to the regulations of this Ordinance or the zoning district in which it is located. A use that is not licensed pursuant to law, or that violates any law or ordinance, is not a lawful use.

**Section 2.70 Outdoor Heating Unit**

Any device, appliance, equipment, apparatus, or structure designed for heating a structure that:

- A. Is designed, intended and/or used to provide heat and/or hot water to any nearby or associated structure;
- B. Operates by burning wood or any other solid fuel including but not limited to coal, paper, pellets, or agricultural products;
- C. Is not located within the structure to be heated; and
- D. Includes, but is not limited to, devices referred to as outdoor furnaces, outdoor boilers, or outdoor stoves.

**Section 2.71 Person**

Any human being, corporation, partnership, property owner, entity, trust, limited liability company, association, or any combination thereof.

**Section 2.72 Planning Commission**

The Planning Commission of Merrill Township, Newaygo County.

**Section 2.73 Principal or Main Use of Structure**

The primary or predominant use of a structure or building pertaining thereto on a lot.

**Section 2.74 Recreational Vehicle**

Vehicular transportable structure mounted on wheels that are self-propelled or towed by a motor vehicle. For purposes of this Ordinance, a recreational vehicle is designed to provide temporary living quarters for recreational, camping, or travel use. This definition includes, but is not limited to, portable structures commonly known as travel trailers, travel homes, fold-down campers, truck-mounted campers, converted buses, and fifth wheels.

**Section 2.75 Right-of-Way**

A public road right-of-way or easement, private street easement, shared driveway, or access easement permanently established for passage of persons or vehicles.

**Section 2.76 Sign**

Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or marks, or other representation, or combination thereof, by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, commodity or product, and that is located outdoors or is visible outdoors upon any land or on or in any building. Also, a device, painting, fixture, or placard using color, graphics, symbols, and/or written copy designed and/or utilized for advertising or identifying any event, establishment, product, good, service, or displaying or depicting other information.

**Section 2.77 Single Ownership**

A lot of record on or before the effective date of this Ordinance that is owned by one or more persons having no legal rights in adjacent property.

**Section 2.78 Site Plan**

A scale drawing that shows the location and dimensions of existing conditions and proposed improvements upon a parcel of land, including buildings, driveways, parking areas, landscaping, lighting, sidewalks, signs, sewage systems, and drainage facilities, and any other items that may be required therein.

**Section 2.79 Stable – Private**

A stable used only for housing horses owned by a person and used by the owner and family.

## **Section 2.80     Stable – Public**

All stables other than private stables as described in this Ordinance.

## **Section 2.81     Story**

That portion of a building between the surface of any floor at grade level and the surface of the floor next above it, or if there be no floor above, then the space between such floor and the ceiling next above it, A story thus defined, shall not include any portion of a building having more than 50% of its total cubic content below the established grade level.

## **Section 2.82     Street (or Road)**

- A. "Private road" or "private street" means any undedicated path, trail, or road that provides or is intended to provide the primary means of ingress and egress to two (2) or more parcels or lots or two (2) or more principal buildings, dwelling units, structures, or combination thereof, whether created by a private right-of-way agreement, a joint ownership, a license, a lease, or an easement. Any and all extensions, additions, or branches of or to a private road shall be considered part of the private road that abuts the public road. A private road shall also include the following:
  - 1. An access serving one (1) parcel or lot if that parcel or lot does not have the requisite amount of frontage on a public road as required by this Ordinance.
  - 2. Where two (2) or more parcels or lots or dwellings share or utilize a common access drive, even if each parcel or lot has the required frontage on a public road.
- B. "Public road" or "public street" means a dedicated or undedicated public right-of-way or easement for public road or street purposes.

## **Section 2.83     Structure**

A structure is anything constructed, erected or placed item or material or combination of materials or items in, on or upon the ground having a fixed location, including, but not limited to, (temporary or permanent) buildings, sheds, towers, signs, swimming pools, animal enclosures, garages, accessory buildings, temporary or portable garage or vehicle enclosure, decks, patios, platforms, satellite dishes, gazebos, tennis courts and storage bins, but excluding lawful fences, lawful docks, sidewalks and paving on streets, driveways or parking areas.

The definition of structure also excludes retention walls, seawalls, decks or patios, no portion of which is located more than 12 inches above the natural grade nor closer than 5 feet to any lot line. Structures shall meet all setback requirements.

#### **Section 2.84     Swimming Pool**

A structure used to hold water for swimming and aquatic recreation. Plastic, canvas or rubber portable pools temporarily erected upon the ground holding less than 300 gallons of water are excluded.

#### **Section 2.85     Topsoil**

The portion of soil, generally the upper most nutrient rich layer, that is capable of being used to grow vegetation.

#### **Section 2.86     Township**

The Township of Merrill in Newaygo County, Michigan.

#### **Section 2.87     Township Board**

The Township Board for Merrill Township in Newaygo County, Michigan.

#### **Section 2.88     Wind Energy Conversion Systems (WECS)**

A surface area, either variable or fixed, for utilizing the wind for electrical power; and a shaft, gearing, belt, or coupling utilized to convert the rotation of the surface area into a form suitable for driving a generator, alternator, or other electricity-producing device; and the generator, alternator, or other device to convert the mechanical energy of the surface area into electrical energy; and the tower, pylon, or other structure upon which any, all, or some combination of the above are mounted or any building or accessory equipment.

Wind Energy Conversion System shall also mean any combination of the following:

- A. A mill or machine operated by wind acting on oblique vanes, blades, or sails that radiate from a shaft.
- B. A surface area such as a blade, rotor, or similar device (either variable or fixed) for utilizing the wind for electrical or mechanical power.
- C. A shaft, gearing, belt, or coupling utilized to convert the rotation of the surface area into a form suitable for driving a generator, alternator, or other electricity-producing device.

- D. The generator, alternator, or other device used to convert the mechanical energy of the surface area into electrical energy.
- E. The tower, pylon, or other structure upon which any, all, or some combination of the above are mounted. A building or equipment accessory thereto.

## **Section 2.89 Yard**

The open spaces on the same lot with a main building and that are unoccupied and unobstructed from the ground upward except as otherwise provided in this Ordinance, and as defined herein. (Also known as a setback area).

- A. FRONT YARD, an open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the main or other building. In the case of a lot having frontage on a body of water (except a creek or stream that is not a lot boundary), the front yard shall be considered that area between the ordinary high-water mark on the shoreline and the building line of the main building. In the case of a corner lot, all lot lines abutting a street (public or private) shall be considered a front lot line with front yards provided for each.
- B. REAR YARD. An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the main or other building. In the case of a corner lot, the rear yard may be opposite either street frontage. In the case of a waterfront lot (except a creek or stream that is not a lot boundary), the rear lot shall be located between the (rear) building line and abutting street (private or public), provided, however, setbacks for the rear yard of a waterfront lot abutting a street shall be no less than those required for the front yard.
- C. SIDE YARD. An open space between a building and the side lot line, extending from the front yard to the rear yard, the width of which is the horizontal distance from the nearest point on the side lot line to the building.

## **Section 2.90 Zoning Act**

The Michigan Zoning Enabling Act, public Act 110 of 2006, as amended, is being MCL 125.3101 et seq.

## **Section 2.91 Zoning Administrator**

The person or persons appointed by the Merrill Township Board to administer the Zoning Ordinance.

## **Section 2.92 Zoning Board of Appeals (also the Board of Appeals or ZBA)**

The Merrill Township Zoning Board of Appeals of Newaygo County Michigan.

### **Section 2.93 Zoning Permit**

A standard form or permit issued by the Zoning Administrator upon application and declaration by the owner or the duly authorized agent regarding proposed construction and use of land, buildings and structures thereon, granting approval or denial for the location of the construction and/or use applied for.

### **Section 2.94 Rules Applying to Text and Interpretation**

The following rules of construction apply to the text of this Ordinance: A.

The particular shall control the general.

B. In the case of any difference in meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control. Illustrations are provided for general reference only.

C. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

D. Words used in the present tense shall include the future; and words used in the singular number shall include the plural; and the plural the singular, unless the context clearly indicates the contrary.

E. A "building" or "structure" includes any part thereof.

F. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

G. Unless the context clearly indicates the contrary, the conjunctions noted below shall be interpreted as follows.

1. "And" indicates that all connected items, conditions, provisions, or events shall apply.

2. "Or" indicates that the connected items, conditions, provisions or events may apply singularly or in any combination.

3. "Either ... or" indicates that the connected items, conditions, provisions or events shall apply singularly but not in combination.

H. Terms not herein defined shall have the meaning ordinarily and customarily assigned to them.

I. The phrase "Zoning Administrator" is used throughout the Ordinance pursuant to the review and approval of zoning requests, enforcement of this Ordinance and other administrative actions. In cases where final review and approval rests with the Planning Commission, Township Board, and/or the Zoning Board of Appeals, the reference to Zoning Administrator shall be interpreted to mean that final review and approval rests with the parties or bodies as referenced above.

ARTICLE 3  
GENERAL PROVISIONS

**Section 3.01 Purpose; Conflict**

General regulations apply to all zoning districts and properties except as otherwise expressly noted herein. Where requirements of a general provision and a zoning district regulation differ, the more restrictive requirement shall prevail.

**Section 3.02 Accessory Buildings**

- A. Two (2) accessory buildings are permitted for residential use (i.e., not commercial, business, office, or industrial use) with the presence of a principal dwelling. One (1) accessory building is permitted without the presence of a principal dwelling on the same lot in all zoning districts, provided that all of the following requirements are met:
  - 1. Shall comply with all side, rear, and front yard setback requirements pertaining to this type of construction specified in this Ordinance.
  - 2. Shall meet all adopted Township building codes and shall comply with all state and local regulations to inhibit or otherwise discourage unlawful entry.
- B. Accessory buildings are permitted in front yards provided they meet the minimum required setbacks.
- C. Accessory buildings, not exceeding 125sq ft (i.e. sheds) in rear yards must be at least 4 feet from any lot line except in Lake Residential where accessory buildings must be at least 7 feet from any lot line and 50 feet from the water line.
- D. No accessory building shall be located closer than 5 feet to any other accessory building and 10 feet to the principal building.
- E. No accessory building shall be used for dwelling purposes. A mobile home cannot be used for accessory use, for by definition, a mobile home when used as a dwelling would be subject to all regulations in this Ordinance for dwellings.
- F. In the Lake Residential zoning district, where the owner has a lot directly across a street right-of-way from the owner's dwelling, one accessory building may be allowed with special use approval.
- G. In the Lake Residential zoning district, the use of semi-trailers, mobile homes, campers, buses, box cars, shipping containers and the like for storage is prohibited

### **Section 3.03    Adult Foster Care Home**

Adult Foster Care Homes must be licensed by the state pursuant to Public Acts 218 of 1979, as amended.

Adult Foster Care Family homes, Adult Foster Care Small Group Homes, and Adult Foster Care Large Group Homes may be allowed in all districts except in lake and river overlay districts

### **Section 3.04    Animal Enclosures for Nonfarm Animals**

No fenced area, enclosure, or similar arrangement shall be utilized or constructed for deer, elk, wild boar, reindeer, caribou, wild turkey or other normally wild animals unless a special approval is obtained from the Planning Commission. Fences for such uses exceeding 6 feet in height can be utilized only if a special use approval is obtained from the Planning Commission.

### **Section 3.05    Area or Space Required**

No lot, yard, court, parking area, or other space shall be reduced to less than the minimum required under this Ordinance. No lot or other area shall be further reduced if already less than minimum. Property and bottomlands located under a lake, river, creek, or stream shall be excluded from lot area or dimension calculations for purposes of determining minimum lot area and other dimension requirements pursuant to this Ordinance. Setbacks shall be measured from the nearest line of the public street right-of-way, private road easement or access easement or right-of-way.

### **Section 3.06    Basement Dwellings**

The use of any basement as a dwelling is prohibited. Any dwelling without a full floor above grade level shall be considered a basement dwelling. An underground home approved as a special use is not considered a basement dwelling.

### **Section 3.07    Camping**

- A. Campgrounds authorized by the Township and licensed by the State of Michigan shall not be subject to these requirements.
- B. Camping shall be subject to the following:
  - 1. In no case shall there be more than four (4) recreational vehicles for camping per lot or parcel.
  - 2. On properties that are less than a half (1/2) acre in size, one (1) annually permitted recreation vehicle is permitted for camping and one (1) additional tent or recreation vehicle for camping not to exceed fourteen (14) calendar days in any thirty (30) day period is permitted. On properties that are a half (1/2) acre and less than one (1) acre in size, two (2) annually permitted recreation vehicles are permitted for camping and one



(1) additional tent or recreation vehicle for camping not to exceed fourteen (14) calendar days in any thirty (30) day period is permitted. On properties that are one (1) acre and less than two (2) acres in size, two (2) annually permitted recreation vehicles are permitted for camping and two (2) additional tents or recreation vehicles for camping not to exceed fourteen (14) calendar days in any thirty (30) day period are permitted. On properties that are two (2) acres or more in size, four (4) annually permitted recreation vehicles are permitted for camping and four (4) tents or recreation vehicles for camping not to exceed fourteen (14) calendar days in any thirty (30) day period are permitted, provided that the total number of all recreation vehicles for camping does not exceed more that provided for in (1) above.

3. All campers shall comply with the following rules:
  - a. Quiet hours shall be maintained between the hours of 11:00 p.m. and 7 a.m.
  - b. Annual camping permit(s) shall be issued to or renewed by the property owner.
  - c. No annual camping permits shall be issued to individuals under eighteen (18) years of age.
  - d. Upon termination of camping all equipment and supplies must be removed.
  - e. Sewage storage and disposal shall be in accordance with the regulations of the Newaygo County Health Department.
  - f. Garbage and refuse build-up on the premises is prohibited and must be removed after each stay.
  - g. Areas used for camping must be kept in a neat, clean and sanitary condition.
  - h. Campers shall be maintained in good and mobile condition.
  - i. Dilapidated campers shall be removed from the property.
  - j. All recreational vehicles and related camping activities, with the exception of camp fires, shall maintain a setback of fifteen (15) feet for side yards, thirty (30) feet for front and rear yards, and fifty (50) feet from the ordinary high-water mark of any water body.
  - k. In-ground septic facility, water well, and electricity shall be permitted on a lot without a principal structure.
  - l. Recreational campfire areas shall be contained by a fire ring. Burning permits shall be obtained when required and fires shall be adequately monitored and contained. The campfire shall not constitute a nuisance to neighboring properties due to the size or location of the fire, excessive smoke, or noxious items being burned.

- m. Camping activities shall not be a nuisance to surrounding property.
- 4. All complaints related to camping must be submitted on the **Merrill** Township Complaint Form.
  - a. Failure to comply with the requirements of this Section is a violation of the Zoning Ordinance and subject to enforcement regulations.

### **Section 3.08 Channelization**

No channel, canal or similar waterway or devise shall be dug, constructed, dredged, enlarged, or created out of or that connects to any lake, river, creek, or stream in the Township. Nor shall the size, location, or surface area of any lake, river, creek, or stream be increased or altered by digging, dredging, or excavation upland from the ordinary high-water mark of the lake, river, creek, or stream; provided, however, that this section shall not apply to the following:

- A. Any lawful dredging occurring on existing lake bottomlands that are lakeward of the ordinary high-water mark of the lake.
- B. The lawful creation or enlargement of a pond that does not abut or connect into an existing lake.
- C. The lawful dredging of an existing canal or channel pursuant to applicable state laws and permit requirements, so long as such existing channel or canal is not enlarged or expanded.

### **Section 3.09 Clear Vision Corners**

All intersections of public streets shall be provided and maintained with a clear unobstructed vision corner extending not less than 20 feet from all right-of-way line intersections along said right-of-way line in the form of an isosceles triangle, within which no vehicle parking or obscuring structures, storage, growth or displays shall be located or allowed.

### **Section 3.10 Corner Lots**

Any yard that abuts a street right-of-way shall meet the front yard requirements of the zoning district in which it is located for each street.

### **Section 3.11 Construction Time Limits**

Once construction or installation has begun regarding a building or structure, such building or structure shall be expeditiously finished, and an occupancy permit shall be issued, in accordance with all other applicable Township ordinances and permit requirements.

### **Section 3.12 Driveways**

An approved driveway permit shall be obtained from the state Highway Department or the Newaygo County Road Commission and submitted to the Building Inspector prior to the issuance of a building permit.

### **Section 3.13 Dwellings on More Than One Lot**

If a structure is to be located on a property containing two or more lots under single ownership, the entire parcel shall be considered "a lot" for the purposes of this Ordinance and shall be permanently legally combined as one lot.

### **Section 3.14 Dwelling Units**

All dwelling units shall have a minimum first floor area of 576 square feet. All dwelling units shall provide a minimum height between the floor and ceiling of 7 feet.

- A. The linkage or placement of more than one manufactured home, or prefabricated, separate, independent dwellings shall not be permitted.
- B. All dwelling units are to be connected to a public water and sewer, if available, or to such private facilities as are approved by the County Health Department.
- C. Storage of abandoned or unusable personal property shall not occur outside of the dwelling unit, garage, or accessory buildings.
- D. Chimneys for furnaces, fireplaces, or wood burning stoves shall be constructed of underwriters' approved construction.
- E. Every dwelling unit must comply with all pertinent building and fire codes. In case the dwelling is a mobile home, all construction, plumbing, electrical apparatus and insulation within and connected to said mobile home shall conform to the "Mobile Home Construction and Safety Standards" as promulgated by the United States Department of Housing and Urban Development (HUD), being 24 CFR 2380, and as from time to time such standards are amended. Additionally, all dwellings shall meet or exceed all roof snow load requirements.
- F. In the event a dwelling unit is a single wide mobile home or double-wide, the mobile home must be installed with wheels removed, and anchored to a cement slab as required by the building code covering the entire length and width of the mobile home. Skirting shall be installed that is compatible with the existing materials of the mobile home according to manufacturer's specifications. This shall take place within 60 days of the home being placed on any lot.
- G. No mobile home will be occupied until a temporary or Certificate of Occupancy is received from the Building Inspector.
- H. All construction required herein shall commence only after zoning and building permits have been obtained.

### **Section 3.15 Flood Plain Areas**

No dwelling shall be erected, or hereafter occupied if vacant, in flood plain areas. The flood plain areas of lakes, rivers and streams shall be determined by an engineer or agency designated by the Nawaygo County Board of Commissioners and information kept at the Nawaygo County Drain Commissioner's office.

### **Section 3.16 Essential Public Services**

It shall be lawful for public utilities, departments or commissions to erect, construct, alter or maintain underground or overhead gas, electrical, water distribution, transmission systems or collection, communication supply or disposal systems, including poles, towers, drains, sewers, pipes, conduits, wire cables and accessories for the furnishing of adequate services by public or municipal departments for health, safety and general welfare, in any zoning district in Merrill Township. Related buildings shall be subject to the approval of the Planning Commission as listed below.

The Planning Commission is hereby granted the power to approve as a special use the erection of any building for a private or public utility. This is provided that the Planning Commission shall find that such use, height, area, buildings or structure is designed, erected and landscaped to conform to the zoning district in which it is located; and that the advantage of the proposed location to the utility is not outweighed by the detriment to the locality, and that a different location is not readily available. A zoning permit also shall be required before installation.

### **Section 3.17 Front Yard**

The front yard of a lot must abut a lawful street right-of-way, private road, shared driveway, or easement. However, on waterfront lots (excluding creeks or streams that are not lot boundaries), the rear yard must abut on a lawful street right-of-way, private road, shared driveway, or easement.

### **Section 3.18 Front Yards - Basis for Determining**

Front yards shall be measured from the road right-of-way, private road, shared driveway, or easement to the nearest portion of the structure.

### **Section 3.19 Greenbelts**

A greenbelt shall be required in the side and/or rear yards of any commercial or industrial use that abuts a residential district. Greenbelts shall always be maintained. The greenbelt may be part of the side or rear yard. Adjacent residential property owners may waive the greenbelt requirement or request a solid fence in place of the greenbelt. Such waivers or requests shall be in writing and be presented to the Planning Commission prior to issuing permits.

### **Section 3.20 Height Exceptions:**

- A. All Zoning Districts: Height requirements may be exceeded by chimney, silos, farm barns and storages, TV towers and radio antennas (where otherwise regulated by this Ordinance), cupolas, spires, ornamental projections, or water towers provided they are located not less than the same distance as their height from any adjoining property line.
- B. Industrial Uses: Chimneys, cooling and fire towers, elevator building and bulkheads, roof storage tanks and other necessary accessory structures are permitted provided they are located not less than the same distance of their height from any adjoining property line.

### **Section 3.21 Home Occupations**

Any use customarily conducted entirely within a single-family residential dwelling and carried on by the inhabitants thereof without being evident in any way from the street or from neighboring premises. In order to preserve the residential character of the neighborhood and/or the residential uses of existing homes, and to maintain a segregation between the areas that are characterized as residential and those characterized as commercial and industrial, the following is applicable:

- A. **Home Occupation** – All home occupations shall meet all of the following restrictions and regulations:
  - 1. The home occupation shall be subject to site plan review and approval by the Zoning Administrator.
  - 2. The home occupation shall be conducted entirely within the dwelling and only by two (2) persons who are residents of that dwelling; except that not more than one (1) person may be employed who is not a resident of the dwelling.
  - 3. All motors and equipment used in the conduct of any home occupation shall be shielded so as not to cause radio or television interference or to be audible from off-site.
  - 4. There shall be no exterior alteration in the residential character of the premises in connection with such home occupation and no more than twenty-five percent (25%) of the living area of the dwelling shall be devoted to such home occupation. The home occupation shall be conducted entirely within the dwelling and no portion of the use shall occur outdoors or within an accessory building.
  - 5. No merchandise or articles for sale shall be displayed for advertising purposes so as to be viewable from outside the dwelling and no sign or device relative to the sale of such merchandise shall be displayed on the premises.
  - 6. All articles and materials used in connection with such home occupation shall be stored in the dwelling. No outside storage is permitted.

7. The use shall not generate more than eight (8) client trips to the home during the hours of 8:00 AM to 8:00 PM. Clients shall not be received during other hours. The parking need generated by the conduct of such home occupation shall be provided off the street and not within the required front yard.
8. There shall be no sale of products or services except as are produced on the lot by such home occupation, except that products not produced on the lot that are incidental to services being performed as a part of the home occupation may be sold in limited quantities.
9. The home occupation shall comply with all applicable Building Code requirements.
10. The home occupation shall be permitted one (1) unlighted wall sign, not to exceed two (2) square feet in size. Such sign shall be attached to the dwelling.
11. The use shall not include deliveries by trucks greater than normal U.S. Postal or United Parcel Service step type vans.
12. Instruction in craft or fine art within a dwelling by a resident member of the family residing in the dwelling shall be considered a home occupation and shall be subject to the requirements for a home occupation.

The allowance of a home occupation by the Township, subject to the regulations of this Ordinance, shall not in any way or manner constitute an acceptance of, or give validity to, the introduction of nonresidential uses into any residential district.

**B. Cottage Industry** - An occupation that does not meet the above standards, may be considered by the Township as a Cottage Industry subject to all of the following:

1. Cottage Industry shall require a special use approval.
2. Included with the special use application shall be detail on the nature of the proposed home Industry including:
  - a) Type of business.
  - b) Hours of operation.
  - c) Number of employees.
  - d) Amount and type of waste (material and effluent) to be generated and the method of handling and disposing of all wastes.
  - e) Anticipated levels of noise, odor, glare, dust, fumes, and related impacts.

