

Article 2 Definitions, Section 2.02 Definitions

APARTMENT. A unit with one or more rooms having a private bath(s), and private kitchen facilities. An independent, self-contained unit used for residential purposes in a building containing (3) or more said units.

Adopted: 04/18/2013

Noticed 05/02/2013

Effective 05/09/2013

Article 13 C-1 Commercial, Section 13.03 Uses Permitted Under Special Use Permit

Item # 12 Apartments

Adopted 04/18/2013

Noticed 05/02/2013

Effective 05/09/2013

AMENDED BY VILLAGE
4-19-2012.

ARTICLE 19
SCHEDULE OF REGULATIONS

DISTRICT	MINIMUM LOT SIZE		MAXIMUM BUILDING HEIGHT (e)		PRINCIPAL STRUCTURE MINIMUM YARD SETBACK (in feet)			MINIMUM FLOOR AREA (per unit and in sq. feet)	MAXIMUM LOT COVERAGE BY ALL BUILDINGS
	Sq. Feet	Width	Stories	Feet	Front	Side	Rear		
R-1 Residential	7,500 15,000(f)		2.5	30	20 30	10(d)	20 10	800 (a)	50%
C-1 Commercial	4,500 9,000		2.5	40	0 25(a)(g)	0 10(b)(g)	20 20(b)(g)		50% 90%
DD Waterfront & Lakebluffs Development	43,560		2.5	35	25	10(b)	10(b)	--	33%(h)
PD Deep Water Port	43,560		2.5	35	25	10(b)	20(b)	--	50%(h)

Schedule of Regulation Footnotes:

- (a) Exclusive of unenclosed porches, garages, basements, and patios.
- (b) When abutting residential it shall be 40' minimum.
- (c) Or even with existing buildings.
- (d) ~~On corner lots must be 25'~~ *Must be 20'*
- (e) Height of Buildings or Structures. The limitations affecting the height of structures shall not apply to the following appurtenant structures, provided they comply with all other provisions of this or any other applicable ordinance: chimneys, smokestacks, church spires, flag poles, penthouses for mechanical equipment and water tanks. The maximum building height may be increased upon application to and finding by the Village that such increased height will not adversely affect existing and surrounding adjacent properties, that the structure is fully protected with an approved fire suppression system, that fire retardant materials are used for roof framing and sheathing, and that the building or structure is constructed with approved fire fighting access ways as determined by the State Fire Marshall and in accordance with applicable building codes.
- (f) ~~Minimum lot area for a two-family dwelling shall be 15,000 square feet.~~ *DELETE*
- (g) Whenever property zoned for commercial use has a contiguous border with a residential district, the Village may require that no storage, driveway, parking area, building, sign, commercial activity be allowed in a setback area established by the Village. The Village may further require that trees, shrubs, grasses, screening fences, berms or other landscaping be placed in the above described area abutting this residential district. In determining the appropriate setback and screening requirement the Village shall consider but is not limited to the following: the proposed use of the property; noise, odors, vehicle traffic, light, vibration, and dirt caused by the proposed use; size, construction, appearances, and exterior lighting of buildings, structures, parking areas or driveways; exterior storage, including storage of waste or trash; and lot size and natural barriers.
- (h) Commercial space usage shall be limited to no more than 50% of the total building area within a mixed use building or structure housing both residential and/or overnight rental accommodations and allowable uses in the Commercial District.

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parcel does not abut a residential use or district.