- f) Anticipated traffic levels (customer, delivery vehicles, etc.).
- 3. No more than two (2) persons who are not residents of the dwelling and two (2) persons that are residents of the dwelling shall be employed on the lot at which the Cottage Industry is conducted.
- 4. Any need for parking generated by the conduct of such Cottage Industry shall be provided off the street and not within the required front yard.
- 5. The Cottage Industry shall be conducted entirely within the dwelling or one approved accessory building. The Cottage Industry shall not occupy more than twenty-five (25) percent of the gross floor area of the dwelling. An accessory building used for the Cottage Business shall not exceed one thousand (1,000) square feet in size.
- 6. The Cottage Industry shall not result in the alteration of the dwelling, nor the construction of an accessory building, that is not customary to dwellings and residential accessory buildings. Special building code requirements such as automatic fire suppression systems, explosion proof construction, paint booths, hazardous waste containment systems (except for the containment of small quantities of motor oil, lubricants, and anti-freeze), and other such systems shall not be permitted.
- 7. In addition to meeting the standards of this section and the special use standards for approval, it shall be demonstrated that the Cottage Industry will not be detrimental to the commercial viability of the Township's (or adjoining municipalities') commercially zoned districts.
- 8. No part of the Cottage Industry shall occur outdoors.

### **Section 3.22 Institutional and Public Uses**

Institutional and public uses may be allowed in any district if approved as a special use by the Planning Commission as provided in this ordinance.

### **Section 3.23 Keyhole Development (Funneling):**

- A. In all zoning districts, there shall be at least one hundred (100) feet frontage on a lake, river, creek or stream, as measured along the ordinary high water mark of the lake, river, creek or stream, for each single-family home, dwelling unit, cottage, lot, condominium unit, site condominium unit or apartment unit utilizing or accessing the lake, river, creek or stream frontage; provided, however, that where the lot width requirement for a given zoning district exceeds 100 feet, a lot in that

zoning district shall have frontage on the lake, river, creek or stream equal to or greater than the minimum lot width required in that zoning district.

- B. In all zoning districts, no lake or river access, boat ramp, shore station, dock, boat launch or shoreline abutting a lake shall be utilized for commercial, business, outdoor recreational (or entertainment) facilities, institutional, nonresidential or nonagricultural uses or purposes unless such use complies with the requirements of the zoning district in which it is located and further such use is also approved as a special use or planned unit development (PUD).
- C. The lake, stream, creek, and river access and use regulations contained in this section shall be fully applicable to all planned unit development (PUD) and special use projects or developments.
- D. In addition to the above limitations, no easement, private park, common area, or lot or access property abutting or adjoining a lake, creek, stream or river shall be used to permit access to the lake, river, creek or stream for more than one (1) single-family home, dwelling unit, lot, condominium unit, site condominium unit, apartment unit or any other use unless such additional access use is permitted in the zoning district in which it is located and furthermore such use must also be approved as a special use or planned unit development (PUD).

### **Section 3.24 Lot Accessibility**

No lot shall be created, and no dwelling shall be built on a lot unless the lot has frontage (equal to or greater than the minimum width required for the lot involved) upon an improved public street, a lawful private road or easement that complies with all requirements of this Ordinance.

### **Section 3.25 Lot Splits and Land Divisions**

No lot, parcel, or access easement shall be created that does not fully comply with the minimum area, width, frontage, and other requirements of the Merrill Township Zoning Ordinance, as amended. All land divisions, splits, or boundary reconfigurations of platted lots and unplatted parcels shall meet the requirements of the Merrill Township Zoning Ordinance, as amended, and the requirements of the Michigan Land Division Act (MCL 560.101 et seq.\ MSA 26.430(101) et seq.). No land division, lot split, creation of an access easement, or reconfiguration of boundary lines shall occur until and unless a land division permit has been obtained from the Township Zoning Administrator or such other person as may be designated from time to time by resolution of the Township Board. No permit for land division shall be issued until and unless the Township determines that the land division, lot split, access easement, or boundary reconfiguration, as well as the resulting lots, access easements or parcels, fully complies with the requirements of the Township Zoning Ordinance, as amended, and all other applicable Township ordinances. Fees for a land division permit shall be set as determined from time to time by resolution of the Township Board. No land division permit shall be approved or issued unless the application is accompanied by a survey done by a registered land surveyor or engineer showing all resulting lots or parcels, easements (if any), and full legal descriptions. The Township can waive the requirement of a survey



in a given case for good cause shown by the applicant. No permit for division of a platted lot or lots, or reconfiguration of boundary lines for a platted lot or lots, shall be issued until and unless such land division is also approved by the Township Board.

### **Section 3.26 Lot Width**

- A. The minimum lot width required in each zoning district shall be maintained across the entire length of the lot or parcel, except as provided in subsection B, below.
- B. All lots shall have frontage on a public street or on a private road approved pursuant to Section 3.35 for a distance equal to or greater than the minimum lot width specified for the district in which the lot or parcel of land is located. Lots abutting, a cul-de-sac shall be permitted to have less street or road frontage (but in no case less than 33 feet of such frontage), provided however, that a special use is obtained pursuant to Article 16, and further provided that the lot width at the front setback line, (or the rear setback line in the case of waterfront lots) and beyond shall satisfy the minimum lot width requirement of the zoning district in which the lot or parcel of land is located.
- C. For all lots or parcels abutting or having frontage on a lake, river, creek or stream, each lot or parcel shall have frontage on the lake, river creek or stream as measured at the normal highwater mark, equal to or greater than the minimum lot width requirement of the zoning district within which the property is located.

### **Section 3.27 Lot Width-to-Depth Ratio**

In all zoning districts and unless expressly otherwise provided elsewhere in this Ordinance, the depth of all lots created of record after the adoption of this ordinance shall not exceed four (4) times the width of the lot. For purposes of this section, the measurement for lot width shall be taken along the frontage on the public street or other approved road. The measurement for depth, for purposes of this section, shall be taken from the street or road frontage to the point of the lot located farthest from the street or road frontage.

### **Section 3.28 Lots of Record - Existing Platted**

A lot of record shall include a lot that is part of a subdivision, the map of which has been recorded in the office of the Newaygo County Register of Deeds, or a lot described by metes and bounds, the deed to which has been recorded in the office of the Register of Deeds, prior to the effective date of this Ordinance.

### **Section 3.29 Lots of Record – Nonconforming**

- A. Lots of record located in zoning districts permitting single-family dwellings must meet current set back provisions for the zoning district in which they are located. Off street parking requirements shall be met. Lot coverage shall not exceed 30%.

- B. The Zoning Administrator may permit a lawful lot of record not meeting the above requirements to have a single-family dwelling built thereon upon the making of the following determinations:
1. The lot is of or in single ownership.
  2. There is no practical way of obtaining more land.
  3. The proposed use cannot be located on the lot such that the minimum requirements are met.
  4. The proposed use will not adversely affect adjacent property values or the character of the neighborhood.
  5. Side yards of at least 10 feet each will be provided.
  6. The front yard shall be at least 30 feet and the rear yard at least 15 feet.
  7. The lot is at least 10,000 square feet in area.
- C. If two (2) or more adjoining lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this Ordinance, or an amendment thereto, with continuous frontage and under single ownership do not meet the requirements established for lot width, dimension, or lot area, the lands involved shall be deemed automatically combined and shall be considered to be an undivided single lot for the purposes of this Ordinance, and no portion of such lot shall be used or divided in a manner which diminishes compliance with lot width, dimension, and area requirements established by this Ordinance.

### **Section 3.30 Mobile Homes and Prefabricated Housing**

This is a structure designed for use as a dwelling unit that is transportable in one or more sections, built on a permanent chassis, and designed for use with or without a permanent foundation. The term does not include recreational vehicles, travel trailers, or recreational units.

- A. Mobile home as new construction, or replacement of an existing Mobile home, shall comply with current federal regulations.
- B. A single wide mobile home as new construction is allowed in all districts.
- C. Will be considered a dwelling unit when connected to required utilities and that is or is intended to be attached to the ground.

### **Section 3.31 Motor Home Storage and Recreational Vehicle Storage/Use**

- A. It shall be unlawful for any person to park, or cause to be parked, any motor home or recreational vehicle on any street, highway or public place for storage, use as a dwelling or for overnight stops.
- B. A property owner wishing to store his motor home or recreational vehicle on his property with his primary residence may do so without obtaining a camping permit from the Zoning Administrator. Said property owner may use stored motor home or recreational vehicle up to 14 days per year without obtaining a camping permit from the Zoning Administrator.

### **Section 3.32 Moving of Structures**

The moving of a structure shall be considered the same as the erection of a new structure. All regulations relative to the erection of new structures shall be met.

### **Section 3.33 Multiple Use of Buildings**

Where any part of any building is used for residential purposes and the remainder thereof is to be used for any nonresidential purposes, the part used as a dwelling shall conform to all requirements for dwellings in that residential district. Land or buildings used for nonresidential purposes shall be excluded in determining whether the requirements for the residential zoning district are met.

### **Section 3.34 Parking Vehicles**

Parking or storage of commercial vehicles exceeding a rated capacity of 1 ½ tons is prohibited in within 150 feet of all lakes, rivers, creeks or streams Lake Residential and other residential zoning districts.

### **Section 3.35 Principal Use - One Dwelling Per Lot**

One principal use shall be made of a lot, except as otherwise expressly permitted by this Ordinance. A single-family dwelling shall constitute a principal use.

### **Section 3.36 Private Roads and Shared Driveways**

Site Plan Review; Road Permits. No construction shall commence prior to the granting of a preliminary road permit by the county and/or state road commission. A permit may be granted upon the approval of a site plan by the Planning Commission. No building permit will be issued until a final road permit is issued after final check by the highway department that the road meets all stated requirements.

- A. Construction Plans. Construction plans shall include location, adjacent properties, proposed street grades, drainage, and proposed improvements, shall be submitted as part of the site plan.

- B. Maintenance and Repair. Maintenance, repair, and liability for private roads shall be the responsibility of the property owners adjacent to the private road and not the responsibility of the Township. The developer or homeowners shall establish by appropriate deed or provisions that shall be responsible for road maintenance and repair through an Association or partnership, and that shall have the authority to apportion and collect the cost of maintenance and repair from benefiting property owners. All deeds or provisions for maintenance and repair of private roads shall be reviewed and are subject to the approval of the Planning Commission prior to the recording thereof.

### **Section 3.37 Razing of Buildings**

No building shall be razed until a permit has been issued by the Building Inspector. A cash bond or irrevocable letter of credit in the amount established by the Township may be required. The applicant must complete the razing within 6 months. The applicant shall comply with such reasonable conditions as to health and safety as the Building Inspector may require. Such conditions shall include but may not be limited to, the filling of holes and the proper disconnection of utilities.

### **Section 3.38 Recreational Vehicle**

No campers, tents, travel trailers or vehicles designed primarily for temporary living or sleeping shall be placed in Merrill Township other than in approved parks or campgrounds without first obtaining a permit from the Zoning Administrator and must comply with Newaygo County Health Department standards. Provided, however, recreational vehicles owned by the owner of record on parcels containing a permanent dwelling is permitted and does not require an annual permit. For purposes of this provision, the term "storage" means placement of a portable dwelling upon a parcel for an indefinite period of time for purposes of safe keeping or preservation. During such time, said unit is not to be utilized for recreational or sleeping purposes. Storage shall not occur in required front yard or required side yard areas.

### **Section 3.39 Required Yards and Lots**

- A. Minimum Requirements - All lots, yards, parking areas or other spaces created after the effective date of this Ordinance shall comply with the minimum requirements of the zoning district in which they are located and all other applicable provisions of this Ordinance.
- B. Exclusion of Private Street Easements, Public Right-of-Way, and Bottomlands in Computing Lot Area and Width - Computations for minimum lot area and width shall not include lands or areas used for private easements granted to other properties for purposes of establishing or maintaining a private street, land located under or comprising a public road right-of-way, or land or bottomlands located under a lake, stream, or river.
- C. Dwellings on More Than One (1) Lot - If a building or structure is to be located on two (2) or more lots under single ownership, the entire parcel (all lots) shall be considered a lot for purposes of

this Ordinance and the lots or parcels shall be legally and automatically combined into one (1) individual lot.

### **Section 3.40 Residential Uses in Commercial Districts**

Residential uses shall not be permitted in the commercial district; provided, however, that a residential use or a combined residential-commercial use may be permitted in the commercial district if a special use is approved by the Planning Commission under the terms of Article 16. If such a special use is approved, all use (other than the residential use prohibition), dimension, sign and other applicable requirements of the commercial district shall apply to the residential use or the combined residential - commercial use.

### **Section 3.41 Swimming Pools**

Swimming pools may be installed as an accessory use in zoning district as an accessory use. All pools must meet all of the following conditions:

- A. Pools may be installed in the side or rear yards of a lot. Motels and hotels may install pools in the front yard.
- B. Pools shall not be erected closer than 10 feet from the rear and side property lines of the lot. In the case of a corner lot, the pool shall not be located closer than 20 feet from any property line abutting a street.
- C. Pools shall not occupy more than 40% of the area of the yard. In computing such area, all other accessory structures shall be excluded.
- D. A fence not less than 4 feet in height shall be required. The support posts thereof shall be constructed in a permanent manner and in such a way as to last as long as the pool. Such posts shall be spaced at intervals of not more than 8 feet. The fence shall entirely enclose the pool. The fence and every gate or other opening in the fence shall be designed and maintained to prevent entry of persons except as permitted by the owner.
- E. The inlet of the water supply system shall be above the overflow level of the pool and be fitted with an anti-siphon device.

### **Section 3.42 Temporary Buildings**

Temporary accessory structures for uses incidental to construction work may be allowed by permit by the Building Inspector after issuance of a building permit for the proposed structure. The Building Inspector may attach reasonable conditions to a permit. The temporary permit shall specify the location of the temporary accessory structures and shall terminate 6 months after the date of its issuance. The permit may be renewed if the Building Inspector finds that construction of the principal structure has been

progressing in a reasonable manner. In any event, the temporary structure and all debris shall be removed within 15 days after the completion or abandonment of work.

#### **Section 3.43     Topsoil**

Topsoil shall not be removed from the lot on which it originated except when it is in surplus amounts in connection with construction operations.

#### **Section 3.44     Unwholesome Substances**

(Future Unwholesome Substances location) (See unattached Unwholesome Substances for current Ordinance)

#### **Section 3.45     Use and Construction of Accessory Buildings**

Accessory buildings shall be stick-built or the equivalent of new building construction. No mobile home, tank, junk object, or salvage materials, trailer, vehicle or similar item shall be utilized as an accessory building or storage structure; provided, however, that such requirement shall not be applicable to bona fide agricultural storage or activities, or to tool sheds or similar temporary storage structures utilized pursuant to the construction of a building, so long as the period of construction does not exceed one (1) year.

#### **Section 3.46     Vehicles - Storage Of**

The Lake Residential District is only allowed two unlicensed vehicles at any given time. All other districts are exempt.

#### **Section 3.47     Working and Storage Surfaces for Certain Operations**

For any junkyard, scrap yard, salvage operation, automobile or vehicle repair or overhaul operation or similar business that utilizes an area exceeding one-fourth (1/4) acre, all areas (indoors or outdoors) used for junk, scrap or materials storage and/or for repair, salvage or overhauling operations shall be paved with a layer of concrete at least four (4) inches thick or asphalt at least one and one-half (1-1/2) inches thick. No chemicals or potentially hazardous substances from such operations shall be disposed of on-site or leaked or deposited onto or into the soil or ground. Such hard surface shall be required and maintained such that leakage into the soil below shall not occur.

#### **Section 3.48     Walls and Fences**

Retaining walls and fences not more than 4 feet in height and not more than 25% in density are permitted in all districts; height restrictions may be exceeded for farm operations. Solid walls and fences not more

than 6 feet in height are permitted only in the side or rear yards in any district, provided that the yard does not abut a street right-of-way (see Clear Vision Corners). Solid walls and fences greater than 6 feet in height or in a side or rear yard that do not meet the minimum regulations of the district in which they are located, may be permitted as a special use.

### **Section 3.49 Use of Basement for Dwelling Purposes**

The use of any unfinished basement or finished basement without a direct outside access shall be prohibited for use as a dwelling unit. Any dwelling without a full floor above grade shall be considered a basement dwelling.

### **Section 3.50 Temporary Uses or Structures A.**

#### **Temporary Offices.**

1. Upon application, the Zoning Administrator may issue a permit for a temporary office building or yard for construction materials and/or equipment that is both incidental and necessary to construction at the site where located. The Zoning Administrator may attach reasonable conditions to such a permit. Each permit shall be valid for a period of not more than twelve (12) calendar months and may be renewed by the Zoning Administrator for one (1) additional successive period of six (6) calendar months or less at the same location if such building or yard is still incidental and necessary to construction at the site where located.
2. Upon application, the Zoning Administrator may issue a permit for a temporary sales office that is both incidental and necessary for the sale or rental of real property in a new subdivision or housing project. Each permit shall specify the location of the office and shall be valid for a period of not more than twelve (12) calendar months and may be renewed by the Zoning Administrator for three (3) additional successive periods of twelve (12) calendar months or less at the same location if such office is still incidental and necessary for the sale or rental of real property in a new subdivision or housing project.

#### **B. Mobile Homes/Travel Trailers/Fifth (5th) Wheels as Temporary Residences.**

1. The Zoning Administrator may issue a permit to an individual to park and occupy a mobile home, trailer, or 5th wheel trailer as a temporary residence for a temporary period of time in any District provided that the Zoning Administrator makes the following determinations:
  - a) The mobile home/travel trailer/5th wheel trailer will be used only as a temporary use on the same lot while the individual is constructing a permanent residence.
  - b) A Building Permit has been issued for the construction of a permanent residence to the individual applying for the temporary mobile home permit.

- c) The mobile home dwelling meets the requirements of the Newaygo County Health Department and all applicable Township ordinances.
  2. Upon applying for a temporary residence permit, the applicant shall pay a fee to the Township as determined by the Township Board. The permit fee shall be remitted to the Township Treasurer. The original temporary mobile home permit shall be limited to a period of twelve (12) months. If the permanent residence is not approximately fifty percent (50%) complete, as determined by the Zoning Administrator, within the twelve (12) month period, a six (6) month extension or less may be permitted by the Zoning Administrator only for the purpose of completing the residence. The Zoning Administrator may attach reasonable conditions to such a permit.
  3. Upon the filing of an application for "continuation" of any temporary residence permit, the applicant shall pay an additional fee, as determined by the Township Board; and such fee shall be remitted to the Township Treasurer. Such fee shall be for the consideration of such application, and no refund shall be made in the event of denial.
  4. In addition to the original application fee, the applicant shall post with the Township a bond, cash deposit, or other security in a form and amount acceptable to the Township Board, as a guarantee that a temporary residence will be removed within thirty (30) days after expiration of the temporary residence permit. In the event the temporary residence is not removed as required, the Township may use any or all of the guarantee to have the temporary residence removed and stored. Any portion of the guarantee not used by the Township for the above stated removal and storage shall be returned to the applicant.
  5. The Township shall also have the discretion to require the applicant to enter into a signed agreement with the Township to implement the temporary residence permit.
- C. Standards for Temporary Uses and Structures - In considering authorization for all temporary uses or structures, the Zoning Administrator shall consider the following standards:
1. That the use or structure does not have an unreasonable detrimental effect upon adjacent properties;
  2. That the use or structure is reasonably necessary for the convenience and safety of the construction proposed;
  3. That the use or structure generally conforms to the placement standards of permanent uses and structures;
  4. That the use or structure does not negatively impact the surrounding neighborhood.
- D. Conditions - The Zoning Administrator may attach reasonable conditions to permits for temporary uses or structures to ensure that the standards of this Section are met.



### **Section 3.51 Governmental Improvements**

Unless preempted by statute, the provisions of this Ordinance shall be applicable to and enforceable against the Township itself and all other governmental agencies and units, federal, state, county, and local.

### **Section 3.52 Site Condominiums**

Pursuant to the authority of Section 141 of the Condominium Act, Public Act 59 of 1978, as amended, all site condominium subdivisions shall meet the following requirements and procedures:

- A. All site condominium subdivisions shall require site plan review and approval by the Planning Commission. In addition to the information required along with a site plan review, the following information shall also be included:
  - 1. A condominium subdivision plan as required in Section 66 of the Condominium Act.
  - 2. If in effect, all information required by the Merrill Township Subdivision Regulations.
  - 3. Documented proof of review by the Newaygo County Road Commission, Drain Commissioner, Health Department, Michigan Department of Transportation and Michigan Department of Natural/Environmental Quality.
- B. All site condominium subdivisions shall meet the requirements of the district in which it is located, including minimum lot size, minimum setbacks and minimum floor area.
- C. Private roads meeting the requirements of this Ordinance shall be permitted, provided, however, the review and approval of private roads shall require a special use permit.
- D. The Merrill Township Clerk and Zoning Administrator shall be furnished with a copy of the recorded master deed, as defined in Section 8 of the Condominium Act. The master deed must ensure that Merrill Township will not be responsible for maintenance or liability of the nondedicated portions of the subdivision and that all private roads will be properly maintained by the landowners. Snow removal will be provided by the landowners and there is adequate access and turnaround for emergency vehicles. Responsibility for maintenance of storm water retention areas, drainage easements, drainage structures, lawn cutting and other general maintenance of common areas must be clearly stated.
- E. The Zoning Administrator shall be furnished with nine (6) copies of all proposed "as-built" drawings for review for compliance.

### **Section 3.53     Division of Parcels or Lots**

No lot or parcel (platted or unplatted) shall be divided, split, or subdivided unless said action meets this Ordinance and all other applicable Township ordinances.

### **Section 3.54     Grade and Grade Modifications**

A grade modification shall not result in significant negative impacts on surrounding property, local streets and roads, sidewalks, and other public infrastructure. Such impacts include, but are not limited to, increase in the off-site discharge of surface water unless said increase is based on an approved site plan in which the discharge of surface water has been permitted based on appropriate engineering studies, elimination of natural views through a site, traffic and other safety hazards, and the like.

### **Section 3.55     Representations and Promises of Developers and Property Owners**

If, pursuant to any zoning approval (including, but not limited to, the granting of a zoning permit or variance or the approval of a rezoning, special use, PUD, site plan, or other zoning approval), the property owner or applicant makes any representation, promise, or offer of a condition or voluntary restriction should the zoning approval be approved or granted, such promise, condition, or representation shall be deemed to be an enforceable condition of any such zoning approval in writing, and whether or not it is reflected in the zoning approval motion, resolution, permit, or other Township approval document) if the Township deems such promise, representation, or condition to have been a consideration by the official or Township body which granted the zoning approval and the Township also deems such promise, representation, or condition to be consistent with the zoning approval. In such case, the promise, condition, or representation shall be deemed an express and enforceable condition of the zoning approval.

### **Section 3.56     Grade Limits**

Sand, dirt and similar materials shall not be used to build up or add to the natural grade of the land in connection with the installation, building, or expansion of a building or structure if such alteration would, in the opinion of the Zoning Administrator, do any of the following:

- A. Unreasonably increase water runoff or drainage onto one or more adjoining properties due to the amount, concentration, or flowage rate of runoff waters; or
- B. Increase the height of a building or structure so as to unreasonably decrease the view on one or more adjoining properties of a lake, stream or natural vista or create a situation which is incompatible with the surrounding uses. Any party aggrieved by the decision of the Zoning Administrator under this section may appeal that determination to the Zoning Board of Appeals within the time limits and procedures specified in this Ordinance.

### **Section 3.57     Lots Partially Outside Township Boundaries**

In cases where a lot lies partially outside of the Township's boundaries, if a proposed lot, building, structure, or use would not satisfy the minimum area, dimensional, and street frontage provisions of this Ordinance with respect to that part of the lot located within the Township, then the minimum provisions of this Ordinance shall be applied with respect to the lot, building, structure, or use as if the entire lot were located within the Township, provided, however, that the entire lot shall comply with the minimum area, width, and frontage requirements of this Ordinance, and provided further that if access to the lot is provided at a location outside the Township boundaries, then such access shall be subject to the approval of the Planning Commission prior to the issuance of a zoning permit or Building Permit by the Township. For purposes of this section, the Township boundaries shall not be deemed to be a lot line.

### **Section 3.58     Construction Time Limits**

Once construction or installation has begun regarding a building or structure, such building or structure shall be finished, and an occupancy permit shall be issued in accordance with all other applicable Township ordinances. If a permit has no time limit specified therein, a time limit of one (1) year shall apply unless the Zoning Administrator grants time extensions.

### **Section 3.59     Non-waiver; Rule of Non-estoppel**

If any provision of this Ordinance is not enforced against a particular lot, parcel, or property or throughout the Township in general, that shall not be deemed to be a waiver (or constitute laches) regarding the ability of the Township to enforce that provision (or any other provision) of this Ordinance against a particular lot, parcel, or property involved or throughout the Township in general. Furthermore, should any Township official, body, board, or commission render any zoning approval or opinion, or undertake (or not undertake) any other action pursuant to this Ordinance, and it is determined that any such opinion, interpretation, approval, action or inaction was done in error or in an ultra vires or other mistaken fashion, that shall not preclude the Township from reversing, revoking, or revising any such zoning approval, interpretation, opinion, action, or inaction which was done in error and to thereafter enforce the provision or provisions of this Ordinance involved. The Michigan common law "rule of municipal non-estoppel" shall benefit the Township, as well as its officials, officers, bodies and commissions.

### **Section 3.60     Adult Uses/Adult-Oriented Businesses**

- A. Location and Approval. An adult use or adult-oriented business shall be allowed only as a special use and only if all of the following standards are satisfied:
  - 1. Adult-oriented businesses shall be allowed only within the C-Commercial zoning district and if approved as a special use.
  - 2. No adult-oriented business shall be located within five hundred (500) feet of another adult-oriented business.

For purposes of this subsection 2, and subsections 3 and 4 below, the distance between a proposed adult-oriented business and (A) another adult-oriented business, (B) the boundary of any land in the agricultural or any residential zoning district or approved as a planned unit development for residential purposes, or (C) land used for any single-family, two-family or multiple-family dwelling; Township, county or state park; school; library; licensed childcare facility; playground; church or place of worship, shall be measured in a straight line from the nearest property line of the parcel of land upon which the proposed adult-oriented business is to be located to (i) the nearest property line of the parcel of land used for the other adult-oriented business, (ii) the nearest boundary of the land in the agricultural or any residential zoning district or approved as a planned unit development or a plat for residential purposes, or (iii) the nearest property line of the parcel of land used for a single-family, two family or multiple-family dwelling; Township, county or state park; school; library; licensed childcare facility; playground; church or place of worship.

3. No adult-oriented business shall be located on a parcel or lot that is within five hundred (500) feet of the boundary of any land in the agricultural or any residential zoning district or approved as a planned unit development for residential purposes.
4. No adult-oriented business shall be located on a parcel or lot within five hundred (500) feet of any single-family, two-family or multiple-family dwelling; any Township, county or state park; school; library; licensed child care facility; playground; church or place of worship.
5. No adult-oriented business shall be located within any principal or accessory building or structure already containing another adult-oriented business.
6. The proposed use shall conform to all requirements of the zoning district in which it is located.
7. The proposed use shall be in compliance with all other ordinances of the Township and with all statutes, laws, rules and regulations of the county, state and federal government and, to the extent required, all governmental approvals must be obtained.
8. The outdoor storage of garbage and refuse shall be contained, screened from view and located so as not to be visible from neighboring properties or the adjacent right-of-way of a public street or private street.
9. Any sign or signs proposed for the adult-oriented business shall comply with the provisions of this Ordinance; may not otherwise include photographs, silhouettes, drawings, or pictorial representations of specified anatomical areas, specified sexual activities or obscene representations of the human form; and may not include animated or flashing illumination.

10. Entrances to the proposed adult-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 clearly marked lettering no less than two (2) inches in height stating that: (a) "Persons under the age of 18 are not permitted to enter the premises," and (b) "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."
11. 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 by a person of normal visual acuity from the nearest adjoining right-of-way of a public street or private street or a neighboring property.
12. Hours of operation shall be limited to 8:00 a.m. to 10:00 p.m., Monday through Saturday. All adult-oriented businesses shall remain closed on Sundays and legal holidays.
13. All off-street parking areas shall comply with this Ordinance and shall be illuminated after sunset during all hours of operation of the adult-oriented business, and until one (1) hour after the business closes. The illumination shall be designed to provide a minimum level of brightness of one (1) foot candle, with a 3:1 uniformity ratio. The illumination shall not reflect-on and shall be screened from adjoining properties.
14. Any booth, room or cubicle available in any adult-oriented business, except an adult motel, that is used by patrons for the viewing of any entertainment characterized by the showing of specified anatomical areas or specified sexual activities shall:
  - a) Be handicap accessible to the extent required by law;
  - b) Be unobstructed by any floor, lock or other entrance and exit control device;
  - c) Have at least one (1) side totally open to a public, lighted aisle so that there is an unobstructed view of any occupant at all times from the adjoining aisle;
  - d) Be illuminated such that a person of normal visual acuity can, by looking into the booth, room or cubicle from its entrance adjoining the public lighted aisle, clearly determine the number of people within; and
  - e) Have no holes or openings in any side or rear walls not relating to utility, ventilation or temperature control services or otherwise required by any governmental building code authority.

B. **Special Use Process.** Any special use application for an adult-oriented business shall be processed under the provisions of Article 14 of this Ordinance.

C. **Definitions.** For purposes of this Section and Ordinance, the following words, phrases, and terms shall have the following meanings:

1. *Adult cabaret* means a nightclub, restaurant, or other establishment that regularly features or displays:
  - a. Live performances, displays, or dancing predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity; or
  - b. Films, motion pictures, video cassettes, DVDs, slides, computer displays, other photographic reproductions or other visual media predominantly characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area.
2. *Adult merchandise store* means an establishment that emphasizes merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area. An establishment emphasizes merchandise that is predominantly distinguished by its 'emphasis on matter depicting, describing, or relating to any specified sexual activity or any specified anatomical area' if any one or more of the following applies to the establishment:
  - a. 25% or more of the establishment's retail display space (excluding bathrooms, office areas, fitting rooms, eating areas, storage areas, closets, and other nonpublic areas) is used for the sale of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area.
  - b. 25% or more of the establishment's visible inventory is comprised of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing, or relating to any specified sexual activity or any specified anatomical area.
  - c. 25% or more of the establishment's gross revenues are generated by the sale or rental of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing, or relating to any specified sexual activity or any specified anatomical area.
  - d. The establishment is operated consistently with its being an adult-oriented business (e.g., advertising is directed to an "adults only" market; the establishment self-imposes, or imposes consistent with state or federal law, prohibitions on minors being present in the establishment, etc.).

3. *Adult motel* means a hotel, motel, or similar establishment that:

- a. Offers accommodation to the public for any form of consideration and provides patrons with close-circuit television (as distinguished from commercial cable services), transmissions, films, motion pictures, video cassettes, DVDs, slides, computer displays, other photographic reproductions or visual media that are characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area; or
  - b. Offers a sleeping room for rent or allows a tenant or occupant of a sleeping room to sub-rent the room, for a period of time that is less than ten (10) hours, if the rental of such rooms accounts for more than ten percent (10%) of the establishment's gross revenues.
4. *Adult-oriented business* means a business or commercial establishment engaging in one or more of the following enterprises, uses, or activities: (a) adult cabaret; (b) adult merchandise store; (c) adult motel; (d) adult theater; (e) escort agency; (f) nude or seminude model studio; or (g) sexual encounter center.
5. *Adult theater* means a theater, concert hall, auditorium, or similar establishment that regularly features live performances predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity or that regularly or primarily shows films, motion pictures, video cassettes, DVDs, slides, computer displays, other photographic reproductions or visual media predominantly characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area. This definition includes, without limitation, establishments that offer individual viewing booths.
6. *Employee* means a person who performs any service for any consideration on the premises of an adult-oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated as an employee, independent contractor, agent, or otherwise, and whether or not said person is paid a salary, wage, or other compensation by the operator of said adult-oriented business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises or for the delivery of goods to the premises.
7. *Escort* means a person who, for any form of consideration and regardless of who pays that consideration, agrees to act or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

8. *Escort agency* means a person or entity that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration. An escort agency is deemed to be operated in the location where (a) a request for an escort is received, or (b) the escort and the person requesting the escort are together.
9. *Material* means anything tangible, whether through the medium of reading, observation, viewing, sound, or in any other manner, including, but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, motion picture, photograph, video tape, video disk, DVD, film, computer display, transparency, slide, audiotape, audio disk, computer tape, holographic images, or any other medium used to electronically produce or reproduce images, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent. This definition is intended to include material that is the product of any technology, whether that technology is available on the effective date of the ordinance that added this definition or becomes available after that date.
10. *Merchandise* means material, products, and novelties.
11. *Novelty* means any instrument, device, or paraphernalia that depicts or describes any specific anatomical area or any specific sexual act, or that is designed for use, or commonly used, in connection with specific sexual activities, excluding condoms and other birth control and disease prevention products.
12. *Nudity, Nude, or State of Nudity* means the knowing or intentional live display of a human genital organ or anus with less than a fully opaque covering or a female's breast with less than a fully opaque covering of the nipple and areola. Nudity, as used in this Section does not include a woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
13. *Nude or semi-nude model studio* means any place where a person who displays any specified anatomical area is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by any other person who pays money or any form of consideration, but does not include the following:
  - a. An educational institution funded, chartered, or recognized by the state of Michigan; or



- b. Any modeling session for a local, non-profit organization, that is not open to the public or to any persons other than members of the organization, that is for the purpose of instruction in the artistic depiction in two-dimensional or three dimensional media of the human form, during which no specified sexual activities occur and during which the model remains in a fixed pose.
- 14. *Operate or Cause to Operate* shall mean to cause to function or to put or keep in a state of doing business. Operator means any person on the premises of an adult-oriented business who exercises overall operational control of the business or a part of the business, who can open or close the business to the public, or who causes to function or who puts or keeps the business open or in operation. A person may be found to be operating or causing to be operated an adult-oriented business regardless of whether that person is an owner or part owner of the business.
- 15. *Patron* means a customer of the adult-oriented business or a person from the general public, not an "employee" of the business, who is on the premises to obtain, receive, or view the products, services, or performances offered by the business.
- 16. *Regularly* means recurring, attending, or functioning at fixed or uniform intervals.
- 17. *Semi-Nudity or Semi-Nude or in a Semi-Nude Condition* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast but shall not include any portion of the cleavage of the human female breasts exhibited in a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.
- 18. *Sexual encounter center* means an establishment, except that which is part of the practice of and under the supervision and control of a physician, psychologist, or psychiatrist licensed to practice in Michigan, that offers:
  - a. Activities between male and female persons and/or persons of the same sex when one or more of the persons exposes or displays any specified anatomical area; or
  - b. The matching and/or exchanging of persons for any specified sexual activities.
- 19. *Specified anatomical area* means any or more of the following:
  - a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast at or below the top of the areola; or
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

20. *Specified sexual activity* means any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or
- b. A sex act, actual or simulated, including intercourse, oral copulation, or sodomy; or
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of activities set forth in (a), (b) or (c) above.

D. Each adult-oriented business shall comply with all applicable Township ordinances and codes.

### **Section 3.61 Wind Energy Conversion System ("WECS")**

A. Intent. It is the intent of this section to regulate the safe, effective, and efficient use of small wind energy conversion systems (WECS) installed to reduce or replace the on-site consumption of electricity supplied by utility companies for the property on which they are located to suit the needs of the home, farm or small business.

B. Definitions:

1. Fall Zone. The potential fall area for the WECS. It shall be measured by using 110% of the total height as the radius around the center point of the base of the tower.
2. Tower. The monopole or guyed monopole structure that supports a wind turbine.
3. Total Height. The vertical distance from ground level to the tip of the wind turbine blade when it is at its highest point.
4. Tower Height. The height above grade of the fixed portion of the tower, excluding the wind turbine.
5. Wind Turbine. The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate energy.

C. Permitted Locations. WECS shall be permitted as an accessory structure in every zoning district provided that they comply with the standards and requirements of this section. Where two or more abutting lots are held under single ownership, the owner may install a WECS on the abutting but separate lot from that on which the principal building is located.

D. Procedure for Review:

1. Approval. No WECS shall be erected, constructed, installed or modified without first receiving a standard building permit.
2. Prior to the issuance of a building permit, a site plan for a WECS shall be submitted to the Planning Commission for review. The site plan shall include at a minimum:
  - a) Property lines and physical dimensions of the applicant's property.
  - b) Location, dimensions, and types of existing major structures on the property.
  - c) Location of the proposed WECS, foundations, guy anchors and associated equipment.
  - d) Setback as required by this Ordinance.
  - e) The right-of-way of any public road that is contiguous with the property.
  - f) Any overhead utility lines.
  - g) WECS specifications, including manufacturer, model, rotor diameter, tower height, tower type (freestanding or guyed).
  - h) If the WECS will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a WECS.
  - i) Tower foundation blueprints or drawings.
  - j) Tower blueprints or drawings.
  - k) Sound level analysis prepared by the manufacturer or qualified engineer.
3. Additional Turbines. A WECS may include more than one turbine and/or tower on any non-residentially zoned property provided that all other requirements of this Ordinance are met, and provided that the total of all turbines on any one parcel or site does not exceed 10 kilowatts (kW) rating.

E. Height/ Towers:

1. The height of any WECS shall not exceed 50 feet.
2. The height of a WECS shall be measured from the ground level to the rotor (the center point of the blades), or the top of the tower, whichever is higher. Ground level shall be the average grade measured within 25 feet of the base of the tower or supporting structure.
3. The minimum required ground clearance between the lowest point of the blades and the average grade shall be a minimum of 20 feet.
4. The applicant shall provide written proof to the Township that the proposed tower height does not exceed the height recommended by the wind turbine manufacturer.
5. Towers and supporting structures shall either maintain a galvanized steel finish, or, subject to any applicable standards of the FAA, be painted and maintain a neutral color intended to reduce visual obtrusiveness to the greatest extent feasible.
6. A tower must have a fall zone contained entirely on the lot where it is located or an abutting lot if under same ownership.

F. Setbacks:

1. The base of the tower shall be setback from all property at least 110% of the total height.
2. No component of a WECS, including tower, guy wires and/or anchors etc., may be located in the required front setback area for the zoning district in which the WECS is located.
3. No component of a WECS, including guy wires and anchors, may extend over or beyond the property lines on which the WECS is located.
4. The setback shall be measured to the center of the tower's base.

G. Noise. When in operation, the noise from a WECS shall not exceed 55 decibels using the A scale (DBA), as measured at the property line, except during short-term events such as severe wind storms and utility outages.

H. Certification Required. In order to be constructed, erected, used, or installed in Merrill Township, a WECS must be approved by a certification program recognized by the U. S. Department of Energy or the American Wind Energy Association (AWEA).

I. Compliance with Michigan Building Code and Michigan Electric Code. Building and electrical permits are required for each WECS.

J. FAA Compliance. Each WECS shall comply with all applicable Federal Aviation Administration (FAA) regulations.

- K. Lighting. The towers and other structures associated with a WECS shall not be artificially lighted by any means or in any fashion unless required by the Federal Aviation Administration (FAA).
- L. Utility Interconnection. No WECS shall be installed until written evidence is provided to the Township proving that the utility company has approved the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- M. Abandonment. Any WECS that remains non-functional or inoperative for a period of at least 365 continuous days shall be deemed abandoned, and the Zoning Administrator may order the removal of the turbine, tower and any associated equipment (and such removal shall occur).
- N. Any WECS not expressly permitted by this section is prohibited within the Township.

### **Section 3.62 Prohibition on Exotic and Dangerous Animals**

No person shall keep, house, breed, or possess any exotic or dangerous animal within the Township. Such prohibition includes, but is not limited to, lions, tigers, wolves, bears, coyotes, elephants, alligators, crocodiles, primates, snakes over three (3) feet in length, wild or exotic cats (such as, but not limited to, bobcat, cheetah, cougar, lynx, panther, mountain lion, or puma), wild pigs or boar, and venomous snakes, spiders, scorpions or reptiles.

### **Section 3.63 Categories or Businesses or Uses not expressly Designated; Unlawful Uses**

Any use, use of land, activity, building, structure, or development activity not expressly allowed by this Ordinance is prohibited, unless the Zoning Administrator finds that the proposed use is identical in character to a use or item listed in this Ordinance. Uses, activities, enterprises, or purposes that are contrary to, or violate federal, state, or county laws or regulations, this Ordinance, or other Township ordinances are prohibited. An individual may apply to the Planning Commission for consideration of an amendment to the Zoning Ordinance to include a proposed use in one (1) or more of the zoning districts of this Ordinance, either as a Permitted Use or a Special Use. At their option and discretion, the Planning Commission and Township Board may consider an appropriate amendment to the Zoning Ordinance but are not required to do so.

### **Section 3.64 Outdoor Heating Units**

The following shall be applicable to all outdoor heating units within the Township:

- A. Every outdoor heating unit must comply with all setback requirements applicable to structures or buildings.
- B. Every owner of an outdoor heating unit shall be responsible for complying with all applicable fire code and other code requirements, as well as any and all insurance standards and requirements.

Every owner of an outdoor heating unit must also comply with all applicable mechanical and electrical codes.

- C. Each outdoor heating unit shall have a working smokestack or chimney.
- D. None of the following items or materials shall be burned or incinerated in an outdoor heating unit:
  - animal carcasses, paint, asphalt product, paint thinner, chemicals, particle board, coal, construction materials, petroleum, demolition debris, plastic, feces, plywood, garbage, rubber, manure, tires

**ARTICLE 4**  
**NONCONFORMITIES**

**Section 4.01    Intent**

It is recognized that there exist certain buildings, structures, uses, and lots that were lawful before this Ordinance was adopted (or amended), and which were legally established, but would be prohibited, unlawful, regulated, or restricted under the current regulations of this Ordinance. It is the intent of this Ordinance to allow nonconforming lots, buildings and structures, and uses to continue until they are removed or abandoned, but not to encourage their survival, expansion or extension.

Nonconforming lots, buildings, structures, and uses are hereby declared by this Ordinance to be incompatible with this Ordinance and the zoning districts in which they are located. It is the intent of this Ordinance that, unless otherwise expressly permitted, nonconformities shall not be enlarged upon, intensified, expanded, or extended without proper approvals, nor be used as grounds for adding other buildings, structures or uses prohibited elsewhere in the zoning district or this Ordinance.

**Section 4.02    General Requirements**

- A. No building, structure, or part thereof shall be constructed, erected, moved, placed, maintained, reconstructed, used, extended, enlarged or altered, except in full conformity with the regulations herein specified for the zoning district in which it is located and this Ordinance.
- B. No use shall be established on any lot, land or premises except in full conformity with the use regulations of the zoning district in which it is located and the requirements of this Ordinance.
- C. No building or structure shall be established, constructed, or used on any lot, land, or premises except in full conformity with the regulations of the zoning district in which it is located and the requirements of this Ordinance.
- D. Nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit was issued or on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently conducted. A building permit shall be valid only in the event that the construction that is the subject of the permit commences within sixty (60) days after the date of issuance and shall be completed within one (1) year of the issuance date.
- E. The Township may acquire, through purchase or condemnation, nonconforming lots, uses, buildings and structures. The Township Board may take these actions in the manner as provided by law.

#### **Section 4.03    Nonconforming Uses**

- A. If a nonconforming use is abandoned or does not occur for any reason for a period of twelve (12) consecutive months or longer, all nonconforming use rights automatically end, and any subsequent use shall fully conform to all of the requirements of this Ordinance.
- B. A nonconforming use shall be considered abandoned if one (1) or more of the following conditions exists, and shall be deemed to constitute an intent on the part of the property owner to abandon the nonconforming use:
  - 1. Utilities, such as water, gas and electricity to the property, have been disconnected;
  - 2. The property, buildings, or grounds have fallen into disrepair;
  - 3. Signs, structures, or other indications of the existence of the nonconforming use have been removed;
  - 4. Removal of equipment or fixtures that are necessary for the operation of the nonconforming use; or
  - 5. Other actions, which in the opinion of the Zoning Administrator, constitute an intention on the part of the property owner, tenant, or lessee to abandon the nonconforming use.
- C. Uses that are nonconforming solely because of height, area, parking or loading provisions may be expanded provided that the Zoning Administrator determines that all of the following are applicable:
  - 1. For the purposes of this subsection, expansion shall include extension or enlargement of the use;
  - 2. All zoning district requirements (and other Ordinance requirements) are satisfied with respect to the expansion;
  - 3. The expansion shall not substantially extend the life of any nonconforming use by reason of parking and loading provisions; and
  - 4. The nonconforming use is made more conforming or less nonconforming by the addition of parking and/or loading space. Thereafter any subsequent expansion of the nonconforming use or change in use will not be allowed if it requires even greater parking and/or loading space.
- D. A nonconforming use not addressed in subparagraph C, above, may be enlarged when authorized by the Zoning Board of Appeals, subject to all of the following provisions:



1. The enlargement, when allowed, shall not exceed twenty-five percent (25%) of the area devoted to a nonconforming use at the effective date of this Ordinance or relevant amendment thereto.
  2. Any building used for the nonconforming use shall not be nonconforming or require a variance to effectuate the enlargement of the nonconforming use.
  3. That the expansion does not create, or make worse, any adverse effect on surrounding properties or the neighborhood.
  4. That the expansion does not intensify the use or unreasonably extend its probable duration.
- E. An existing nonconforming use may be changed to another nonconforming use provided that all of the following determinations are made by the Zoning Board of Appeals:
1. The proposed use shall be as compatible as or more compatible with the surrounding neighborhood than the previous nonconforming use.
  2. The proposed nonconforming use shall not be enlarged or increased, nor extended to occupy a greater area of land than the previous nonconforming use, except as may otherwise allowed by this section.
  3. That appropriate conditions and safeguards are provided that will ensure compliance with the intent and purpose of this Ordinance.
  4. Once returned to a conforming use, the previous nonconforming use shall be considered abandoned and may not be reestablished. Subsequent uses shall all conform to the requirements of the zoning district.

#### **Section 4.04 Nonconforming Buildings**

- A. Any building or structure existing and lawful at the time of enactment of this Ordinance, or amendments thereto, may be continued although the structure does not conform to the current provisions of this Ordinance.
- B. Such repairs and maintenance work may be done as are required to keep a nonconforming building or structure in a sound condition.
- C. In the event fire, wind or an act of God or the public enemy damages any nonconforming building(s) or structure(s), it may be rebuilt or restored provided it meets the zoning district requirements and the total costs of repair or restoration shall not exceed fifty percent (50%) of the taxable value of the building or structure before the building was damaged. The Building Inspector shall determine the cost of reconstruction.

- D. A nonconforming building shall not be expanded in any manner that increases its nonconforming condition. However, it may be expanded in other dimensions, provided that it is otherwise in full conformance with this Ordinance.