21.12 AUTOMOBILE SERVICE STATIONS

1. Except for repairs that must be completed before a disabled vehicle can be relocated into an enclosed building, all repair services shall be conducted within a completely enclosed building.
2. Minimum lot area shall be ~~45,000~~ ^{45,000} square feet ~~with a minimum width of 150 feet.~~
3. The proposed site shall have at least one property line on a major or minor street.
4. The station pumps and service drives shall be considered part of the building, and the buildings and accessory structures shall maintain the minimum setback requirements.
5. The building shall not be located closer than 20 feet to any property line in a Residential Zoning District or an existing residential dwelling unit.
6. No installations, except walls or fencing and permitted signs, lighting, and essential services, may be constructed closer than 15 feet to the line of any street right-of-way.
7. Hydraulic hoists, pits, and all lubrication, greasing, automobile washing, and repair equipment shall be entirely enclosed within a building.
8. No more than two driveway approaches shall be permitted directly from any major street nor more than one driveway approach from any minor street.
9. If the service station or permitted building site fronts on 2 or more streets, the driveways shall be located as far from the street intersection as practicable, but no less than 20 feet.
10. No driveway or curb cut for a driveway shall be located within ten feet of an adjoining property line.
11. The entire service area shall be paved with a permanent surface of ~~concrete or asphalt~~ ^{PERMANENT PAVED SURFACE MATERIAL}.
12. All vehicles shall be stored within the building or within an opaque fence. Vehicles storage shall not be permitted to exceed 72 hours.

21.13 AUTO BODY REPAIR SHOPS

1. Except for repairs that must be completed before a disabled vehicle can be relocated into an enclosed building, all repair activities shall be conducted wholly within a completely enclosed building.
2. Any outdoor storage of vehicles and equipment shall be screened from view on all sides by a properly maintained opaque fence, except if there is an existing vegetative buffer acceptable to the Planning Commission. If the vegetative buffer is removed after the approval of the special use, the owner shall submit buffering plans to the Planning Commission for review and approval.

21.14 BOATHOUSES. RESERVED.

21.15 BUILDINGS GREATER THAN 5,000 SQUARE FEET IN SIZE.

1. If required by the Planning Commission, buildings shall have a well-defined front facade with entrances facing the street.
2. If required by the Planning Commission, buildings shall have windows and doors at street level. The windows shall be a minimum of 3 feet wide and 3 feet high.
3. If required by the Planning Commission, no building shall have more than 15 horizontal feet of wall facing the street without a window or door opening.
4. Trademark architecture, which identifies a specific company by building design features, shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of the Village of Elberta.

21.16 CAMPGROUNDS.

1. Campgrounds shall comply with the provisions of Part 125 of the Michigan Public Health Code.
2. No campgrounds shall be located except with direct access to a major thoroughfare, or with a minimum lot width of not less than 50 feet for the portion used for entrance and exit. No entrance or exit shall be through a residential district or shall require movement of traffic from the campground through a residential district.
3. The minimum size of a campground shall be 10 acres with a maximum of 100 acres.
4. Campsites may be rented by the day or week or for indefinite periods or sold PROVIDED, however, that no site shall be occupied as a permanent or principal residence.

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5. Management headquarters, recreational facilities, toilets, showers, off-street parking areas, laundry facilities and other uses and structures customarily incidental to the operation of a campground are permitted as accessory uses PROVIDED that:
 - a. Such accessory uses shall not occupy more than 10% of the area of the campground.
 - b. Such accessory uses shall be restricted in their use to occupants of the campground and their guests.
 - c. Such accessory uses shall present no visible evidence of their commercial character which would attract customers other than occupants of the campground and their guests.
6. No campsite shall be so located that any part intended for sleeping purposes is within 100 feet of the right-of-way line of any public road or highway. Setback spaces shall be occupied by plant materials and appropriately landscaped. Plant materials shall be of sufficient size when installed to assure immediate and effective screening of the park from adjacent roads and properties. The plans, specifications and proposed arrangement of such plantings shall be prepared by a registered landscape architect.
7. The campground site plan shall be subject to the review and approval of the Benzie County Health Department.

21.17 DRIVE-IN OR DRIVE-THRU FACILITIES OR ESTABLISHMENTS

1. Driveway openings shall be located as far from street intersections as practical but in no case closer than 100 feet (measured from the nearest right-of-way line to the edge of such driveway).
2. No drive shall be closer to any other drive than 75 feet.
3. Vehicular circulation patterns into and out of such businesses shall be located and designed to minimize disruption of and conflicts with thru traffic movement on abutting streets.
4. All buildings shall be set back a minimum distance of 30 feet from any adjacent right-of-way line.
5. All refuse containers shall be located in the rear yard and be screened from view by a 6-foot high fence or wall of sound construction.