#### **Section 4.05    Nonconforming Lots**

- A. If a nonconforming lot has less than the minimum required area, frontage, or width required for the zoning district in which it is located, the area, frontage, or width may be maintained, unless regulated by subsection C, below, but shall not be made more nonconforming or less conforming.
- B. Where a nonconforming commercial or industrial lot can provide the side and front yard requirements of its zoning district, the permitted uses of the zoning district shall be allowed.
- C. Where a residential lot of record in lawful existence at the time of the adoption or amendment of this Ordinance does not meet the minimum requirements for lot width, dimension, or lot area, such lot of record may be used for any purposes permitted by the zoning district in which the lot is located, provided that the lot meets at least eighty (80) percent of the required lot area, lot width, dimension, and side yard required by that zoning district and further provided that any building or structure constructed on the lot complies with all other yard setback requirements.
- D. If two (2) or more adjoining lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this Ordinance, or an amendment thereto, with continuous frontage and under single ownership do not meet the requirements established for lot width, dimension, or lot area, the lands involved shall be considered to be an undivided single lot for the purposes of this Ordinance, and no portion of such lot shall be used or divided in a manner which diminishes compliance with lot width, dimension, and area requirements established by this Ordinance.
- E. Where two (2) or more nonconforming adjacent lots are in the same or similar ownership and each contain less than minimum required area, dimension, or width of the zoning district in which it is located, the lots shall be considered a single lot for zoning purposes. These lots may not be used individually but shall be deemed automatically combined to create a lot that conforms as closely as possible to the zoning district regulations.
- F. A nonconforming lot may only be expanded if it is brought into closer conformity with the regulations specified for the zoning district in which it is located.

#### **Section 4.06    Nonconforming Signs**

- A. Every permanent sign in lawful existence at the time of adoption of this Ordinance which does not conform to the height, size, area, location, or other requirements of this Ordinance is deemed nonconforming.

- B. Nonconforming signs may not be expanded, moved, structurally altered, rebuilt, enlarged, or extended, but they may be maintained and repaired as allowed by this Ordinance so as to continue their useful life.
- C. A nonconforming sign may be diminished in size or dimension, or the copy on the sign may be amended or changed, without adversely affecting the status of the sign as a nonconforming sign. However, no nonconforming or other sign may be converted into a digital, tri-vision, LED, or similar sign.
- D. Any nonconforming sign in existence in any zoning district at the date of enactment of this Ordinance shall, at the expiration often (10) years from such date, become a prohibited and unlawful use and shall be discontinued and removed.
- E. Abandonment or destruction: If a sign loses its lawful nonconforming designation or status, the sign (and all portions thereof) shall be removed immediately and shall not be repaired, replaced or rebuilt unless it fully complies with all requirements of this Ordinance. A nonconforming sign shall lose its lawful nonconforming designation and status if the Zoning Administrator determines that any of the following is applicable:
  - 1. The sign is relocated, moved, rebuilt or replaced.
  - 2. The sign is destroyed. A sign shall be deemed destroyed if any of the following occurs:
    - a) The sign is torn down or demolished;
    - b) The sign is wrecked or ruined;
    - c) Such damage has been done to the sign that it cannot be returned to its prior state by routine repair, but only by replacement or material rebuilding; or
    - d) More than 50% of the face of the sign has been shattered, or a portion of the sign face touches the ground.

If a sign is destroyed, subsection F hereof (which applies only to repairs and maintenance) shall not be applicable.
  - 3. Even if a sign has not been destroyed, but damage or deterioration has occurred to the point of 50% or more as defined in subsection F, below, the sign shall be deemed to have lost its legal nonconforming status and it shall be removed.
  - 4. The structure or size of the sign is altered in any material way other than a change of copy or normal maintenance which does not physically alter the sign.
  - 5. There is a material change in the use of the premises where the sign is located.
  - 6. A building permit is issued for any construction on the premises where the sign is located which increases the total building square footage by more than 5% or 5,000 square feet, whichever is less.
  - 7. The sign is abandoned.

- F. Repair. This subsection F shall not apply if a lawful nonconforming sign has been destroyed, since a destroyed sign automatically loses its legal nonconforming designation and status. If a lawful nonconforming sign suffers 50% or more damage, destruction, or deterioration, it must be brought into full compliance with this Ordinance or be removed. In order to determine whether or not a sign has been damaged or has deteriorated by 50% or more, the costs of physically repairing the sign shall be compared to the costs of physically replacing the sign. If less than 50% damage or deterioration has occurred pursuant to such comparison, the sign may be repaired to its exact original state.

#### **Section 4.07    Burden of Proof**

The burden of proof for establishing or proving the existence or any aspect of a lawful nonconforming structure, lot or use (as well as the size, scope, intensity, and extent thereof) is on the owner of the property involved.

## **ARTICLE 5**

### **SIGNS**

#### **Section 5.01 Signs – Intent**

This Article is intended to regulate the type, number, physical dimensions, erection, placement, and maintenance of signs in the Township. Its purpose and intent are to:

- A. Protect, promote, and further the public peace, health, and safety of residents, property owners, and visitors;
- B. Prevent, eliminate, or minimize traffic hazards and pedestrian accidents caused by signage that obstructs vision or views, distracts or confuses motorists, or is improperly secured or constructed
- C. Protect the public's ability to identify establishments and premises;
- D. Protect the natural beauty and distinctive character of the Township;
- E. Protect commercial, business, office and industrial districts and areas from visual chaos and clutter;
- F. Provide an environment that fosters the reasonable growth and development of business and commerce;
- G. Protect and enhance property values; and
- H. Balance the individual rights of property owners to communicate their message with the public's right to be free of unreasonable distractions and aesthetic intrusions.

#### **Section 5.02 Signs – Definitions**

- A. **Awning:** A retractable or fixed shelter constructed of nonrigid materials on a supporting framework that projects from the exterior wall of a building.
- B. **Awning sign:** A sign affixed flat against the surface of an awning.
- C. **Balloon sign:** A sign composed of a nonporous bag of material and inflated.
- D. **Banner sign:** A fabric, plastic, or other sign made of nonrigid material without an enclosing structural framework.
- E. **Billboard:** A sign that advertises an establishment, product, service, or activity not available on the lot on which the sign is located. Also, a sign that advertises or designates an establishment, service, merchandise, use, entertainment, activity, produce, or message that is not conducted, sold, produced, manufactured, or furnished upon the parcel or lot where the sign is located (e.g., billboard, off-premise direction signs).

- F. Construction Sign: A sign that identifies the owners, financiers, contractors, architects, and engineers of a project under construction.
- G. Directional Sign: A sign that gives directions, instructions, or facility information for the use on the lot on which the sign is located, such as parking or exit and entrance signs.
- H. Freestanding Sign: A sign supported on poles, posts, or structures not attached to a building or wall.
- I. Government Sign: A temporary or permanent sign erected by Merrill Township, Newaygo County, or the state or federal government.
- J. Marquee: A permanent structure constructed of rigid materials that projects from the exterior wall of a building.
- K. Marquee Sign: A sign affixed flat against the surface of a marquee.
- L. Mural: A design or representation painted or drawn on a wall that does not advertise an establishment, product, service, or activity.
- M. Placard: A sign not exceeding two (2) square feet that provides notices of a public nature, such as "No Trespassing" or "No Hunting" signs.
- N. Political Sign: A temporary sign used in connection with an official Merrill Township, school district, county, state, or federal election or referendum.
- O. Portable Sign: A sign designed to be moved easily and not permanently attached to the ground, a structure, or a building.
- P. Projecting Sign: A double-faced sign attached to a building or wall that extends more than twelve (12) inches but not more than thirty-six (36) inches from the face of the building or wall.
- Q. Reader Board: A portion of a sign on which copy is changed manually.
- R. Real Estate Sign: A sign advertising the real estate upon which the sign is located as being for sale, rent, or lease.
- S. Roof Line: The top edge of a roof or parapet wall, whichever is higher, but excluding any cupolas, chimneys, or other minor projections.
- T. Roof Sign: A sign erected above the roof line of a building.
- U. Sign: A device, structure, fixture, or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying an establishment, product, service, or activity. Also, a device, structure, painting, fixture, or placard using color, graphics, symbols, and/or written copy designed and/or utilized for the purpose of advertising or identifying an event, establishment, product, good, service, or displaying or depicting other information.

### **Section 5.03    General Sign Provisions**

- A. No person shall erect, alter, move, expand, place, or permit to be placed, or replace any sign without first obtaining a sign permit from the Township, provided that the following signs shall not require a sign permit:
  - 1. Directional signs of six (6) square feet in size or less.
  - 2. Government signs.
  - 3. Placards.
  - 4. Temporary sale signs of four (4) square feet in size or less.
  - 5. Window signs.
  - 6. Political signs.
- B. Signs shall be kept in good condition and repair at all times and shall be maintained free of peeling paint or paper, fading, staining, rust, or other condition that impairs legibility or intelligibility.
- C. Sign supports, braces, guys and anchors shall be maintained in such a manner as not to cause a hazard.
- D. Signs may be internally illuminated. If externally illuminated, except for home occupation signs that shall not be illuminated, the source of the light shall be enclosed and directed to prevent the source of light from shining directly onto traffic or residential property.
- E. No sign shall be placed in, upon or over any public right-of-way, alley, or other public place, except as may be otherwise permitted by this Article.
- F. No light pole, utility pole, or other supporting member shall be used for the placement of any sign unless specifically designed and approved for such use.
- G. No sign shall be erected in any place where it may, by reason of its position, shape, color, or other characteristic, interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device, or constitute a nuisance per se.
- H. No commercial vehicle which, in the opinion of the Zoning Administrator has the intended function of acting as a sign, shall be parked in any area abutting the street, unless no other parking area is available.
- I. No wall sign shall extend beyond the edge of the wall to which it is affixed, and no wall sign shall extend above the roof line of a building.
- J. No sign attached to a building shall be erected above the roof line of that building.
- K. All signs shall pertain only to the business or activity conducted on the premises, with the exception of lawful billboards, political signs, and special event signs.

L. Any sign not expressly allowed by this Article is prohibited.

M. Billboards are prohibited.

#### **Section 5.04 Exempted Signs**

A. The following signs shall be exempt from the provisions of this Ordinance, except as otherwise provided in this Ordinance.

1. Government signs.
2. Historical markers.
3. Window signs.
4. Memorial signs or tablets.
5. Murals.
6. Signs not visible from any street or adjoining property.
7. Signs for essential services.
8. No trespassing signs of less than two (2) square feet.
9. Signs with address, owner, or occupant name, of up to two (2) square feet in area attached to a mailbox, light fixture, or exterior wall.
10. Flags or insignia of any nation, state, Merrill Township, community organization, or educational institution.

#### **Section 5.05 Nonconforming Signs, Illegal Signs, and Signs Accessory to Nonconforming Uses**

- A. Every permanent sign that does not conform to the height, size, area, or location requirements of this Article but was fully lawful as of the date of the adoption of this Ordinance, is hereby deemed to be lawfully nonconforming.
- B. Lawfully nonconforming signs may not be altered, expanded, moved, enlarged, or extended; however, lawfully nonconforming signs may be maintained and repaired so as to continue the useful life of the sign. Any lawfully nonconforming sign that is altered, expanded, moved, enlarged, or extended automatically loses its lawful nonconforming status and must be removed immediately.
- C. For the purposes of this Article, a lawfully nonconforming sign may be diminished in size or dimension or the copy of the sign amended or changed without jeopardizing the privilege of lawfully nonconforming use.



- D. Any sign that for a period of one (1) year or more no longer advertises a bona fide business conducted or product sold shall be removed by the owner of the building, structure, or property upon which such sign is located, within thirty (30) days of receipt of written notice by the Zoning Administrator.
- E. A sign accessory to a lawful nonconforming use may be erected in the Township in accordance with the sign regulations for the zoning district in which the property is located.

#### **Section 5.06 Signs - Units of Measurement**

- A. The area of a sign shall be measured as the area within a single, continuous perimeter composed of any straight-line geometric figure that encloses the extreme limits of writing, representation, emblem, logo, or any other figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding only the structure necessary to support the sign.
- B. The area of a freestanding, ground, or projecting sign that has two (2) or more faces shall be measured by including the area of all sign faces, except if two (2) such faces are placed back-to-back and are of equal size, the area of the two (2) back-to-back faces shall be counted as one face. If the two (2) back-to-back faces are of unequal size, the larger of the two (2) sign faces shall be counted as the one (1) face.
- C. The height of a sign shall be measured as the vertical distance from the highest point of the sign to the grade of the adjacent street or the average grade of the ground immediately beneath the sign, whichever is less.
- D. For buildings with multiple tenants, the sign areas for wall signs, projecting signs and awning signs shall be determined by taking that portion of the front wall of the building applicable to each tenant and computing sign requirements for that portion of the total wall.

#### **Section 5.07 Sign Regulations Applicable to All Zoning Districts [except as otherwise noted] A.**

The following sign regulations are applicable to all zoning districts, except as noted:

- 1. Billboards are prohibited.
- 2. Any sign, including awnings to which signs are affixed or displayed, not resting directly on the ground shall maintain a minimum clear space of eight (8) feet from the bottom of the sign to the ground.
- 3. Political signs shall be removed within ten (10) days after the official election or referendum to which such sign pertains.
- 4. Real estate signs shall be removed within thirty (30) days after completion of the sale or lease of the property.

B. Construction signs are permitted within any zoning district, subject to the following restrictions:

1. Construction signs shall be no larger than thirty-two (32) square feet and not exceed eight (8) feet in height.
2. Construction signs will not be erected until a Building Permit has been issued for the project that is the subject of the proposed sign and construction activity has begun.
3. Construction signs shall be removed immediately upon the issuance of any Occupancy Permit for the building or structure that is the subject of the construction sign.

C. Special event signs, including banner signs, are permitted in any zoning district, subject to the following restrictions:

1. No more than five (5) such signs shall be displayed for each special event. Such signs may be located either on or off the lot on which the special event is held.
2. The display of such signs shall be limited to the twenty-one (21) days immediately preceding the special event that is being advertised.
3. Such signs shall have a maximum size of thirty-two (32) square feet in area, and a maximum height of five (5) feet and shall be set back from any side or rear property line a minimum of fifteen (15) feet.
4. Such signs shall be removed within forty-eight (48) hours of the conclusion of the special event that is being advertised.

D. Directional signs are permitted subject to the following restrictions:

1. A directional sign may contain a logo of an on-premise establishment, but no advertising copy.
2. No such sign shall exceed six (6) square feet in area or four (4) feet in height.
3. Directional signs shall be limited to traffic control functions only. Garage, estate sale, and roadside stand signs are permitted subject to the following restrictions:
  - a) One (1) sign per premises is permitted, located on the premises on which such sale is being conducted, and set back a minimum of fifteen (15) feet from any side or rear property line.
  - b) Such sign shall not exceed six (6) square feet in area.
  - c) Such sign shall be erected no more than ten (10) days prior to the day(s) of the sale and shall be removed within one (1) day after the completion of the sale.

- E. Portable, temporary, balloon, and other such signs are permitted for a period not to exceed fourteen (14) days per year per property, provided, however, the Zoning Administrator may permit an additional length of time for the placement of portable signs in the Commercial zoning district not to exceed a total of sixty (60) days per year per property. A permit shall be secured from the Zoning Administrator prior to erection of the sign. Portable, temporary, balloon, and other such signs shall meet applicable building codes. No such sign shall be placed or erected in such a manner that it constitutes a safety hazard.

#### **Section 5.08 Signs in Commercial and Resort Districts**

- A. No sign shall be permitted that is not accessory to the business conducted on the same lot.
- B. No business establishment shall have a total of more than 2 signs (of which not more than 1 freestanding sign is allowed) facing upon any one street, provided the total sign area for all signs permitted shall not exceed 12% of the area of the face of the building to which they are attached or stand in front of.
- C. All signs attached to a building shall be flat signs, parallel to the face of the building wall. No sign shall extend farther than 15 inches from the face of the building upon which it is attached, provided however, that where a sign extends more than 3 inches from the face of the wall, the bottom of said sign shall not be closer than 8 feet from the ground level below said sign. The maximum width of any single sign shall not exceed 90% of the width of the wall to which the sign is attached or related.
- D. No sign shall be lighted by flashing or intermittent illumination. All light sources, except for diffused lighting with translucent signs, used for the illumination of signs, business building, or areas surrounding them shall be completely shielded from the view of vehicular traffic using any road abutting such business properties.
- E. Each lot with a business or resort is allowed one (1) freestanding sign and no portion of the sign can exceed 5 feet above the natural ground grade. Such freestanding sign shall be a ground sign.
- F. Pennants and Banners. Temporary pennants or banners may be permitted for a period of not more than 30 days without a permit, provided that they are kept in a state of good repair.

## **ARTICLE 6**

### **PARKING AND LOADING SPACES**

#### **Section 6.01 Residential Off-Street Parking**

Provision shall be made for at least one garage space or one off-street parking space for each new dwelling unit. Multiple dwelling structures shall provide 1 1/2 off-street parking spaces for each dwelling unit.

#### **Section 6.02 Nonresidential Off-Street Parking**

Provisions shall be made for one square foot of total parking area for each square foot of floor area for all new nonresidential buildings or additions to such buildings in all districts. The conversion of an existing residence to another use shall be deemed as a new use that must meet all provisions in this article.

#### **Section 6.03 Mixed Occupancy and Uses Not Specified**

In the case of mixed uses the total requirements for off-street parking areas shall be the sum of the requirements of the various uses computed separately. Collective provisions for off-street parking spaces shall not be less than the sum of the requirements for the various uses computed separately. Parking areas for churches, theaters, or other uses in which the primary parking demand occurs out of normal work and business hours may be jointly used where adequate arrangements are made by the Planning Commission to ensure that adequate space is available for each function.

#### **Section 6.04 Size and Access**

Each off-street parking space shall have an area of not less than 180 square feet exclusive of access drives or aisles and shall be a minimum of 9 feet in width. There shall be adequate provisions for ingress and egress to all parking spaces. No access or egress to a parking area accessory to a commercial or industrial use shall utilize any residential street unless there is a side street with no residential lots facing upon it.

#### **Section 6.05 Units of Measurement**

For the purpose of the section "floor area shall mean the gross floor area of all floors of a building or an addition to an existing building, excluding basements and those areas used exclusively for storage of goods or supplies. The total parking area excludes access drives within the parking area.

#### **Section 6.06     Location**

Required off-street parking facilities shall be located on the same lot as the principal use in residential and agricultural districts. In commercial districts additional off-street parking is permitted as a principal use on a separate lot.

#### **Section 6.07     Community Parking**

The provisions of this Article may be met by financial participation in a municipal or community parking program designed to serve a larger area and approved by the County Planning Commission and Township Board.

#### **Section 6.08     Standards for Parking in Nonresidential Districts**

Every parcel of land hereafter established as a parking area in a nonresidential district shall be developed and maintained in accordance with the following requirements:

- A. Parking areas shall be effectively screened on any side that abuts a residential district with a greenbelt as defined in this Ordinance. If owners of the adjacent residential properties agree, the screening may be a solid, uniformly painted fence or wall. No part of any parking area or access drive shall be closer than 5 feet to any property line unless connected to another adjoining parking area by driveways. No access drive shall be less than 20 feet from any residentially zoned lot or intersecting street right-of-way lines.
- B. Lighting shall be arranged to reflect light away from any adjoining residential buildings or street. All drainage and surfacing plans shall be approved by the Newaygo County Road Commission.
- C. Parking areas and their driveways, signs, lighting and landscaping shall be reviewed and approved by the Planning Commission as a special use and require a site plan prior to issuance of a building permit to ensure its adequacy in relation to traffic safety and protection of adjacent property.

#### **Section 6.09     Parking Areas in Residential Districts**

Any person desiring to establish a parking area as an accessory use in a residential district other than for a one-family structure or a farm use shall be considered a special use and a site plan must be submitted to the Planning Commission for review and approval. Plans must show size, design, landscaping, curb cuts, and other features of the parking lot. Such parking areas may be authorized subject to the following conditions:

All parking areas shall be landscaped, screened, surfaced, and drained

- A. All parking areas shall be used solely for the parking of passenger automobiles, and no commercial work, sales or service of any kind shall be conducted thereon. No sign, other than entrance, exit, and other condition of use signs shall be maintained.

- B. Each entrance to and exit from a parking area shall be at least 25 feet distant from any adjacent property located in any residential district and not be wider than 20 feet. The Planning Commission shall ascertain that the proposed parking area is safely related to traffic, street intersections, buildings and pedestrian walkways and that surrounding properties are fully protected from detrimental effects.
- C. The Building Inspector shall issue a use permit upon receipt of the approved plan. The permit may be revoked at any time the above requirements and/or the requirements of the approved plan are not complied with.

#### **Section 6.10 Required Off-Street Loading and Unloading Space**

In any district where any building to be erected that is to be occupied by any commercial or other designated special use shall provide, if needed, and maintain an off-street loading space on the same premises. This shall be part of the site plan submitted to the Planning Commission. Each loading space shall be at least 12 feet in width, 22 feet in length and have a clearing of 14 feet above, grade. Such space may occupy all or any part of the required side or rear yard.

#### **Section 6.11 Parking Variation**

Where it can be demonstrated that the parking requirements of this article would provide an excessive amount of parking area for the needs of a particular use, a plan with lesser area may be approved and permitted provided all the following conditions are met.

- A. The maximum number of employees and visitors during any one eight-hour period can be demonstrated to be less than the parking space requirements of this Ordinance.
- B. A written agreement to provide additional parking if an increase in employees or visitors shall occur at a future time shall be made part of the Site Plan.
- C. An open landscaped area meeting the requirements of this section is shown reserved for future parking.
- D. Plan approval shall be valid, for the stated use only. Any expansion or redesigning of said lot must go through the original site plan review process.

#### **Section 6.12 Building Additions**

Whenever an addition is made to an existing building, the parking area shall be increased sufficiently to meet the requirements of this article.

**Section 6.13    Permits**

No parking area may be constructed, enlarged, or altered before a site plan has been submitted and approved by the Planning Commission. See Article 17. Upon receipt of approval of the plan, the Building Inspector will issue a building permit. No parking area shall be occupied or used as a parking area prior to the issuance of an occupancy permit. Whenever the requirements of the Ordinance and/or site plan are not being met, use of the parking shall cease within 60 days after the revocation of an occupancy permit.

**ARTICLE 7**  
**ZONING DISTRICTS**

**Section 7.01     Zoning Districts**

RR	Rural Residential	Article 8
LR	Lake Residential	Article 9
C	Commercial	Article 10
W-O	Wilderness Overlay	Article 11
RC-O	River/Creek Overlay	Article 12
PUD	Planned Unit Development	Article 13

**Section 7.02     Erection, Alteration and Use of Buildings**

Except as otherwise expressly provided herein, no structure or building shall be erected or altered, nor shall any building, structure, or lot be used for any purpose or activity other than is expressly allowed in the use, dimension, area, or height sections in the zoning district within which it is located.

**Section 7.03     Provision for Official Zoning Map**

For the purpose of this Ordinance, the zoning districts as provided herein are bound and defined as shown on a map entitled "Official Zoning Map of Merrill Township." The Official Zoning Map, with all explanatory matter thereon, is hereby made a part of this Ordinance.

**Section 7.04     Identification of the Official Zoning Map**

The Official Zoning Map shall be identified by the signature of the Township Supervisor, attested to by the Township Clerk and bear the following words: "This is to certify that this is the Official Zoning Map referred to in the Merrill Township Zoning Ordinance together with the effective date of this Ordinance.

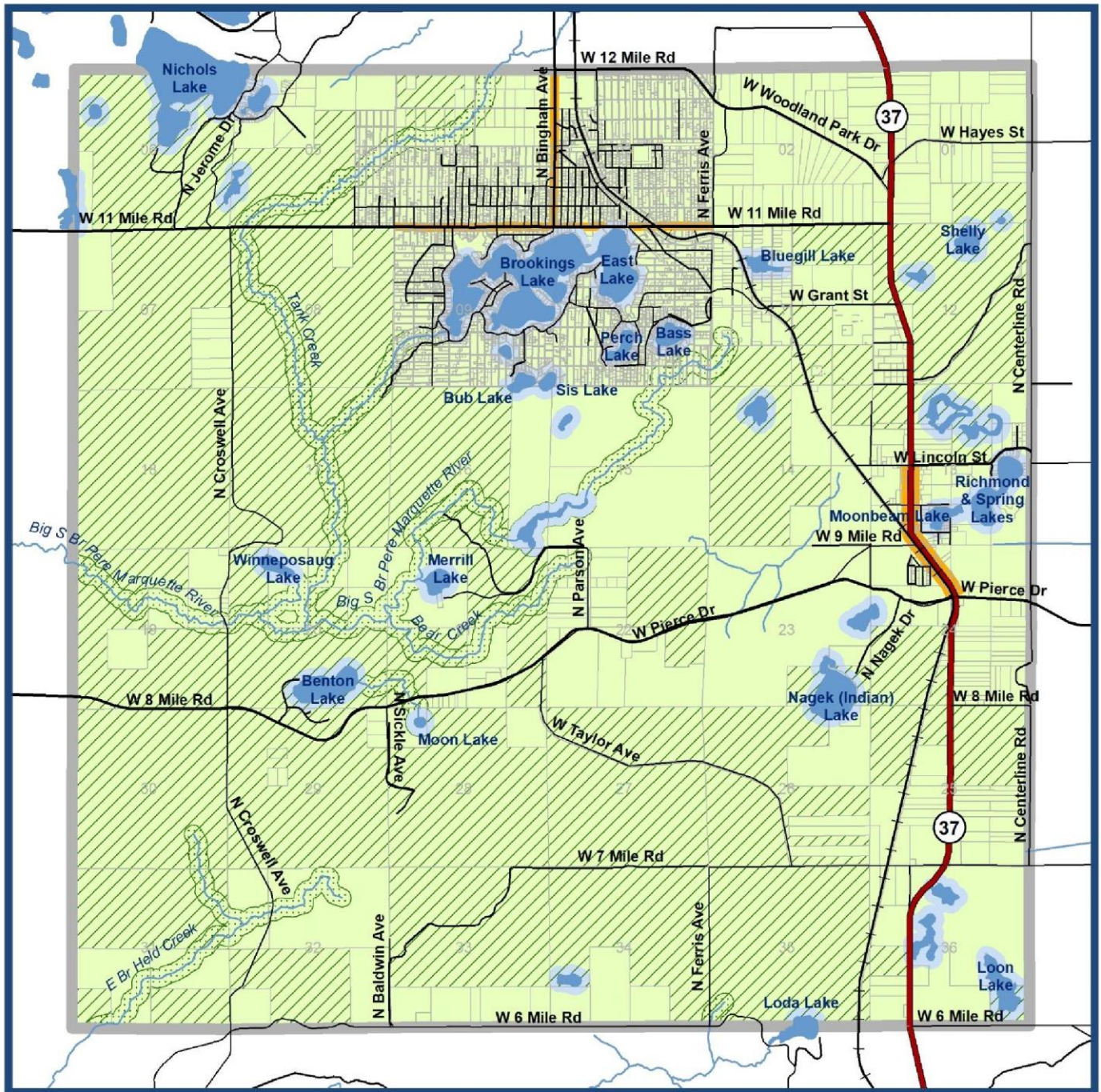
**Section 7.05     Authority of the Official Zoning Map**

Regardless of the existence of purported copies of the Official Zoning Map that may from time to time be made or published, the Official Zoning Map, which shall be located in the offices of the Township and open to public inspection, shall be the final authority as to the current zoning status of any land, parcel, lot, district, use, building or structure in the Township.



## **Section 7.06 Interpretation**

- A. The locations and boundaries of the zoning districts are hereby established as shown on a map, as the same may be amended from time to time, entitled "The Official Zoning Map of Merrill Township, Newaygo County, Michigan," that accompanies and is hereby made a part of this Ordinance. Where uncertainty exists as to the boundaries of zoning districts as shown on the zoning map, the following rules of construction and interpretation shall apply.
1. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerlines.
  2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
  3. Boundaries indicated as approximately following Township boundaries shall be construed as following Township boundaries.
  4. Boundaries indicated as approximately following shorelines or lake or stream beds shall be construed as following such shorelines or lake or stream beds, and in the event of change in the location of shorelines or lake or stream beds, shall be construed as moving with the shoreline and lake or stream bed.
  5. Boundaries indicated as approximately following property lines, section lines or other lines of a government survey shall be construed as following such property lines, section lines or other lines of a government survey as they exist as of the effective date of this Ordinance or applicable amendment thereto.
- B. Whenever all or part of a street or other public way is vacated, it shall automatically become a part of the zoning district to which it attaches. If a vacated area is bordered by two different zoning districts, the area shall be divided along a line half-way between them according to the adjacent zoning district, unless the Township Board shall otherwise designate.



## Merrill Township - Newaygo County, MI

- |  |                 |  |                     |
|--|-----------------|--|---------------------|
|  | Township Limits |  | Rural Residential   |
|  | Parcel Line     |  | Commercial          |
|  | State Highway   |  | Lake Residential    |
|  | Paved Road      |  | River-Creek Overlay |
|  | Unpaved Road    |  | Wilderness Overlay  |
|  | Railroad        |  |                     |
|  | Lake            |  |                     |
|  | River/Creek     |  |                     |

0 0.25 0.5 1 Miles



## Official Zoning Map of Merrill Township

### CERTIFICATION

IT IS HEREBY CERTIFIED THAT THIS IS THE TRUE AND ACCURATE ZONING MAP FOR THE TOWNSHIP OF MERRILL

SUPERVISOR \_\_\_\_\_

CLERK \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

### **Section 8.01 Purpose**

This zoning district is primarily intended for single family dwellings in a rural setting.

### **Section 8.02 Permitted Uses**

Only the following uses are permitted:

- A. Single family dwelling.
- B. Agricultural
- C. Parks, playgrounds, community centers and other public buildings owned, and operated by a governmental agency or a nonprofit neighborhood group.

### **Section 8.02 Special Uses**

The following uses are allowed if approved by the Planning Commission as a special use:

- A. Institutional uses.
- B. Mining and mineral extraction.
- C. Cottage Industries.
- D. Home Occupations.
- E. Communication towers.

### **Section 8.04 Height regulations**

No building shall exceed thirty-five (35) feet or two and one-half stories in height, whichever is less.

### **Section 8.05 Area and Dimension Regulations**

No lot shall be created or used and no building or structure shall hereafter be erected, used, altered, or enlarged unless all of the following yard and other dimensional requirements are met and maintained in connection with such lot creation and use or building or structure erection, alteration, or enlargement.

- A. Front Yard (i.e. front setback): There shall be a front yard of at least 30 feet from the edge of a street right-of-way or easement provided. However, accessory buildings for agricultural uses must be at least 30 feet from any street easement or right-of-way.

- B. Side Yard (i.e. side setback): There shall be a side yard of not less than 15 feet on each side of the dwelling or accessory building.
- C. Rear Yard (i.e. rear setback): There shall be a rear yard of at least 30 feet.
- D. Lot Area:
  - 1. No lot shall be created or utilized that is not at least 2 acres in size.
  - 2. Lot width: Every lot shall have a minimum width of 165 feet.
  - 3. Length/Width Ratio: The length or depth of any lot shall not be longer than four times the width of the lot.

#### **Section 8.06 Minimum Floor Area**

The minimum floor area for all residential uses shall meet the minimum floor areas set forth in Dwelling Units.

#### **Section 8.07 Large Scale Residential Developments.**

No land division, plat, mobile home park, site condominium or development establishing or involving 11 or more lots, parcels, mobile home or trailer sites or site condominium units shall occur or be developed unless approved as a planned unit development.

## **ARTICLE 9**

### **“LR” LAKE RESIDENTIAL ZONING DISTRICT**

#### **Section 9.01 Purpose**

- A. Encourage the proper development of land abutting lakes.
- B. Avoid Pollution.
- C. Preserve lakes and waterways for the highest and best use of land.
- D. This district is 300 feet around each designated lake from the ordinary high-water mark.

#### **Section 9.02 Permitted Uses**

- A. One single family dwelling.
- B. An existing lawful mobile home may be replaced or upgraded provided that the replacement home meets all other requirements of Merrill Zoning Ordinance.

#### **Section 9.03 Area and Dimension Regulations**

No lot shall be created or used and no building or structure shall hereafter be erected, used, altered, or enlarged unless all of the following yard, lot area, and other dimensional requirements are met and maintained in connection with such lot creation and use or building or structure erection, alteration, or enlargement.

- A. Front Yard (i.e. front setback): There shall be a front yard of at least 30 feet provided.
- B. Side Yard (i.e. side setback): There shall be two side yards of at least 15 feet each.
- C. Rear Yard (i.e. rear setback): There shall be a rear yard of at least 30 feet. Accessory garages and storage structures may be located to the rear of the dwelling provided such structure is at least 30 feet from the street right-of-way or easement on all conforming and newly-created lots.
- D. Lot Area: No lot shall be created or utilized unless it is at least 5,000 square feet in size. The minimum width of all lots shall be not less than 50 feet. If a lot has any frontage on a lake, creek, it shall have at least 50 feet of frontage on that body of water.
- E. Special Conditions:

1. Water Setbacks: No building shall be located closer than 50 feet to a waterfront property line or the high-water line of any body of water, whichever is greater, or not to exceed the build to line of neighboring structures.
2. Waterfront Accessory Structures: the two accessory buildings not exceeding **125** square feet may be located between the waterfront and the principal structure and it shall meet the side yard and front yard setback requirements for the principal structure, but in no event shall any such accessory structure (except for a lawful seasonal dock or pump house not exceeding two feet tall) be located closer than 30 feet from the highwater mark of the lake, river, creek or stream. Seasonal docks in lakes or ponds shall not be longer than is required to reach a low water mark of a depth of 4.5 feet and shall not exceed 4 feet in width or 3 feet above the water mark.
3. Sewage Disposal Systems:
  - a) No sewage disposal system shall be installed without the authorization and consent with a permit from local health department.

**ARTICLE 10**  
**"C" COMMERCIAL ZONING DISTRICT**

**Section 10.01 Purpose**

This zoning district is intended to provide areas for business uses that serve the needs of the community and fabricate, manufacture or produce a salable product. This district is 200 feet along each side of the road on N. Bingham Ave. from the Township line south to W. 11 Mile Rd., on W. 11 Mile Rd. from N. First Ave. east to N. Ferris Ave. and on M-37/N. Woodbridge Dr. from W. Lincoln St. south to W. Pierce Dr.

**Section 10.02 Permitted Uses**

Land and/or buildings in the "C" zoning district may be used for the following purposes with special use approval:

All commercial uses not otherwise prohibited elsewhere in this ordinance as regulated in the rural residential district.

Single family residential as regulated in the rural residential district.

Institutional uses.

Mining and mineral extraction.

Communication towers.

Accessory uses customarily incidental to the preceding uses, but only with special use approval.

**Section 10.03 Height Regulations**

No building shall exceed 35 feet or two- and one-half stories, whichever is less.

**Section 10.04 Area Regulations**

No lot shall be created or used and no building or structure shall hereafter be erected, used, altered, or enlarged unless all of the following yard, lot area, and other dimensional requirements are met and maintained in connection with such lot creation and use or building or structure erection, alteration, or enlargement.

Lot Area: The minimum lot area in this zoning district shall be 10,000 square feet with a minimum width of 100 feet.

Front Yard (i.e. front setback): There shall be a front yard of not less than 30 feet.

Side Yard (i.e. side setback): There shall be a side yard of not less than 15 feet on each side of any building.

Rear Yard (i.e. rear setback): There shall be a rear yard of not less than 30 feet

#### **Section 10.05 Greenbelt**

A greenbelt, is defined in the Ordinances as, an area that is maintained at all times on each side and rear lot line that abuts a residential district.

#### **Section 10.06 Miscellaneous Regulations**

All businesses and uses shall be conducted in such a manner that no unreasonable noise, dust, vibration, light, noxious fumes or any other like nuisance shall exist to adversely affect adjoining properties.

No canopy, drive-through window, or drive-through service shall be permitted or utilized unless approved by the Planning Commission as a special use pursuant to Article 16.

#### **Section 10.07 Storage of Hazardous Substances**

The use, storage, or generation of any and all hazardous substances, as defined below, shall be subject to the following requirements.

*Definition of Hazardous Substances:* Hazardous substances shall include hazardous chemicals as defined by the Michigan Department of Public Health and the Michigan Department of Labor; hazardous materials as defined by the U.S. Department of Transportation; critical materials and polluting materials as defined by the Michigan Department of Natural Resources; and hazardous waste as defined by the Michigan Department of Natural Resources.

Specific state laws that must be adhered to are:

PIPP: Pollution Incident Prevention Plan (DNR), "Part 5" of the Water Resources Commission Act.

Michigan Hazardous Waste Management Act.

Michigan Rules for Storage of Flammable and Combustible Liquids; Michigan Fire Prevention Act known as the "Fireman's Right to Know Law"; State Police Fire Marshall

Registration of Underground Tanks (DNR).



Material Storage Permits (DNR).

Small Quantity Hazardous Waste Management Regulations (DNR).

Applicability. These provisions apply to all businesses and facilities that use, store or generate hazardous substances in quantities of 100 Kilograms (25 gallons, 220 pounds, or 1/2 drum) or greater at one time. Hazardous substances included raw material, products, and wastes.

Above Ground Storage:

- A. Primary containment of hazardous substances shall be product tight.
- B. Secondary containment of hazardous substances shall be provided for all facilities subject to a site plan review. 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. Outdoor storage of hazardous substances is prohibited except in product tight containers that are protected from weather, leakage, accidental damage, and vandalism. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released substance, including an allowance for the expected accumulation of precipitation.
- D. At a minimum, state and federal agency requirements for storage, leak detection, record keeping, spill prevention, emerging response, transport, and disposal shall be met.

Below Ground Storage:

- A. At a minimum, regulations of the Michigan Department of Natural Resources, Michigan Fire Marshal Division for the installation, inspection, maintenance of a leak detection system, inventory and record keeping, emergency response and closure must be met. All underground storage tanks that have been out of service for 9 months or longer shall be removed from the site before a building permit is issued. This requirement may be adjusted by the Township Fire Authority in situations where a clear timetable for the safe use of the underground tank is established.

## **ARTICLE 11**

### **"W-O" WILDERNESS OVERLAY**

#### **Section 11.01 Purpose**

The purpose of this overlay is the preservation of the large, contiguous tracks of forest/wilderness in areas surrounded by and/or adjacent to the Manistee National Forest. This overlay specifically is intended to govern areas that were once part of the Manistee National Forest or are currently part of the forest and may one day revert to private land. Low density single-family dwellings situated on large parcels, that preserve the nature of the forest with limited intrusion of humans and the preservation of wildlife and flora is the primary use in this over lay.

#### **Section 11.02 Uses Permitted**

- A. All uses in the rural residential zoning district.
- B. Land division in the "W" overlay shall be limited to one (1) split per 40 acres of land.

#### **Section 11.03 Special Uses**

The following uses are allowed if approved by the Planning Commission as a special use:

- A. All special uses in the rural residential zoning district.
- B. Private Campgrounds.
- C. Outdoor Recreational and Entertainment Facilities.

#### **Section 11.04 Height Regulations**

All height regulations in the rural residential zoning district

#### **Section 11.05 Area Regulations**

All area regulations in the Rural Residential Zoning District.

#### **Section 11.06 Minimum Floor Area**

The minimum floor area for all residential uses shall meet the minimum floor areas set forth in this ordinance under *Dwelling Units*.

## **ARTICLE 12**

### **“RC-O” RIVER/CREEK OVERLAY**

#### **Section 12.01 Purpose**

The purpose of this overlay is the preservation and enhancement of rivers, streams and lakes in Merrill Township and in particular, their special environmental aspects such as flood plains and wetlands in the interest of present and future generations; the prevention of ecological damage and aesthetic damage that may result from overcrowding, overuse or unwise and disorderly development. This overlay is a buffer of 300 feet along each side of designated rivers/creeks from the ordinary high-water mark.

#### **Section 12.02 Designated District and Boundaries**

This overlay covers all lands abutting within 300 feet of any river, stream, or lake within Merrill Township that is not already within the Lake Residential zoning district. These regulations are in addition to those for the underlying zoning district.

#### **Section 12.03 Regulations**

- A. Accepted normal agricultural activities shall be followed, providing there is no undue erosion of banks by farm animals or pollution of the waters from animal wastes.
- B. One pump house is allowed when it is set back at least 10 feet from the water's edge and does not exceed 9 square feet in area and 3 feet in height.

#### **Section 12.04 Natural Vegetation Strip**

To minimize erosion, stabilize riverbanks, protect water quality and keep nutrients out of the water, a strip 25 feet wide, bordering the water's edge, shall be left undisturbed, or if disturbed shall be planted and maintained in trees and shrubs. An opening is allowed for access to the lake, river, or stream of not more than 10 feet wide. Trees and shrubs may be trimmed or pruned, allowing building setback of 30 feet, with a minimum frontage of 200 feet.

#### **Section 12.05 Earth Changing Activities**

All earth changing activities, including dredging, cutting, filling and grading within this overlay district that involves the removal of ground cover, shall be in accordance with the requirements of the sedimentation control regulations of the Newaygo County Soil Conservation District (or successor agency). If the earth changing activity involves the filling in of a flood plain, all regulations of the state of Michigan must be met. In addition, no refuse, garbage, rubbish, or waste material shall be used as fill material. No approval by the Planning Commission shall be gained without assured compliance with this Section.

**Section 12.06 Considerations for Approval**

The Zoning Administrator may grant permits for dwellings and accessory buildings if the above requirements and following considerations are met. Construction and/or use will:

- A. Provide for the conservation of soil, banks, and adjoining uplands.
- B. If abutting a river or stream, protect the natural flood water storage capacity of the river flood plain, so as to prevent flood damages and associated public relief expenditures created by improper construction of structures in a flood plain.
- C. Not damage fish, wildlife, and their habitat.

## ARTICLE 13

### “PUD” PLANNED UNIT DEVELOPMENT

#### **Section 13.01 Description and Purpose:**

The use, area, height, bulk, and placement regulations of this Ordinance are primarily applicable to the usual situation of one (1) principal building per lot. In certain larger or unusual developments, those requirements result in a less desirable development for the achievement of the purposes of this Ordinance than if a controlled degree of flexibility is allowed. For example, a large-scale residential development might better achieve the purposes of this Ordinance if a portion of the open space requirements were consolidated into small community parks or open space rather than on an individual, lot-for-lot basis.

A development may be of such large size or unusual nature as to justify permitting certain incidental uses not normally permitted in the existing zoning district. Permitting these uses within the development can, in certain cases, increase convenience, be compatible with the overall character of the development, and not be injurious to adjoining properties. The Planned Unit Development (PUD) zoning district is intended to permit and control the development of areas as planned developments (PUD's) for various compatible uses permitted by this Ordinance in other zoning districts and for other special uses not so permitted. In so doing, a degree of flexibility is allowed in the use, area, height, bulk and placement regulations for PUD developments. However, it is also the intent of a PUD district to afford each type of use reasonable protection from encroachment or interference by other incompatible land uses, and that reasonable protection be afforded to uses adjacent to the PUD zoning district.

All zoning pursuant to this Article shall give due consideration to maintenance of reasonable conditions regarding emission and transmission of injurious or obnoxious noise, vibration, gas, smoke, dust, dirt, litter, odor, light glare, traffic congestion, ease of police and fire protection, drainage, property values, light and air, overcrowding of persons, sanitation, surface and ground water quality, water supply and sewage disposal, general appearance and character of the area, and other similar considerations having an effect on the achievement of the purposes of this Ordinance.

#### **Section 13.02 Allowed Uses**

If approved by the Township Board, land in the PUD zoning district may be used for all or any of the uses permitted by this Ordinance in other zoning districts and other special uses not permitted as of right, including, without limiting the generality of the foregoing, the following specific uses:

- A. Camps and campgrounds.
- B. Cemeteries.
- C. Children's homes.
- D. Colleges.
- E. Community swimming pools and other recreation facilities and parks.
- F. Golf courses and country clubs.

- G. Hospitals and clinics.
- H. Housing for senior citizens.
- I. Industrial parks and/or research parks.
- J. Junk yards, landfills and dumping grounds.
- K. Mineral extraction uses.
- L. Large scale residential development.
- M. Mobile-modular home sales lots.
- N. Mobile-modular home development or parks.
- O. Nursing homes.
- P. Offices and office parks.
- Q. Philanthropic institutions.
- R. Private clubs.
- S. Public and private schools and colleges.
- T. Resorts, including motels, restaurants and similar associated uses.
- U. Malls or shopping centers.
- V. Drive-in theaters.
- W. Recreational or entertainment facilities.
- X. Condominiums.
- Y. Site condominiums.
- Z. One-family, two-family, multiple-family, and condominium dwellings.
- AA. Mineral extraction operations.
- BB. Sanitary landfill.

### **Section 13.03 Procedures**

Any land in the Township may be zoned or rezoned as the PUD zoning district in accordance with the procedures and requirements hereinafter specified.

### **Section 13.04 Preliminary Plan - Submissions and Content**

Applicants for a PUD zoning district shall prepare and submit to the Zoning Administrator three (3) copies of a preliminary plan for the PUD. The Zoning Administrator shall promptly transmit two (2) copies of this plan to the Planning Commission and one (1) copy to the Township Board. This plan shall set forth, in general terms, the proposed uses to be developed in the PUD and the following specific information:

- A. Legal description of the land included in the PUD.
- B. Small-scale sketch of properties, streets and uses within one-half (1/2) mile of the PUD.
- C. A map to scale showing any existing or proposed arrangement of (1) streets, (2) lots and buildings, (3) access points, (4) other transportation arrangements, and (5) buffer strips.

- D. A narrative describing: (1) the overall objectives of the PUD, (2) method of financing, (3) number of acres allocated to each use, (4) gross densities, (5) proposed method of providing sewer and water service as well as other necessary public and private utilities, and (6) proposed method of providing storm drainage.
- E. All information submitted shall be of sufficient scale, clarity, and quality to permit a determination of compliance with the standards of this Article.
- F. Any additional information required by the Planning Commission.

#### **Section 13.05 Planning Commission Review of Preliminary Plan**

The Planning Commission shall review the preliminary plan and make recommendations to the applicant based on (1) the requirements of this Ordinance and (2) the following specific considerations where applicable:

- A. Ingress and egress to the property and proposed buildings and structures thereon, with particular reference to vehicle and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- B. Off-street parking and loading areas where required, with particular reference to the items in subparagraph A and the economic, noise, glare and/or odor effects of each use in the proposed PUD.
- C. Refuse and service areas, with particular reference to the items in subparagraphs A and B above.
- D. Utilities, with reference to locations, availability, and compatibility.
- E. Screening and buffering with reference to type, dimensions, and character.
- F. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect and compatibility and harmony with adjoining properties and properties in the proposed PUD.
- G. Required yards and other open spaces.
- H. General compatibility with adjoining properties and properties in the proposed PUD.
- I. The purpose of this Ordinance, as well as compatibility with other ordinances and statutes that regulate land development.
- J. Consistency of the project with the Merrill Township Master Plan.

### **Section 13.06 Transmittal of Planning Commission's Recommendation**

The Planning Commission shall transmit its recommendations pertaining to the preliminary plan along with any recommended changes or modifications thereof to the applicant. A copy of the Planning Commission's recommendations shall also be transmitted to the Township Board. In the course of its consideration of the preliminary plan, the Planning Commission may hold an advisory public hearing and give such notice thereof as it shall deem appropriate.