21.18 GASOLINE SERVICE STATIONS.

1. All accessory uses and services shall be conducted within a completely enclosed building.
2. The minimum site size shall be ~~15,000~~ square feet with a minimum lot width of 150 feet.
3. Any buildings that are part of a Gasoline Service Station shall be set back ~~25~~ feet from all street right-of-way lines and shall not be closer than 25 feet to any property line of a residential zoning district.
4. No more than 2 driveway approaches shall be permitted directly from any other public street.

21.19 GOLF COURSES AND COUNTRY CLUBS, including accessory uses to a golf course such as eating or drinking establishments, driving ranges and retail sales directly connected with the conduct of the principal use.

1. Miniature golf courses are not included in this provision.
2. The site shall be immediately accessible from a major or minor street and all ingress and egress shall be directly onto or from the streets.
3. The site should be located such that it enhances the surrounding uses and such that it does not interfere with any surrounding activities by creating a nuisance or hazards.
4. Minimum site area shall be at least 60 acres for 9 holes and 110 acres for 18 holes.
5. Lighting shall be shielded to reduce glare and shall direct light away from all residential lands, which adjoin the site.
6. No building shall be closer than 50 feet to any property or street line.

21.20 HOTELS, MOTELS AND OTHER TRANSIENT LODGING.

1. Minimum floor area shall contain not less than 125 square feet per guest unit shall be provided.
2. The maximum number of guests per unit shall not exceed 6 persons.
3. If required by the Planning Commission, buildings shall set back no less than 20 feet from any street, unless adjacent to a residential district, in which case, the building shall set back not less than 30 feet from any street, and in all instances, the building shall be no less than 40 feet from any side or rear property line.
4. No lighting shall have a source of illumination or light lenses visible outside the property lines of the

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- parcel or lot, and shall in no way impair safe movement or traffic on any street or highway.
5. Uses such as swimming pools and other outdoor recreational uses, meeting rooms, restaurants, taverns or bars, and a caretaker's or proprietor's residence shall be permitted provided that these uses are located on the same site as the principal use to which they are accessory. Appropriate permits shall have been obtained from regulating County or State agencies.
 6. Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment, in conjunction with the operation of the establishment shall be prohibited.
 7. Activities made available to guests shall be on the lot used for the facility or on lands under the direct control of the operator either by ownership or lease. Outdoor gatherings of guests or other individuals shall be carried on in such a manner and at such hours so as to not be disruptive to neighboring properties.
 8. The maximum number of rental units which may be developed at any single location shall be 20.
 9. Accessory uses, including swimming pools, shall be as approved as part of the Special Use permit approval process.

21.21 RESERVED.

21.22 JUNK YARDS.

1. The site shall be a minimum of ³~~10~~ acres in size.
2. A solid fence or wall at least 8 feet in height shall be provided around the entire periphery of the site to screen the site from surrounding property and right-of-way.
3. Fences or walls shall be of sound construction, painted and otherwise finished neatly and inconspicuously.
4. All activities shall be confined within the fenced-in area. There shall be no stocking of material above the height of the fence or wall, except that movable equipment used on the site may exceed the wall or fence height. No equipment, material, signs or lighting shall be used or stored outside the fenced-in area.
5. All fenced-in areas shall be setback at least ^{20'}~~100~~ feet from any front street or property line.
6. The front yard setback shall be planted with trees, grass and shrubs to minimize the appearance of the installation.
7. No open burning shall be permitted and all industrial processes involving the use of equipment for cutting, compressing or packaging shall be conducted within a completely enclosed building.