### **Section 13.07 Final Plan Submission**

- A. After receiving the recommendations of the Planning Commission on the preliminary plan, the applicant for PUD district zoning shall submit five (5) copies of a final development plan to the Zoning Administrator. The Zoning Administrator shall promptly transmit two (2) copies to the Planning Commission, two (2) copies to the Township Board, and retain one (1) copy.
- B. Simultaneously with the submission of a final development plan, the applicant shall submit to the Zoning Administrator an application for rezoning request that the land included in the final plan for the PUD be rezoned to the PUD zoning district designation. Consideration of the requested zoning amendment shall then proceed in accordance with the rezoning procedures of the Zoning Act.

### **Section 13.08 Final Plan Content**

The final plan shall include all of the following information unless the same, as determined by the Township, is found to be unnecessary for the consideration of the PUD.

- A. A plot plan based on an accurate certified land survey showing: (1) location, size, and type of present buildings or structures to be retained or removed; (2) location of all proposed buildings, structures or other improvements; (3) location of existing and proposed streets, easements, rights-of-way, drives and parking lots; (4) location of water and sewer lines; (5) storm drainage; (6) topographical features including contour intervals no greater than five (5) feet and bodies of water; (7) ditches and water courses; (8) ground cover and other pertinent physical features of the site such as trees; (9) proposed landscaping; (10) location of existing improvements; (11) location of lot lines; (12) loading and unloading facilities; (13) wetlands; and (14) exterior lighting and signs.
- B. Preliminary architectural sketches and/or a general statement as to the type of construction and materials to be used in the proposed buildings or structures. Height and area of buildings and structures shall be described.
- C. The period of time within which the project will be completed.
- D. Proposed staging of the project, if any.  
Gross areas of buildings and parking.



- E. Delineation of the one hundred (100) year flood plain, if applicable and any proposed uses therein.
- F. A description of all aspects of such plan that might have an adverse effect on public health, safety, and welfare.
- G. An environmental impact statement or assessment, if requested by the Planning Commission.
- H. Current proof of ownership of the land to be utilized or evidence of a contractual ability to acquire such land as an option or purchase contract.
- I. Method of financing and commitments or other proof of ability to obtain financing.
- J. Additional information that the Township Board may request that is reasonably necessary to evaluate the proposed PUD and its effect on the surrounding neighborhood and properties and the Township in general.
- K. Such other data or information as is required by the Planning Commission.

#### **Section 13.09 Public Hearing**

The Planning Commission shall hold a public hearing pursuant for the purpose of receiving comments relative to the final development plan and the proposed rezoning.

#### **Section 13.10 Final Planning Commission Recommendations**

The Planning Commission shall transmit its recommendations concerning the final development plan and the proposed zone change along with any recommended changes, conditions, or modifications to the Township Board.

#### **Section 13.11 Final Approval by Township Board**

Final approval (together with conditions of approval) or disapproval of the zone change and final development plan shall be by the Township Board. The Township Board shall also hold a public hearing pursuant to Section 19.11. A copy of said final zone change, if finally approved, shall be forwarded to the Township Clerk for filing with the Township Zoning Ordinance and shall be an official amendment to this Ordinance. If all conditions and requirements of this Article are fulfilled, the Township Board may approve the PUD. The Township Board may attach conditions to any PUD approval.

#### **Section 13.12 "PUD" Planned Unit Development General Provisions**

- A. Minimum Size, Modification of Standards, and Project Design Review Standards:
  - 1. Size - In order to be zoned as a PUD zoning district, the proposed area of land shall be no less than five (5) acres.

2. Project Design and Review Standards - Unless specifically specified otherwise, the Township Board may approve deviations to the dimensional standards normally required for projects developed in traditional fashion. These include modifications to building setbacks, building density, customary building placement parking, and access, and similar modifications. In approving the PUD, including any modifications, the Township Board shall find:
  - a) That there will be no adverse effect upon public health, safety, or general welfare.
  - b) That the modifications are consistent with the Township Master Plan.
  - c) The PUD will be designed, constructed, operated, and maintained in a manner harmonious with the character of adjacent properties and the surrounding area.
  - d) The proposed use and modifications will not change the essential character of the surrounding area and the neighborhood.
  - e) The proposed use and modifications will not place demands on public services, roads, and facilities in excess of their current capacities.
  - f) The proposed use and modifications will not establish a precedent for developments or uses that could adversely affect the long-term goals of the Township Zoning Ordinance or Master Plan. The proposed use and modifications shall be designed to preserve environmental features, such as lakes, streams, flood plains, agricultural areas, ground water and natural areas.
  - g) The standards for a site plan are met.
- B. Time Limitations on Development. Each PUD development shall be under substantial construction within one (1) year after the date of rezoning by the Township Board. If this requirement is not met, the Township Board may grant an extension provided the developer presents reasonable evidence to the effect that said development has encountered unforeseen difficulties but is now ready to proceed. Should the aforementioned requirements not be fulfilled within a period of one (1) year after final approval by the Township Board, any building permit issued for said development shall be invalid and void, and the Township Board may initiate proceedings to hold a public hearing for the purposes of rezoning said property.
- C. Security. The Township Board, in connection with reviewing any application for a final development plan, may require reasonable undertakings by the applicant to guarantee and assure by agreement, including a performance bond or irrevocable letter of credit, such bond or security

to be posted by applicant in order to ensure that the development will be executed in accordance with the approved plan.

- D. Required Improvements Prior to Issuance of Occupancy Permit. The Township Board is hereby empowered to require that all required improvements be constructed and completed prior to issuing an occupancy permit. In the event that said improvements are partially completed to the point where occupancy would not impair the health, safety, and general welfare of the residents, but are not fully completed, the Building Inspector may, upon the recommendation of the Township Board, grant an occupancy permit so long as the developer deposits a performance bond with the Township Clerk in an amount equal to the cost of improvements yet to be made, said improvements to be completed within one (1) year of the date of the occupancy permit.
- E. Additional Provisions. All provisions of this Ordinance and other ordinances of the Township shall apply to the PUD district except where inconsistent therewith, in which case the provisions of this Article shall control.

### **Section 13.13 Discretionary Density**

- A. Notwithstanding the density requirements of this Ordinance, the Township may require a lesser density for a particular land development (that is, fewer dwelling units, fewer dwellings or other buildings, or fewer lots, mobile home sites, parcels of land or site condominium units) if it is determined that the following requirements will not be satisfied with the proposed density or the proposed number of lots, mobile home sites, parcels of land or site condominium units:
  - 1. The property is located on a paved public street and is served by adequate public streets.
  - 2. There is a public sanitary sewer system to serve the property.
  - 3. There is a public water supply system or a privately-owned public water supply system to serve the property.
  - 4. There are no natural or environmentally-sensitive areas, including lakes, woodlands, wetlands, or prime farmland.
  - 5. The proposed development will not impose unreasonable demands upon public services or public facilities.
- B. In determining whether a lesser density shall be required, the Planning Commission and Township Board shall consider whether the requiring of such lesser density will assist in overcoming, compensating for or improving, in whole or in part, the disadvantages resulting from any of the following:
  - 1. Inadequate public streets.

2. Lack of a public sanitary sewer.
3. Lack of a public or community water supply system.
4. Potential harm to or degradation of environmentally sensitive areas, including lakes, wetlands, woodlands, and prime farmland, resulting from the proposed development.
5. Unreasonable demands on public services and facilities resulting from the proposed development. The other standards contained in this Article.

#### **Section 13.14 Certain Residential Developments as Planned Unit Developments**

- A. In the "LR" Lake Residential zoning district, and the "RR" Rural Residential zoning district, no subdivision (as defined in this section) shall be established or created and no lot, site condominium unit, individual mobile home or trailer site or park or parcel of land in a subdivision shall be sold, conveyed, transferred or otherwise established, nor shall any building permit or zoning approval permit be issued, for any land in a subdivision unless such subdivision shall have been approved by the Township as a planned unit development (PUD).
- B. For purposes of this section, a "subdivision" means any land or property, wherever located, improved or unimproved, that is divided, split, conveyed, proposed to be divided, split or conveyed, or developed as a land division, mobile home park, site condominium or recorded plat, for the purpose of sale, transfer or building construction, into or including 11 or more lots, parcels of land, site condominium units, individual mobile home or trailer sites or other interests in land, or any combination thereof whether in whole or in part. For purposes of this section, "subdivision" also includes any lands, whether contiguous or not, 11 or more lots, parcels of land, site condominium units, individual mobile home or trailer sites or other units or interests are offered as part of a common promotional plan for rent, sale or conveyance, or where the subdivision is being developed or is offered for sale, rent, transfer or building construction by one developer, or more than one developer, whether acting individually or in concert.
- C. If parcels of land are contiguous or if they are known, designated or advertised as a single or common development, or by a single or common name, the land shall be deemed to be offered for disposition as part of a common promotional plan and shall accordingly be deemed to be part of a subdivision, if the total number of lots, parcels of land, site condominium units, individual mobile home or trailer sites or other interests is 11 or more.
- D. For purposes of this section, "contiguous" land means any additional land adjacent to or adjoining the subdivided land included in any previous subdivision.
- E. If a parcel of land is created, divided or split from or out of another parcel of land, and if either or both of such parcels are further divided, split or site condominium units are created, or if any of such actions is proposed, within seven years after the recording of the first land division or land split, then each parcel shall be considered a subdivision for purposes of this section, and

accordingly, each parcel shall be subject to planned unit development approval, if 11 or more lots, parcels of land or site condominium units are created or developed from or out of such parcels or either of them.

#### **Section 13.15    Modification of PUD Plans**

Minor changes to a PUD site plan may be approved administratively in writing by the Zoning Administrator provided the changes comply with all applicable requirements of this Ordinance and all other Township regulations and state laws. Any other changes shall require a formal amendment to the developers' PUD Ordinance or approval.

#### **Section 13.16    Conditions**

The Township Board may attach reasonable conditions to any PUD approval, including the following:

- A. PUD's shall be designed to protect and enhance environmental features, such as the preservation of trees, flood plains, waterways, agricultural areas and natural areas, and shall encourage proper site landscaping.
- B. The Township may require additional standards for private roads in addition to those specified in Section hereof.
- C. All PUDs shall be designed with open space.
- D. The Township may also require that the applicant provide some or all of the following information:
  - 1. Soil surveys, borings and septic suitability reports.
  - 2. Natural hazards.
  - 3. Substrate information.
  - 4. Surface and groundwater information.
  - 5. Storm water drainage information.
  - 6. Erosion information.
  - 7. Streams and water bodies impact analysis.
  - 8. Environmental impact statement.

9. Traffic information.

10. Market study.

Such additional information as is reasonably necessary for the Township to determine a proposal's environmental impacts upon adjoining woodlots, waterways, wetlands, adjoining properties and other resources.

For large scale residential developments and nonresidential developments, the Township may require that the developer pay for and install a private community water system and/or a private community sewage system, where public municipal water and sewage systems are unavailable

**ARTICLE 14**  
**SPECIAL USES**

**Section 14.01 Scope**

This Article provides a set of procedures and standards for special uses of land or structures, which because of their unique characteristics require special consideration in relation to the welfare of adjacent properties and the community as a whole. The regulations and standards, herein, are designed to allow, on one hand, practical latitude for the applicant, but at the same time maintain adequate provision for the protection of the health, safety, convenience, and general welfare of the Township. For purposes of this Ordinance, all special uses within the various zoning districts are subject to the conditions and standards of this Article. In addition, particular special uses shall conform to the specific standards cited in this Article 14 as applicable.

**Section 14.02 Application and Review Procedures**

- A. An application for a special use shall be submitted through the Zoning Administrator, accompanied by:
  - 1. A complete site plan as specified in this ordinance.
  - 2. A narrative describing the proposed use(s).
- B. Applications for a special use (if complete) shall be submitted at least thirty (30) days prior to the next Planning Commission meeting.
- C. The application (if complete), along with the required site plan, shall be forwarded to the Planning Commission for its next scheduled meeting.
- D. The Planning Commission shall hold a public hearing on the application, noticed in accordance with this ordinance. The Planning Commission shall then review the application and other information available to it through the public hearing or from any other sources, including recommendations or reports from the Township's planner, engineer, attorney, or other party, and shall approve, approve with conditions, or deny the request, and incorporate the basis for the decision and any conditions which should be imposed on an approval.
- E. No request for special use approval that has been disapproved shall be resubmitted for a period of one (1) year from the date of disapproval, except as may be allowed by the Zoning Administrator after learning of new and significant material facts or substantially changed conditions that might result in favorable action upon re-submittal.
- F. A special use approved pursuant to this Article shall be valid for one (1) year from the date of approval. Each development or use shall be under substantial construction within one (1) year after the date of approval of the special use, except as noted below.

1. The Planning Commission may grant one six (6) month extension of the approval, provided the applicant requests the extension prior to the date of the expiration of the special use approval.
  2. The extension shall be approved if the applicant presents reasonable evidence to the effect that the development or use has encountered unforeseen difficulties beyond the control of the applicant, and the project will proceed within the extension period.
  3. If neither of the above provisions are fulfilled or the six (6) month extension has expired prior to construction the special use approval shall be null and void.
- G. No use, building, or structure requiring special use approval shall occur or be commenced prior to such approval.

#### **Section 14.03 General Standards**

- A. In addition to the standards established for specific uses herein, an application for a special use shall be reviewed for compliance with the review standards for approval of site plans in this ordinance. Reasonable conditions may be placed upon a special use approval (and the accompanying site plan approval).
- B. No special use may be approved unless all of the following standards are met. Each application shall be reviewed for the purpose of determining that the proposed special use will:
1. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance, with the existing or intended character of the general vicinity and that the use will not change the essential character of the area in which it is proposed.
  2. Be adequately served by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, and refuse disposal, water and sewage facilities.
  3. Not create excessive additional requirements at public cost for public facilities and services.
  4. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production or effects of traffic, noise, smoke, fumes, glare, or odors.
  5. The proposed use shall be sufficiently designed to maintain adequate provision for the protection of the health, safety, conveniences, and social and economic welfare of those who will use the special use, residents, and landowners adjacent to the special use, and the community as a whole.
  6. The proposed use shall be consistent with the intent of this Ordinance and the intent of the Master Plan.



7. The use shall not create or substantially add to traffic hazards in the area.
  8. The proposed use shall not set precedents for development which could adversely affect the long-term plans or policies of the Township.
  9. The proposed use shall not have significant adverse environmental, ecological, or natural resource impacts.
  10. The proposed use shall not have significant adverse impacts upon adjoining properties or uses.
  11. The proposed use will be reasonable.
  12. Any standards listed later in this Article for specific uses must also be met.
- C. The Planning Commission may impose additional conditions and safeguards on a special use approval deemed necessary to accomplish the following purposes. Failure to comply with the conditions may result in the revocation of the special use approval, pursuant to this ordinance. Conditions imposed shall be those necessary to ensure that the proposed special use will:
1. Meet the intent and purpose of the Zoning Ordinance and the Master Plan.
  2. Relate to the standards established in the Ordinance for the land use or activity under consideration.
  3. Ensure compliance with those standards.
  4. Protect the general welfare.
  5. Protect individual property rights.
  6. Ensure that the intent and objectives of this Ordinance will be observed.
- D. The Planning Commission shall adopt a statement of findings and conditions relative to the special use that specifies the basis for the decision and any conditions imposed.

#### **Section 14.04 Performance Guarantee**

The Planning Commission may require a performance guarantee or guarantees in accordance with Section 19.09 to ensure compliance with any requirements or conditions associated with the granting of a site plan and special use approval.

#### **Section 14.05 Special Use Specific Requirements**

The general standards and requirements are basic to all special uses. The specific and detailed requirements set forth hereafter relate to particular uses and are requirements which shall be met by those uses in addition to the foregoing general standards and requirements. Any use listed in this Ordinance not addressed as follows shall be reviewed under the general standards.

#### **Section 14.06 Termination/Revocation of a Special Use Approval**

In the event that a special use approval is granted, the individual or successor in interest as to the property involved shall not use the property in question such that it would exceed the rights granted by the special use (and site plan) approval or any conditions attached thereto or fail to follow or comply with any conditions or requirements thereof. In the event that the use of the property exceeds those rights given by the special use (and site plan) approval or conditions attached thereto, or the property owner fails to follow the conditions placed upon the special use (and site plan) or any requirements of this Ordinance, the special use (and site plan) shall terminate immediately. Alternatively, in such cases, the Planning Commission shall also have the authority to terminate a special use approval after reasonable notice and hearing.

#### **Section 14.07 Institutional and Public Uses**

Any Zoning District (except LR Lake Residential). Institutional and public uses may be allowed as a special use if the Planning Commission finds that all of the following requirements are met:

- A. The proposed use will be harmonious with, and not harmful, injurious, or objectionable to, existing and projected future land uses in the area.
- B. The proposed use is adequately served by necessary improvements, including, but not limited to, water, sewer, electricity, roads, drainage, and parking.
- C. The proposed use is in accordance with the development policies of Merrill Township.

#### **Section 14.08 Kennels**

Kennels may be allowed as a special use provided the Planning Commission determines all the following requirements are met:

- A. All animals must be housed no closer than 200 feet from any adjoining property line and at least 500 feet from any residential dwelling.
- B. Animals shall be kept under sanitary conditions and in sanitary enclosures. The special use approval may be revoked if the premises become unsanitary or if objectionable noise or odors emanate from the premises.

#### **Section 14.09 Oil, Gas or Other Drilling Activity**

Oil and gas wells, including drilling operations for any underground resources, though not controlled by this Ordinance, shall comply with the following requirements:

- A. No truck parking or storage shall be located within 500 feet of any adjoining residence or within 200 feet of adjoining property lines.
- B. All truck operations shall be directed away from residential streets.
- C. Site operations shall be at least 500 feet from any dwelling, church, school, public building, or public or semi-public place including parks and recreation areas.
- D. The area shall be completely enclosed by a solid wall or fence of at least 6 feet but no more than 8 feet in height, with no material stored within the fenced area visible above said fence. E. No dumping of garbage, trash or any byproducts shall be permitted.
- F. The site shall not create a nuisance adversely affecting adjoining property owners.

#### **Section 14.10 Outdoor Recreational and Entertainment Facilities**

Outdoor recreational and entertainment facilities may be allowed with special use approval if the Planning Commission finds that all of the following requirements are met:

- A. The proposed use will be harmonious with, and not harmful, injurious or objectionable to, existing and projected future land uses in the area.
- B. The proposed use is adequately served by necessary improvements, including, but not limited to, water, sewer, electricity, roads, drainage, and parking.
- C. The proposed use is in accordance with the development policies of Merrill Township.

#### **Section 14.11 Private Campgrounds**

Private campgrounds may be allowed as a special use if the Planning Commission finds that all of the following requirements have been met:

- A. The campground shall be situated on a lot of no less than 20 acres, with direct access to an improved gravel or paved public road.
- B. Each camp site shall contain a minimum of 1,500 square feet.
- C. No vehicle, trailer, or tent shall be erected or placed within 30 feet of any road right-of-way.
- D. A greenbelt of at least 50 feet shall be maintained along all parameters of said campground.

- E. Public restrooms, housed in all-weather structures, containing adequate water outlet, toilet, waste container and shower facilities shall be provided uniformly throughout the said campground at a ratio of not less than one such restroom for every 20 sites.
- F. All sanitary facilities shall be designed and constructed in strict conformance with all applicable Newaygo County health regulations.
- G. The development of the entire parcel is subject to all applicable requirements of the Michigan Department of Natural Resources, and Camp Ground Act 368 of Public Acts of 1978, as amended.
- H. Each campground shall have a minimum of 20 campsites.
- I. No particular trailer, tent, or recreational vehicle shall remain at a campsite for longer than 120 days during a calendar year.
- J. Deer camps, one family campsites, and similar uses shall not be deemed a “campground” and are fully subject to the restrictions of Section 3.30 hereof.

#### **Section 14.12 Mining and Mineral Extraction Uses and Operations**

- A. Purpose and Intent. The purpose of this Section is to provide for the use of lands that have significant gravel and/or sand deposits and which, if mined for such deposits under the regulations of this Article and this Ordinance, would not constitute a hazard to the public health, safety, and welfare. The regulations are intended to result in: mining and excavation operations that will not be detrimental to the public health, safety, and welfare; and operations that will be conducive to and result in the reclamation of the land so that it will be suitable for other purposes, including single-family residential purposes. Further, it is the intent of these provisions to preserve the natural resources of the Township.
- B. Zoning Districts. Mining and mineral extraction shall be allowed in any zoning district (except LR Lake Residential) if approved by the Planning Commission as a special use.
- C. Site Plans. A site plan for the proposed mining or mineral extraction operation (together with a reclamation plan) shall be filed with the Township and shall be reviewed and approved, approved with conditions or denied by the Planning Commission as part of the special use review process.
- D. Standards. In order to approve a special use for mining or mineral extraction, the Planning Commission must find that no very serious consequences would result from the mining or mineral extraction operation, use or activities. In making that determination, all of the following factors may be considered if applicable:
  - 1. The relationship of extraction and associated activities with existing land uses; The impact on existing land uses in the vicinity of the property involved.

2. The impact on property values in the vicinity of the property involved and along the proposed hauling route serving the property involved, based on credible evidence.
  3. The impact on pedestrian and traffic safety in the vicinity of the property involved and along the proposed hauling route serving the property involved.
  4. The impact on other identifiable health, safety, and welfare interests in Merrill Township.
  5. The overall public interest in the extraction of the specific natural resources on the property involved. When considering this factor, the Planning Commission shall determine:
    - a) Whether the mineral or minerals involved are available from other locations nearby or closer to the site or sites where the materials are needed.
    - b) The degree and extent of the public interest in the extraction of the materials at issue.
    - c) Whether the public interest in the specific material(s) is very high or relatively low.
    - d) Market conditions related to the resource at issue in the specific location or area involved.
    - e) The demand for the materials at issue.
- E. Conditions. If the Planning Commission approves a special use for a mining or mineral extraction use, activity, or operation, the Planning Commission can attach reasonable conditions to such approval regarding the following areas and topics:
1. Hours of operation.
  2. Noise.
  3. Dust control.
  4. Traffic.

### **Section 14.13 Home Business**

A Home Business may be allowed only as a special use and includes an occupation or profession carried out by a member of a family residing on the lot, which is clearly incidental and secondary to the principal residential use and does not involve the alteration of the structure or change the character thereof. The above requirements as well as those listed below must be met to be considered a "Home Business."

- A. No more than 25% of the gross floor area of the dwelling unit shall be utilized.

- B. A Home Business may also be carried out in a separate unattached structure.
- C. Creates no nuisance or undue hazard due to heat, glare, noise, smoke, vibration, noxious fumes, odors, vapors, gases, or any other disturbances at any time resulting from such operation. In the case of electrical interference, no equipment or process shall be used that creates visual or audible interference in any radio or television off the premises or causes fluctuations in line voltage off the premises.
- D. There shall be no change in the exterior appearance of the dwelling or premises, or other evidence of the conduct of the "Home Business" other than one non-illuminated sign not greater than 16 square feet in size relating to such occupation.
- E. Notice provisions regarding commercial property shall apply to uses under this Section.
- F. There shall be no exterior storage of materials, equipment, or products.
- G. Activities relating to the Home Business must be carried on only by residents of the dwelling, plus not more than one nonresident.
- H. Provides adequate off-street parking, in addition to that required for the principal residence.
- I. Any such Home Business is subject to periodic inspection by the Zoning Administrator of the Township.

#### **Section 14.14 Communications Towers**

Any Zoning District (except "LR" Lake Residential). Communications towers may be allowed as a special use in any zoning district if the Planning Commission determines that all of the following requirements are satisfied, in addition to the general standards for all special uses.

Communications towers exceeding 50 feet in height shall also comply with all of the following requirements:

- A. Placement: Communications antennas and other such equipment shall be required to be located on an existing approved tower or other structure within a three (3) mile radius of the proposed tower unless one (1) or more of the following conditions exist:
  - 1. The planned communications equipment would exceed the structural capacity of the existing tower, as documented by a qualified and registered professional engineer, and the existing tower cannot be reinforced, modified, or replaced so as to accommodate planned or equivalent equipment at a reasonable cost.
  - 2. The planned communications equipment would cause interference materially affecting the usability of other existing or planned equipment on or at the existing tower, as documented by a qualified and registered professional engineer, and such interference cannot be prevented at a reasonable cost

3. Existing or approved towers within a three (3) mile radius cannot accommodate the planned communications equipment at a height necessary to function reasonably, as documented by a qualified and registered professional engineer.
  4. Other unforeseen conditions that make it unfeasible to locate the planned equipment upon an existing tower.
- B. Access by Other Users: Any proposed communications tower shall be designed, structurally, electrically, and in all other respects, to accommodate both the applicant's equipment and comparable equipment for at least four (4) additional users. Towers shall be designed and constructed to allow for future rearrangement of equipment upon the tower and for the accommodation of equipment mounted at varying heights on the tower.
- C. Design: Towers shall be designed to blend into the surrounding environment through the use of color and architectural treatment, except in instances where color is dictated by state or federal authorities. Towers shall be of a monopole design unless Federal Communications Commission requirements or engineering requirements require an alternate design.
- D. Setbacks: All parts of the communications tower and associated structures and equipment placed on the ground shall comply with the following setback requirements:
1. Except as noted under subsection 3, towers and associated equipment shall be located a minimum height of the tower from any property line or right of way.
  2. Towers in Nonresidential Districts: Except as noted under subsection 3, any part of a tower and associated equipment shall be set back for a distance equal to the required setbacks for main buildings for the zoning district in which the tower is located, except that in all cases a tower and associated structures and equipment shall be located at least twenty-five (25) feet from any adjacent lot line or main building, and at least three hundred (300) feet from any residential zoning district, lot line or residential dwelling.
  3. Non-collapsible Towers: Towers that have not been designed and constructed to collapse in a downward, vertical fashion shall be set back from all property lines a distance of one (1) foot for each one (1) foot of height (tower and antenna combined). In no case however, shall said setback be less than as specified under subsections 1 and 2, above.
- E. Screening: The Planning Commission may require such towers and associated buildings, structures and equipment on the ground to be screened with landscaping, berms, fences, or a combination of these elements.
- F. Illumination and Advertising: Towers shall not be illuminated unless required by state or federal authorities. No signs or other advertising not related to safety or hazard warnings shall appear on any part of the tower or associated equipment or buildings.
- G. Abandonment: Towers that are abandoned or unused shall be removed, along with any associated structures, buildings or equipment, within twelve (12) months of the cessation of the operations, unless a time extension is granted by the Zoning Administrator. One three-month extension shall

be permitted only if the Zoning Administrator finds that the owner or former operator of the facility is pursuing active measures to accomplish its removal.



## **ARTICLE 15**

### **SITE PLANS**

#### **Section 15.01 Purpose**

It is the purpose of this Article to achieve, through site plan review, safe and convenient traffic movement; harmonious relationships of buildings, structures, and uses; and the conservation of natural features and resources and the preservation of adjacent property values.

The general and intensive use of the automobile requires careful study of the relationships between buildings, parking areas, streets, alleys, pedestrian walkways, traffic movements, and obstructions caused by uses that generate or attract traffic or that require parking. To ensure the safety, convenience, and well-being of the residents of Merrill Township and the public, the Planning Commission shall, prior to the granting of certain zoning approvals, review and consider a site plan. A preliminary site plan may be required at the option of the Planning Commission.

#### **Section 15.02 Uses Requiring Site Plan Approval**

The following buildings, structures, and uses require a site plan:

- A. All rezoning and conditional rezoning requests.
- B. All special uses.
- C. All commercial, business, and office uses, including parking areas.
- D. Any land division or development involving the creation of 5 or more lots, parcels, or site condominium units.
- E. Any site condominium.
- F. Any Planned Unit Development (PUD).
- G. Any use requiring a site plan as specified elsewhere in this Ordinance.
- H. Any change to or expansion of any of the above uses.
- I. No use, building, or structure requiring site plan approval shall occur or be commenced prior to site plan approval.

#### **Section 15.03 Site Plan Scale Requirements**

Each site plan shall have the date, north arrow and scale. The scale shall not be less than 1" = 20 feet for property under three acres and at least 1" = 100 feet for property of three acres or more.

#### **Section 15.04 Site Plan Information Requirements**

Three (3) copies of each site plan submitted to the Township shall contain all of the following information, unless specifically waived by the Planning Commission, in whole or in part:

- A. Location, shape, area, and dimensions of the property.
- B. Surrounding property uses and zoning districts.
- C. Public and private easements or rights-of-way located adjacent to the property and also located on the property or proposed for said property.
- D. Driveways, off-street parking areas, loading spaces and all other facilities to deal with traffic.
- E. Location and dimensions of all buildings, existing and proposed, number of floors and uses.
- F. Pedestrian walkways, fences, and landscaping.
- G. Existing and proposed water, sewer, and utility lines, including sites for solid waste pickup.
- H. The method of storage of any and all toxic materials to be stored, sold, or used on the premises.
- I. Location, height, and orientation of all signs.
- J. All major environmental features, including, but not limited to, wetlands, lakes, creeks, streams, major stands of timber and vegetation, steep slopes (over 18%) and rock outcroppings on and within 100 feet of said property.
- K. Such other information as is required by the Planning Commission.

#### **Section 15.05 Review Procedure**

The Planning Commission shall study the site plan and shall approve, approve with conditions, or disapprove said plan. After review, the Planning Commission, prior to making a final decision, may require more studies or reports to be provided by the applicant. These may include, but are not limited to, environmental impact studies, property valuation studies, traffic studies, or other studies or reports as required by the Planning Commission. If the site plan is rejected, the reasons for disapproval shall be stated. Upon approval of a site plan, two copies shall be signed and dated by the Chairman of the Planning Commission. One copy shall be kept on file by the Zoning Administrator, and one returned to the applicant. All findings of facts shall be made part of the public records of the meetings of the Planning Commission.

## **Section 15.06 Standards for Site Plan Review; Conditions**

- A. The Planning Commission shall not approve a site plan unless it determines that the site plan is consistent with this Ordinance and in accordance with the Township land use plan and that all of the following standards will be met:
  - 1. That the movement of vehicular and pedestrian traffic within the site and in relation to access streets will be safe.
  - 2. That the site will be equal to or an improvement in relation to property in the immediate vicinity and to the Township as a whole.
  - 3. The proposed use will not cause undue congestion or cause an adverse environmental impact or in any way negatively affect the properties or aesthetic values of township residents.
  - 4. That the site plan will not overburden the Township's ability to provide public services, while at the same time adequately providing for sewage collection and treatment, storm drainage, and parking.
  - 5. That the site plan is adequate to provide for the health, safety, and general welfare of persons and property on the site and in the neighboring community.
  - 6. That all uses, structures, and buildings comply with this Ordinance.
  - 7. That the use is reasonable.
- B. Reasonable conditions may be attached to the approval of a site plan by the Planning Commission.
- C. The conditions imposed with respect to the approval of a site plan shall be part of the record of approval and shall remain unchanged except by mutual agreement of the Planning Commission and the land owner, after a public hearing notice of which must be given in the same manner as the original hearing. The Planning Commission shall keep on record the conditions that are changed.

## **Section 15.06 Revocation**

Every structure, building, land use, or activity covered by or subject to an approved site plan must fully comply at all times with that site plan. If a violation of the site plan (or any conditions of approval attached thereto) occurs, then the Planning Commission shall have the authority to revoke the approved site plan after reasonable notice has been given to the property owner or applicant and a hearing has been held pursuant to this ordinance.

**ARTICLE 16**  
**ZONING BOARD OF APPEALS**

**Section 16.01 Membership and Procedures**

- A. The Zoning Board of Appeals for Merrill Township (ZBA) shall consist of three (3), five (5), or seven (7) members (with the specific number of members set by the Township Board) appointed by the Township Board, who shall serve terms of three (3) years, except for the liaison members who are also on the Planning Commission or Township Board, who shall serve only as long as they are members of those bodies. Membership shall be representative of the population distribution and of the various interests present in the Township.
- B. One (1) member of the Planning Commission shall be a member of the ZBA, while a member of the Township Board may be a member of the ZBA, and the remaining members selected and appointed by the Township Board from the electors of the Township. A Township Board member may not be chairperson of the ZBA.
- C. Meetings shall be held at the call of the Chairperson, and at other times as the ZBA in its rules of procedure may specify. The Chairperson, or in his/her absence, the acting Chairman, may administer oaths and compel the attendance of witnesses.
- D. All meetings of the ZBA shall be open to the public. The ZBA shall maintain a record of its proceedings, which shall be filed in the office of the Township Clerk and shall be a public record.
- E. Alternates
  - 1. The Township Board may appoint up to two (2) alternate members for the same term as regular members of the ZBA.
  - 2. An alternate member may be called to sit as a regular member of the ZBA to serve in place of a regular member for the purpose of reaching a decision in a case where the regular member has abstained for reasons of conflict of interest or is absent.
  - 3. The alternate members of the ZBA may be called to sit as regular members of the ZBA, if a regular member is absent from one (1) or more meetings of the ZBA. An alternate member may also be called to serve in the place of a regular member for reasons of conflict of interest.
  - 4. The alternate member having been called to serve on a case shall serve on that case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the ZBA.
  - 5. The records maintained by the ZBA shall reflect the attendance and participation of an alternate member.

## **Section 16.02 Vacancies and Removal**

- A. Vacancies: If a vacancy occurs in the membership of the ZBA, the Township Board shall appoint another person to the ZBA for the balance of the unexpired term. Upon expiration of the term of a member of the ZBA, a successor shall be appointed not more than one (1) month after the term of the preceding member has expired.
- B. Removal: A member of the ZBA may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a known conflict of interest constitutes malfeasance in office. Whenever a member of the ZBA has a conflict of interest with respect to a matter presented to the ZBA, the member shall state on the record the nature of the conflict of interest, and the member shall not participate in the ZBA's discussion, consideration, deliberation, or decision of the matter.

## **Section 16.03 Rules of Procedure**

The ZBA may adopt rules and regulations for the conduct of its meetings. The ZBA shall elect from its membership a Chairperson, Vice-Chairperson, Secretary, and other officers as deemed necessary. The ZBA shall not conduct business unless a majority of all of its members are present. The presence of a majority of its members shall constitute a quorum.

The regular place and time of meetings of the ZBA may be established by the ZBA in its rules and regulations. Except as otherwise specified in the rules and regulations of the ZBA, the procedure in meetings of the ZBA shall be governed by Robert's Rules of Order.

Minutes of proceedings shall be kept for all ZBA meetings. These minutes shall list the members absent and present and shall show the action taken by the ZBA, as well as the vote of each member upon each matter presented to the ZBA.

## **Section 16.04 Conflict of Interest**

A member of the ZBA shall not participate or vote with respect to a matter in which the member has a conflict of interest. Failure of a member to refrain from participating or voting in a matter in which the member has a known conflict of interest shall constitute misconduct in office. A conflict of interest exists whenever a member of the ZBA owns land within the Township which is significantly affected by a matter presented to the ZBA, or a member has a direct financial interest in the matter presented to the ZBA. A conflict of interest may exist in other circumstances as well.

The members of the ZBA should strive to avoid even the appearance of impropriety. Whenever a member of the ZBA has a conflict of interest or appears to have a conflict of interest with respect to a matter presented to the ZBA, the member shall state on the record the nature of the conflict of interest, or the circumstances which exist which could be perceived to be a conflict of interest. If the member has a conflict of interest, the member shall not participate in the ZBA's consideration of the matter. If circumstances

exist which could be perceived to be a conflict of interest, the member, after disclosure of these circumstances, may continue to participate in the ZBA's consideration of the matter if the member can be fair, objective and impartial, subject to the vote of the other members of the ZBA.

Nondisclosure of a known conflict of interest shall constitute misconduct in office, and nondisclosure of circumstances which exist which could be perceived to be a conflict of interest may also constitute misconduct in office.

If a member of the ZBA fails to disclose any circumstances which could be perceived to be a conflict of interest and the ZBA later becomes aware of such circumstances, or if a member of the ZBA participates in the consideration of a matter in which the member has a known conflict of interest, the ZBA may, upon the vote of a majority of the regular members of the ZBA (other than the member who has failed to make the disclosure or who participated in the consideration of a matter in which the member had a conflict of interest), the ZBA may make a recommendation to the Township Board that the member be removed from the ZBA for misconduct in office. If the ZBA makes such a recommendation to the Township Board, the Township Board shall hold a public hearing to consider the recommendation.

#### **Section 16.05 Interpretations**

The Zoning Board of Appeals shall have the power to hear and decide, in accordance with the provisions of this Ordinance, appeals involving interpretations of this Ordinance made by the Zoning Administrator, and may make decisions on any other questions on which the ZBA is authorized to pass. In exercising all of its powers, the ZBA shall apply the standards of this section.

- A. Text Interpretations: The ZBA may hear and decide upon appeals for the interpretation of the provisions of this Ordinance after the Zoning Administrator has rendered an interpretation. In deciding text interpretations, the ZBA shall be governed by the following such rules.
  - 1. Text interpretations shall be narrow and address only the situation to be interpreted, be based on a thorough reading of this Ordinance and not have the effect of amending this Ordinance.
  - 2. Interpretations shall give weight to practical interpretations by the Zoning Administrator if applied consistently over a long period of time.
  - 3. Records shall be kept of all interpretations.
  - 4. Where the intent of this Ordinance is unclear and the facts cannot be read to support only one interpretation, the benefit of the doubt shall go to the property owner.
  - 5. Nothing contained in this section shall be construed to give or grant to the ZBA the power or authority to alter or change the language of this Ordinance.

- B. Map Interpretations: When there is any question as to the location of any boundary line between Districts, upon an appeal involving an interpretation of the zoning map from a decision of the Zoning Administrator, the ZBA shall establish the boundary based upon the map and all available information relating thereto and shall establish the boundaries to carry out the intent and purposes of this Ordinance and the Master Plan.
- C. Any appeal shall be filed in writing with the Township within fourteen (14) days of the date when the Zoning Administrator makes his/her interpretation.

#### **Section 16.06 Appeals**

- A. Upon application, the ZBA shall hear and decide appeals from and review any order, requirements, decision or determination made by the Zoning Administrator or other official or body charged with the administration of this Ordinance. Any person aggrieved may make an appeal to the ZBA. The grounds of every appeal shall be stated in writing as part of the application.
- B. A written application for appeal shall be filed with the Township within fourteen (14) days after the date of the decision that is the basis of the appeal. The appealing party shall file the notice of appeal with the Township on the form required by the Township and pay the required fee or fees with the Zoning Administrator. The notice shall specify the nature and grounds of the appeal and the application fee or fees shall be submitted to the Township in an amount or amounts as established by the Township Board from time to time.
- C. The Zoning Administrator shall transmit to the ZBA all the papers constituting the record upon which the action being appealed was taken.
- D. An appeal stays all proceedings from furthering the action being appealed unless the Zoning Administrator certifies to the ZBA that a stay would, in their opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the ZBA or by the Circuit Court.
- E. The ZBA shall fix a reasonable time for the hearing of the appeal, and give due notice to the applicant and all property owners and occupants within three hundred (300) feet of the subject property via a letter sent first class mail not less than fifteen (15) days before the public hearing the time and place of the hearing. Any party may appear in person or by agent. A public hearing notice shall also be published in a newspaper of general circulation not less than fifteen (15) days before the public hearing.
- F. Following the public hearing, the ZBA shall decide the matter within a reasonable time. The ZBA may reverse or affirm, wholly or partly, or may modify the order requirement, decision or determination, and to that end, shall have all the powers of the Zoning Administrator and may issue or direct the issuance of a permit.

## Section 16.07 Variances

A. Non-Use (Dimensional) Variances: The ZBA may authorize upon written application in specific cases variances from the terms of this Ordinance where, owing to special conditions related to the applicant's property, a literal enforcement of the provisions of this Ordinance would result in a practical difficulty to the applicant. A variance from the terms of this Ordinance shall not be granted by the ZBA unless and until a written application for a variance is submitted and the ZBA finds that all of the following standards are met:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same Zoning District. Exceptional or extraordinary circumstances or conditions include:
  - a) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Article;
  - b) By reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure;
  - c) By reason of the use or development of the property immediately adjoining the property in question, whereby the literal enforcement of the requirements of this Ordinance would involve practical difficulties; or
  - d) Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.
2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.
3. That the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
5. The variance will not impair the intent and purpose of this Ordinance.
6. That the immediate practical difficulty causing the need for the variance request was not created by any affirmative action of the applicant or the applicant's predecessors in title.



7. That the reasons set forth in the application justifies the granting of the variance and that the variance is the minimum variance necessary.
- B. Use Variances: Subject to other provisions of this Ordinance, the ZBA shall have the jurisdiction to decide applications for use variances. The ZBA shall not grant a use variance unless it finds that an unnecessary hardship will occur unless the variance is granted. Additionally, the ZBA shall not grant a use variance unless it also finds that all of the following standards below are met:
1. The variance request, if granted, will be the minimum variance (i.e., the least variation or change from the particular requirement of the Ordinance involved) that will make possible the reasonable use of the land, structure, or building involved.
  2. The granting of the variance will not be injurious or detrimental to neighboring properties or residents.
  3. The variance will not be detrimental to the public welfare or change the essential character of the neighborhood.
  4. The variance will not impair the intent or purpose of this Ordinance.
  5. The problem or condition for which the variance is requested is not a self-created problem by the applicant or property owner (or their predecessors in title) as to the property involved.
  6. The condition or situation involved is not of so general or recurrent a nature that it would be more reasonable or practical for the Township to amend the provision of the Ordinance involved rather than to grant a variance for the condition or situation.
  7. There are exceptional, unique, or extraordinary physical conditions or circumstances which directly relate to the property itself (including the land or a structure or building thereon) rather than the individual situation or desire of the applicant or property owner. In other words, the problem or exception or extraordinary circumstances or conditions must be inherent in the land, structure, or building involved.
  8. The variance must be necessary for the preservation and enjoyment of a substantial property right which is similar to that possessed by other properties in the same zoning district and vicinity. (NOTE-a possible increased financial return shall not, of itself, be deemed sufficient to warrant a variance.)
  9. As specified above, the ZBA must also find that unnecessary hardship will occur if a use variance is not granted.
- C. No use variance shall be granted unless at least two-thirds (2/3) of all members of the ZBA vote in favor of such use variance. Furthermore, before the members of the ZBA may vote on a given use variance request, the matter shall be referred to the Planning Commission. The Planning Commission shall be asked for its recommendation regarding the proposed use variance request. The ZBA may take final action regarding such a use variance request once the Planning Commission has forwarded its recommendation on the particular use variance request to the ZBA or 45 days has elapsed since the referral to the Planning Commission, whichever occurs first.

- D. The ZBA may attach reasonable conditions to the granting of any variance.

#### **Section 16.08 Applications and Hearings**

- A. Applications for variances shall be submitted to the Zoning Administrator who will review the application for completeness and validity, then transmit it to the Zoning Board of Appeals when complete. Applications not meeting the requirements shall be returned to the applicant for completion.
- B. A valid application for a variance to the ZBA shall consist of all of the following:
  - 1. Ten (10) copies of a site plan drawn to scale, which is sufficient to describe the nature of the request.
  - 2. A completed application form as provided by the Township.
  - 3. Payment of the application fee or fees, in accordance with a fee schedule, as determined by the Township Board from time to time.
  - 4. An escrow deposit where applicable.
  - 5. A legal description and/or parcel number of the entire property that is the subject of the request.
  - 6. A statement with regard to compliance with the standards **in this ordinance**, as applicable.
  - 7. Other materials as may be required by the ZBA or the Township.
- C. A public hearing shall be held and noticed pursuant to this ordinance and the Michigan Zoning Enabling Act.

#### **Section 16.09 Decisions of the ZBA**

- A. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or body or to decide in favor of the appellant on any matter. The ZBA shall render its decision upon any appeal or application submitted to it within a reasonable time after the hearing thereon. However, no use variance shall be granted unless at least two-thirds (2/3) of all of the members of the ZBA vote in favor thereof.
- B. The ZBA may require a performance guarantee or guarantees and/or impose reasonable conditions in conjunction with the approval of an appeal, variance, or any other decision that it

is required to make. Conditions shall be imposed in a manner in accordance with the Zoning Act and be related to the standards by which the decision is reached.

- C. All decisions of the ZBA shall become final at the entry of an order, or at the adoption of the minutes, unless the ZBA shall find, and so certify on the record, that it is necessary to cause the order to have immediate effect, in order to preserve property or personal rights.
- D. For each decision of the ZBA, a record shall be prepared including at a minimum, the following items:
  - 1. Description of the applicant's request.
  - 2. The ZBA's motion and vote.
  - 3. A summary or transcription of all competent material and evidence presented at hearing.
  - 4. Any conditions attached to an affirmative decision.
- E. The decision of the ZBA shall be final. However, a party aggrieved by the decision of the ZBA may appeal to the Circuit Court. Upon appeal, the Circuit Court shall review the record in accordance with the requirements of the Zoning Act. The court may affirm, reverse, or modify the decision of the ZBA, or may remand the decision to the ZBA for further hearings or action.
- F. Period of Validity. No variance granted by the ZBA shall be valid for a period longer than twelve (12) months, from the date of its issuance if not used. However, the applicant may, upon written request, seek up to one (1) twelve (12) month extension of the variance from the ZBA. The ZBA may grant an extension provided that the original circumstances authorizing the variance have not changed and that the circumstances creating the need for the extension were reasonably beyond the control of the applicant.

#### **Section 16.10 Performance Guarantee**

The Zoning Board of Appeals may require a performance guarantee or guarantees to ensure compliance with any conditions associated with the granting of a variance.

#### **Section 16.11 Resubmission**

No variance request (or similar request) that has been decided by the ZBA shall be submitted for reconsideration within a one (1) year period from the date of the original application unless the ZBA finds that at least one of the following conditions exists:

- A. That the conditions involving all of the reasons for the original denial have been significantly altered; or
- B. That new conditions or circumstances exist which change the nature of the original request.

#### **Section 16.12 Lack of Jurisdiction**

The ZBA is without jurisdiction to hear any appeals or matters involving any of the following:

- A. A planned unit development (PUD).
- B. A special use.
- C. Site plan decisions.

Notwithstanding the fact that the ZBA generally has no jurisdiction with regard to the above-mentioned matters, the ZBA shall have jurisdiction to entertain variance requests related to subsections A, B, and/or C above, if the Township body which makes the final decision regarding the matter (for example, the Township Board with regard to a PUD or the Planning Commission with regard to a special use) expressly grants written permission to the landowner or applicant involved to apply to the ZBA for a variance of one or more of the underlying requirements of the Zoning Ordinance. For example, but not by way of limitation, the Planning Commission could approve a particular special use request contingent upon the ZBA granting a variance for an otherwise applicable requirement within the Ordinance which would normally prohibit the applicant or landowner from taking advantage of a special use approval absent a variance.

#### **Section 16.13 Termination/Revocation of a Variance**

In the event that the ZBA grants a variance, the individual or successor in interest as to the property involved shall not use the property in question such that it would exceed the rights given by the Zoning Ordinance or the variance or fail to follow any conditions placed thereon by the ZBA. In the event that the use of the property exceeds those rights given by the Zoning Ordinance or the variance, or the property owner fails to follow the conditions placed upon the variance, the variance shall immediately terminate. Alternatively, in such case, the ZBA shall also have the authority to terminate or revoke a variance after reasonable notice and hearing pursuant to this ordinance.