21.23 MARINAS AND LAUNCHING RAMPS FOR COMMERCIAL OPERATIONS.

1. The lot for the marina shall abut and have direct access to a major or minor street.
2. Marinas shall be designed and/or operated, through natural or mechanical circulation of water, so that there will be no accumulation of algae, weeds, or garbage upon the marina waters.
3. All provisions for the storing and disposing of fuels, oils, and waste products, including daily generated garbage, shall meet county, state, and federal standards. The applicant shall document the availability and capacity of sewage facilities to handle the anticipated volume of wastes.
4. Marinas shall be designed to minimize negative impacts upon neighboring properties including lighting, glare, and unsightliness. Considerations to minimize negative impacts shall include, but not be limited to: height, type, and hours of operation of lighting fixtures, including night-sky protection measures; location of parking areas, boat ramps, and access roads and drives; location of storage buildings and restroom facilities; location of heavy pedestrian traffic areas; and landscaping and screening.
5. The applicant shall submit, as part of the site plan application, minimum-operating rules for the management of the marina which shall effectively assure that the marina will be operated in a manner compatible with surrounding land uses, including rules regarding noise and hours of operation and prohibition of fish cleaning except at approved fish cleaning stations.
6. Any dangerous or dilapidated waterfront structure, including docks, shall be removed or repaired within 30 days after notice of such condition by the Zoning Administrator.
7. Special measures shall be taken to preserve vegetation around shoreline areas to prevent soil erosion.

INSERT FOR
ART. # 21.

performances which are characterized by an emphasis on the exposure or display of specified sexual activities or specified anatomical areas.

SPECIFIED SEXUAL ACTIVITIES. Specified sexual activities are defined as:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

SPECIFIED ANATOMICAL AREAS. Specified anatomical areas are defined as:

1. Less than completely and opaquely covered: (i) Human genitals, pubic region, (ii) Buttock, and (iii) The nipple and/or areola of the female breast.
2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Add to Article 21:

21.27 Regulated Uses.

1. Purpose.
 - a. In the development and execution of this Section, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when 1 or more of them are located in near proximity to a residential zone, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects shall not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Section. These controls are for the purpose of preventing a concentration of these uses within any one area, or to prevent deterioration or blighting of a nearby residential neighborhood. These controls do not legitimize activities, which are prohibited in other Sections of the Code.
 - b. In regulating sexually oriented businesses, it is the purpose of this Section to promote the health, safety, and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Village. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.
 - c. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Council,

establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that Village is seeking to abate and prevent in the future.

2. Additional notice.

- a. In addition to the notices required for the public hearing, the Clerk shall serve notice on all owners and occupiers of all property within 500 feet of the proposed use.
- b. The notice shall give a minimum of 30 days from the mailing of the notice until the Planning Commission public hearing on the matter.
- c. The mailing shall include a postcard addressed to the Village, containing spaces for stating approval or disapproval of the proposed Regulated Use and including space for commentary.
- d. The total number of postcards returned prior to the hearing shall be tallied. The votes yea and nay shall also be tallied. These votes shall be considered as evidence in the Planning Commission's decision.

3. Expansion and Discontinuance of Use.

- a. Establishments where uses subject to the control of this Article are located shall not be expanded in any manner without first applying for and receiving the approval of the Council. Further, if a use subject to the control of this Section is discontinued for more than 30 days, the use may not be reestablished without applying for and receiving the approval of the Council as provided in this Article.
- b. Nothing in this Section shall prevent the reconstruction, repairing, or rebuilding and continued use of any building or structure the uses of which make it subject to the controls of this Section which is damaged by fire, collapse, explosion or act of God.

and on findings incorporated in the cases of *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *Thomas v. Chicago Park District*, 122 S. Ct. 775 (2002), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220 (6th Cir. 1995); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Deja vu v. Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Barnon Corp. v. City of Dayton*, 7923 F.2d 470 (6th Cir. 1991); *Threesome Entertainment v. Strittmather*, 4 F.Supp.2d 710 (N.D. Ohio 1998); *J.L. Spoons, Inc. v. City of Brunswick*, 49 F.Supp.2d 1032 (N.D. Ohio 1999); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884 (6th Cir. 2000); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Deja vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 2001 U.S. App. LEXIS 26007 (6th Cir. Dec. 6, 2001); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Connection Distrib. Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994); *American Target Advertising, Inc. v. Giant*, 199 F.3d 1241 (10th Cir. 2000); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 2002 U.S. Dist. LEXIS 1896 (D. Md., Feb. 6, 2002); *Currence v. Cincinnati*, 2002 U.S. App. LEXIS 1258 (6th Cir., Jan. 24, 2002); and other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds that sexually oriented businesses as a category of