#### **Section 16.14 No Advisory Opinions**

The ZBA shall not give advisory, informal, or hypothetical opinions or decisions.

## **ARTICLE 17**

### **ADMINISTRATION AND ENFORCEMENT**

#### **Section 17.01 Zoning Administrator**

The provisions of this Ordinance shall be administered and enforced by the Zoning Administrator, who shall be appointed by the Township Board.

#### **Section 17.02 Duties of the Zoning Administrator**

- A. This Ordinance shall be enforced by the Zoning Administrator who shall, in no case, issue any permit nor grant any occupancy permit where the proposed structure, alteration, or use would be in violation of any provisions of this Ordinance, except under written order of the Zoning Board of Appeals or a court of competent jurisdiction. The Zoning Administrator shall interpret and enforce the Zoning Ordinance. The Building Inspector shall administer applicable building codes and shall issue Building Permits once a land use permit has been issued by the Zoning Administrator.
- B. Violations. The Zoning Administrator shall investigate any alleged violation of this Ordinance coming as may be discovered. If a violation is found to exist, the Zoning Administrator shall serve written notice upon the owner to cease said violation as provided by law. If said owner fails to act diligently to correct such violation, the Zoning Administrator shall serve notice upon the owner, notify the Township Board, and prosecute (or issue and pursue municipal civil infraction citations/tickets) such violator to terminate said violation before a court of proper jurisdiction.
- C. Inspections. The Zoning Administrator shall make periodic inspections of the Township to ascertain that all the requirements of this Ordinance are being complied with.
- D. Records. The Zoning Administrator shall keep records of all inspections, applications and permits issued, with a notation of all special conditions involved. He/she shall file and safely keep copies of all plans, other than for single family dwellings, and records of all fees submitted with applications. The same shall form a part of the records of the Township and shall be available to the Township Board and all other officials of the Township.

#### **Section 17.03 Zoning Permits**

- A. No structure or part thereof shall be constructed, reconstructed, erected, moved, enlarged, or altered, nor shall any use on any property be commenced or changed to another use, until a zoning permit has been issued by the Zoning Administrator. Application for a zoning permit shall be filed by the owner or an agent of the owner and it shall state the intended use of the structure and of the land. The application shall be accompanied by building plans and specifications, a plot plan, a

site plan where required, and such other information as may be necessary to provide for the enforcement of this Ordinance.

- B. The Zoning Administrator may require plans drawn to scale and shall show all dimensions in figures. Plans shall be signed by the person preparing them and by the owner of the property or building involved. A fee as established by the Township Board from time to time to defray the costs of administration and inspections shall accompany any plans or applications for a zoning permit or building permit.
- C. A zoning permit shall only be issued if the plans and intended use conform in all respects to the provisions of this Ordinance. All zoning permits shall expire one (1) year from their date of issuance unless extended by the Zoning Administrator.
- D. A copy of all approved permits shall be sent to the Assessor.
- E. A zoning permit shall not be issued until the owner verifies that the lot involved has been created in conformance with this Ordinance.
- F. The zoning permit and building permit shall be displayed so as to be visible at the site where authorized action is being undertaken.
- G. Every use, building and structure must comply with its zoning permit.

#### **Section 17.04 Certificate of Occupancy**

No land shall be used and no building hereafter erected or altered shall be occupied or used for any purpose until a Certificate of Occupancy shall have been issued by the Building Inspector stating that the premises or building complies with the provisions of approved plans and all Ordinances of the Township. Where any special use or site plan review conditions are applicable, said conditions shall be stated on the Certificate of Occupancy. A record of all Certificates of Occupancy shall be kept on file in the Township. A copy also shall also be sent to the Township Assessor. Where a Building Permit is not involved, the Zoning Administrator shall issue a Zoning Permit. Said permit may be in the form of a letter or such instrument as determined by the Township Board to be fulfill the requirements of this section.

#### **Section 17.05 Ordinance Amendments**

This Zoning Ordinance may be amended at any time pursuant to the procedures of the Zoning Act, as amended, or its successor legislation.

- A. Initiation

1. An amendment to the Zoning Map, which is a part of this Ordinance, may be initiated by the Township Board or Planning Commission on a motion by either body, or by a verified application of one (1) or more of the owners or lessees of property within the area proposed to be changed, or by a person authorized in writing by the property owner to submit such application.
2. An amendment to the text of the Zoning Ordinance may be initiated by the Township Board or Planning Commission on a motion by either body or by a verified application of any person affected by the provision requested to be changed.

B. Procedure for Changes

1. Applications for Zoning Ordinance map or text amendments shall be submitted to the Planning Commission upon forms supplied by the Township, along with the following information or materials:
  - a) A legal description of the property to be affected by a proposed change to the Zoning Map; or a typewritten copy of the proposed text amendment, including specific references to the portions of the existing Ordinance section and language.
  - b) Drawing or map showing, at a suitable scale, the property to be changed by an amendment to the Zoning Map and the location of properties within three hundred (300') feet of the property affected by such amendment.
  - c) Payment of a fee or fees, in accordance with a fee schedule, as determined by the Township Board from time to time.
2. Before submitting its recommendation to the Township Board, the Planning Commission shall hold at least one (1) public hearing, notice to be given in accordance with the requirements of the Zoning Act.
3. The Planning Commission shall transmit a summary of comments received at the public hearing, along with the recommendation of the Planning Commission, to the Township Board. The Township Board may hold additional hearings if it considers it necessary. The notice for such hearing to be the same as required by the Planning Commission public hearing for the same matter.

- C. Resubmission. Whenever a proposed zoning map or text change has not been approved by the Township Board, the Planning Commission shall not reconsider such map or text change for at least one (1) year following the date of the original application unless the Planning Commission finds that at least one of the following conditions exist:

1. That the conditions involving all of the reasons for the original denial have been significantly altered.
2. That new conditions or circumstances exist that change the nature of the original request.

#### **Section 17.06 Fees, Escrow Charges and Expenses**

- A. Except as may be provided for otherwise in this Ordinance, the Township Board shall determine and set fees to be collected for all applications for zoning matters, permits, and approvals. These fees shall be collected prior to the issuance of any permit or certificate being issued, and other official actions required by this Ordinance. No application shall be considered complete until all applicable fees have been paid to the Township. Furthermore, Township employees and officials shall not commence work on a given zoning application or matter until any and all fees have been paid to the Township in full. The fee schedule shall be that adopted by resolution of the Township Board as amended from time to time.
- B. In addition to regularly established fees, the Township Board at its discretion may also require an applicant to submit to the Township, at any time during the zoning review process, an amount of money determined by the Township to be a reasonable estimate of the fees and costs which may be incurred by the Township in reviewing and acting upon any such application or related matters. Such costs and expenses to be charged or assessed to the applicant for reimbursement of the Township's reasonable costs and expenses, may include but shall not be limited to Township attorney fees, Township engineering fees, costs and fees for services of outside consultants, fees and expenses of other professionals who may assist the Township, costs and fees for studies and reports pertaining to the matters in questions, significant Township employee time, special meeting costs, and other reasonable costs and expenses. Such monies shall be retained by the Township for reimbursement of such costs and expenses. Any monies paid or deposited by an applicant, which are not used or spent by the Township pursuant to an escrow fee shall be refunded. If, for some reason, the applicant does not pay, or the Township does not collect, zoning escrow fees during the zoning review process, the Township can still bill such costs and expenses to the applicant after the zoning review process has been completed and the applicant or landowner shall promptly pay/reimburse the Township for the same.

#### **Section 17.07 Stop Work Orders**

- A. Notice to Owner. Upon notice from the Zoning Administrator that any use is being conducted or that any work on any building or structure is being prosecuted contrary to the provisions of this Ordinance, such work or use shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, to the owner's agent, or to the person doing the work and shall state the conditions, if any, under which work or the use will be permitted to resume.



- B. Unlawful Continuance. Any person who continue to work in or about the structure, land or building or use it after having been served with a stop work order, except such work as that person is directed to perform to remove a violation, shall be in violation of this Ordinance.

#### **Section 17.08 Enforcement**

- A. No property, premise, lot, structure, building, or use shall be used, erected or conducted in such a manner as to cause a nuisance to adjacent property or uses. Any structure, building, lot, or use that violates any provision of this Ordinance (or any permit or approval issued pursuant to this Ordinance) shall be deemed to be a nuisance per se.
- B. Any building or structure which is erected, moved, placed, reconstructed, demolished, extended, enlarged, altered, maintained or changed in violation of any provision of this Ordinance (or any permit or approval issued pursuant to this Ordinance) is hereby declared to be a nuisance, per se.
- C. A violation of this Ordinance (or any permit or approval issued pursuant to this Ordinance) constitutes a municipal civil infraction offense. Any person or firm who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any permit or approval issued hereunder, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a municipal civil infraction.
- D. A violation of this Ordinance is a municipal civil infraction, for which the fine shall be not less than \$50 nor more than \$500 for the first offense and not less than \$100 nor more than \$2,500 for subsequent offenses, in the discretion of the Court, and such fine shall be in addition to all other costs, attorney fees, damages, expenses, and other remedies as provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible, provided, however, that offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses.
- E. The Township Board, the Zoning Administrator, or their duly authorized representative(s) are hereby charged with the duty of enforcing the Ordinance and are hereby empowered to commence and pursue any and all necessary and appropriate actions and/or proceedings in the District Court (including municipal civil infraction proceedings) or Circuit Court of Newaygo County, Michigan, or any other Court having jurisdiction, to restrain and/or prevent any noncompliance with or violation of any of the provisions of this Ordinance, and to correct, remedy and/or abate the noncompliance or violation. And it is further provided that any person aggrieved or adversely affected by this noncompliance or violation may institute suit and/or join the Township in the suit to abate the same.

- F. The rights and remedies provided to the Township herein are cumulative and in addition to other remedies provided by law.

#### **Section 17.09 Performance Guarantees**

- A. As a condition of approval of a site plan review, special use, PUD, Zoning Agreement, Zoning Permit, variance, or other approvals authorized by this Ordinance, the Township Board, Planning Commission, Zoning Board of Appeals, or Zoning Administrator may require a performance guarantee or guarantees of sufficient sum to assure compliance with this Ordinance, to assure compliance with a condition of approval or a permit, and to assure the installation of those features or components of the approved activity or construction which are considered necessary to protect the health, safety, and welfare of the public and of users or inhabitant's of the proposed development.
- B. The features or components, hereafter referred to as "improvements," may include, but shall not be limited to, survey monuments and iron's, street's, curbing, landscaping, fencing, wall's, screening, lighting, drainage facilities, sidewalk's, paving, driveway's, utilities, and similar items.
- C. Performance guarantees shall be processed in the following manner:
1. Required Improvement:
    - a) Prior to the issuance of a Building Permit, Zoning Permit, or other approval or permit, the applicant or their agent shall submit an itemized cost estimate of the required improvements that are subject to the performance guarantee, which shall then be reviewed and approved by the Zoning Administrator.
    - b) The amount of the performance guarantee shall be not more than one hundred percent (100%) of the cost of purchasing of materials and installation of the required improvements, including the cost of necessary engineering and inspection costs and a reasonable amount for contingencies.
    - c) The required performance guarantee shall be payable to the Township and may be in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety guarantee acceptable to the Township.
    - d) The Zoning Administrator shall not sign off on the issuance of a Zoning Permit until all final plans, development agreements, escrow fees and any required performance guarantees are provided.
    - e) The Zoning Administrator, upon the written request of the obligor, shall rebate portions of the performance guarantee upon determination that the improvements for which the rebate has been requested have been satisfactorily

completed. A portion of the performance guarantee shall be rebated in the same proportion as stated in the itemized cost estimate for the applicable improvements.

- f) When all of the required improvements have been completed, the obligor shall send written notice to the Zoning Administrator of completion of the improvements. Thereupon, the Zoning Administrator shall inspect all of the improvements and approve, partially approve, or reject the improvements with a statement of the reasons for any rejections.
- g) If partial approval is granted, the cost of the improvement rejected shall be set forth. Where partial approval is granted, the obligor shall be released from liability pursuant to relevant portions of the performance guarantee, except for that portion sufficient to secure completion of the improvements not yet approved.
- h) The Zoning Administrator shall maintain a record of required performance guarantees.

2. Compliance with Conditions:

- a) As a condition of approval of a site plan, special use, conditional rezoning, PUD, Zoning Permit, variance, or other approvals authorized by this Ordinance, the Township Board, Planning Commission, Zoning Board of Appeals, or Zoning Administrator may require a performance guarantee or guarantees to ensure compliance with the approval and any conditions attached thereto.
- b) A required performance guarantee or guarantees shall be payable to the Township and shall be in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety guarantee with the amount, form, financial institution, and language acceptable to (and approved by) the Township.
- c) The Zoning Administrator shall not sign off on the issuance of a Zoning Permit or other permit or approval until all required fees and performance guarantees are provided to the Township.
- d) The Zoning Administrator shall maintain a record of required performance guarantees pursuant to this subsection.

**Section 17.10 Zoning Agreements; Conditional Rezoning**

The Township Board recognizes that there are certain instances where it would be in the best interest of Merrill Township, as well as advantageous to property owners seeking a change in zoning boundaries, if

certain conditions and limitations could be proposed by an applicant as part of an application for a rezoning. Therefore, it is the intent of this section to provide a process by which an applicant seeking a change in zoning districts may propose a Zoning Agreement, with conditions and commitments attached thereto, as part of the application for the requested rezoning. These provisions shall be in accordance with the provisions of the Zoning Act, as amended.

A. The following definitions shall apply to this section:

1. Rezoning Offer - shall mean conditions proposed by the applicant and approved by the Township that are processed as part of an approval under this section. These conditions shall constitute permanent requirements for and in connection with the development and/or use of the property approved with a Zoning Agreement.
2. Zoning Agreement - shall mean a written agreement offered by the applicant and approved and executed by the applicant and the Township and recorded with the Nawaygo County Register of Deeds, incorporating the Rezoning Offer along with any requirements necessary to implement the Rezoning Offer. When necessary, the Zoning Agreement shall also include and incorporate, by reference, a site plan that illustrates the implementation of the Rezoning Offer. This plan shall not replace the requirement for a site plan or other approvals that may be required by this Ordinance.

B. Eligibility: An applicant for rezoning may submit a proposed Zoning Agreement with an application for rezoning.

C. Zoning Agreement

1. The Zoning Agreement shall set forth the Rezoning Offer and shall include those terms necessary to implement the Agreement. In addition, the Zoning Agreement shall include the following acknowledgments and understandings that:
  - a) The Zoning Agreement and the Rezoning Offer were proposed voluntarily by the applicant, and that the Township relied upon the Agreement and may not grant the rezoning without the Rezoning Offer and terms spelled out in the Zoning Agreement.
  - b) The Zoning Agreement and its terms and conditions are authorized by all applicable state and federal laws and constitutions, and that the Zoning Agreement is valid and was entered into on a voluntary basis and represents a permissible exercise of authority by the Township.
  - c) The property shall not be developed and/or used in any manner that is not consistent with the Zoning Agreement.

- d) The approval and the Zoning Agreement shall be binding upon the property owner and the Township, and their respective heir's, successor's, assign's, receiver's or transferee's.
  - e) If a rezoning with a Zoning Agreement becomes void in accordance with the Zoning Act, no development shall take place and no permits shall be issued unless and until a new zoning district classification for the property has been established or a new rezoning with a Zoning Agreement has been approved.
2. Each of the requirements and conditions in the Zoning Agreement represents a necessary and reasonable measure which, when considered with all other conditions and requirements, is roughly proportional to the increased impact or other condition created by the use's, activities or condition's represented in the approved rezoning and Zoning Agreement, taking into consideration the changed zoning district classification and the specific use(s), structures, activities, or conditions authorized.
  3. No part of the Zoning Agreement shall permit any activity, use, structure, or condition that would otherwise violate any requirement or standard that is otherwise applicable in the new Zoning District.

#### D. Rezoning Offer

1. The Zoning Agreement shall specify the Rezoning Offer and any requirements necessary to implement it. However, the Rezoning Offer may not authorize uses or developments of greater intensity or density, and/or which are not allowed in the new zoning district; nor may any variances from height, area, setback or similar dimensional requirements in the Zoning Ordinance of Merrill Township be allowed unless a variance has been previously granted by the ZBA pursuant to the requirements of this ordinance.
2. Any uses proposed as part of a Zoning Agreement that would otherwise require approval of a special use permit and/or site plan shall be approved as required in this Ordinance prior to establishment of or commencement of development of the use.

### **Section 17.11 Procedure for Application, Review and Approval**

#### A. Application

1. An application for rezoning shall be the same as specified in the Zoning Act. In addition to the required materials listed, a Zoning Agreement in a recordable format acceptable to the Township shall be submitted, along with any plans necessary to illustrate the Rezoning Offer.

2. The application may be amended during the process of Township consideration, provided that any amended or additional Rezoning Offers are entered voluntarily by the applicant.
3. The Zoning Agreement shall be reviewed by the Township Attorney prior to the required Planning Commission public hearing. The Township Attorney shall determine that the Zoning Agreement conforms to the requirements of this section and the Zoning Act, as amended, and shall confirm that the Zoning Agreement is a form acceptable for recording with the Newaygo County Register of Deeds.
4. An escrow fee deposit may be required by the Township to cover any and all costs incurred for addressing the Zoning Agreement request.

#### B. Approval

1. If the rezoning and Zoning Agreement are approved, the zoning classification of the rezoned property shall consist of the district to which the property has been rezoned, plus a reference to the Zoning Agreement. The Zoning Map shall specify the new district, plus a small letter "a" to indicate that the property is subject to a Zoning Agreement. The Township Clerk shall maintain a listing of all properties subject to Zoning Agreements and shall provide copies of the Agreements upon request.
2. Upon rezoning, the use of the property in question shall conform to all of the requirements regulating use and development within the new zoning district as well as the Zoning Agreement; however, the more restrictive requirements of the Zoning Agreement shall apply, and the Zoning Agreement shall supersede all inconsistent regulations otherwise applicable under the Zoning Ordinance.
3. The approved Zoning Agreement shall be recorded with the Newaygo County Register of Deeds by the applicant with proof of recording provided to the Township.
4. Prior to development, a site plan shall be approved in accordance with this Ordinance, if otherwise required.

#### C. Continuation

1. Provided that all development and/or use of the property in question is in compliance with the Zoning Agreement, a use or development authorized under the agreement may continue indefinitely, provided that all terms of the Rezoning Offer and the Zoning Agreement continue to be adhered to.
2. Failure to comply with the Zoning Agreement at any time after approval may constitute a breach of agreement, and further use of the property may be subject to legal remedies available to the Township.

#### D. Amendment

1. During the initial two (2) year period, or during any extension granted by the Township as permitted above, the Township shall not add to or alter the Rezoning Offer in the Zoning Agreement.
2. The Zoning Agreement may be amended after the expiration of the initial two (2) year period and any extensions, in the same manner as was prescribed for the original rezoning and Zoning Agreement.

#### Section 17.12 Notice and Hearings

Except where expressly stated otherwise in this Ordinance, whenever a public hearing on a zoning application or matter is required by this Ordinance or by the Zoning Act (for example, where a rezoning, ordinance amendment, conditional rezoning, special use, PUD, or ZBA matter is involved), notice of the public hearing shall be published and delivered in accordance with the requirements of this section and the Zoning Act.

- A. The notice of public hearing shall be published once, at least 15 days prior to the date of the public hearing, in a newspaper of general circulation in the Township.
- B. For applications involving the rezoning **of ten** (10) or fewer adjacent properties; for applications to the ZBA; and for all planned unit development and special use applications, a notice of public hearing shall be mailed by way of U.S. **certified** mail to the following persons, at least 15 days prior to the date of the public hearing:
  1. The applicant;
  2. All persons to whom real property is assessed for property tax purposes within 300 feet of the property that is the subject to the application;
  3. The occupants of all dwellings within 300 feet of the property that is the subject of the application; and
  4. All neighborhood organizations, public utility companies, railroad's, and other person's that have requested to receive notice.
  5. If the above-described 300-foot radius extends outside of the Township's boundaries, then notice must also be provided outside of the Township boundaries, within the 300foot radius, to all persons in the above-stated categories.
- C. The notice of public hearing shall include the following information:

1. A description of the nature of the application or request.
2. An identification of the property that is the subject of the application or request. The notice shall also include a listing of all existing street addresses within the property; provided, however, that street addresses do not need to be created and listed if no such addresses currently exist within the property; and provided further that street addresses do not need to be listed if eleven (11) or more adjacent properties are being proposed for rezoning.
3. A statement of where and when the application or request will be considered.
4. Indicate where and when written comments will be received concerning the application or request.

#### **Section 17.13 Time Limits**

If a zoning approval or permit under this Ordinance has been granted with a specific time limit and the use has not commenced or substantial construction has not begun pursuant to that approval within the time limit specified, the zoning approval or permit shall automatically expire (and be void) at the end of that time limit. No extension to that time limit shall be granted except by the Township body, commission, or official which granted the initial zoning approval or permit. If a zoning approval or permit is silent with regard to a time limitation, the time limitation shall be deemed to be one (1) year, and the zoning approval or permit shall expire (and be void) after one (1) year if the use has not been commenced or substantial construction has not begun within said one (1) year time limitation. A time extension may be granted only by the body, commission, or official that granted the initial zoning approval or permit.

#### **Section 17.14 Proof of Ownership**

The Zoning Administrator or Building Inspector may require proof of ownership from an applicant (including copies of a recorded deed or land contract) before the issuance of a Zoning Permit or a Building Permit if it appears that the applicant may not be the owner (or sole owner) of the property involved. The Township may also require that all owners of a particular property join in and sign the application or applications for any zoning or building request or application, including a Building Permit, variances, special use requests, site plan review, Zoning Permits, and any other zoning or building code action.

#### **Section 17.15 Surveys**

The Zoning Administrator or Building Inspector shall have the authority to require that an applicant or property owner provide the Township with a current survey by a registered surveyor or engineer for one (1) or more boundary or property lines of the lot or parcel involved (including providing a sealed survey drawing by such professional surveyor or engineer and with property boundaries staked by such professional) if the Zoning Administrator or Building Inspector determines that it is reasonably necessary



in order for the Township to determine whether the zoning setback, area, and other applicable requirements are met. The Zoning Administrator or Building Inspector may also require that the professional surveyor or engineer place stakes at specified relevant areas along the property line(s) and any setback lines or building envelopes. All such surveying costs shall be paid for by the applicant or property owner.

#### **Section 17.16    Revocation or Termination of Zoning Approvals**

If a property owner or applicant violates any of the conditions or requirements attached to a zoning approval or Zoning Permit, then the Township body, board, or official that granted the zoning approval or permit may terminate the zoning approval or Zoning Permit. Where a special use, PUD, variance, or site plan approval was involved, no such revocation shall occur until and unless the property owner or applicant has been given reasonable notice and a public hearing has been held regarding the revocation.

**ARTICLE 18**  
**AMENDMENTS AND REZONINGS**

**Section 18.01    Amendments**

Any amendment to this Ordinance (including rezoning) shall be done pursuant to the requirements of the Michigan Zoning Enabling Act (MCL 125.3101 et seq.), as amended.

**ARTICLE 19**  
**MISCELLANEOUS PROVISIONS**

**Section 19.01 Severability**

If any provision of this Ordinance or the application thereof to any person, property, or circumstance shall be found to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions of this Ordinance and the balance of this Ordinance shall remain unaffected and in full force and effect.

**Section 19.02 Repeal of Prior Ordinance**

The Merrill Township Zoning Ordinance, adopted in 2001 and with amendments thereto, is hereby repealed effective coincident with the effective date of this Ordinance.

**Section 19.03 Effective Date**

This Ordinance shall become effective upon the expiration of seven (7) day's after publication as provided by law.