

ARTICLE IX SPECIAL USE PERMITS

Section 9.0 - Intent

The provisions of this Article are intended to set forth the procedures and standards applicable to certain land uses, structures or activities that, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and/or the community as a whole.

Because of these characteristics, the uses of the land for certain purposes in certain districts will not be permitted without first obtaining special approval from the Planning Commission.

Section 9.1 - Applicability

For the purpose of this Ordinance special use categories are identified in §5.9 Table 3, which shall be governed by the provisions of this Article.

Section 9.2 - Procedures

- A. An application shall be submitted to the Zoning Administrator on a form for that purpose together with a site plan prepared to the specifications contained in Article X of this Ordinance. Each application shall contain the information required in Article X for a Special Use and shall be accompanied by the payment of fee as determined by the Village Council. The Zoning Administrator shall determine if an application is complete. Complete applications shall be processed further. Incomplete applications shall be returned to the applicant with a list of missing materials within 14 days of submission.

- B. Upon receipt of a complete application for a special use, a notice that the Planning Commission will hold a public hearing on the application shall be published in a newspaper which circulates in the Village and sent by mail or by personal delivery to the owners of property for which approval is sought, to all persons to whom real property is assessed within three hundred (300') feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300') feet. The notice shall be given not less than fifteen (15) days. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

The notice shall:

- 1. Describe the nature of the special use request.

- 2. Indicate the property that is the subject of the special use request.

3. State when and where the public hearing will be held.
 4. Indicate when and where written comments will be received concerning the request.
- C. In the case of Special Uses, the Planning Commission shall, within a reasonable amount of time to approve, approve with modifications and/or conditions, or disapprove the site plan in writing with reasons. The Special Use Permit shall be granted when all of the applicable standards of the Zoning Ordinance are met.
- D. The decisions of the Planning Commission shall be incorporated in a statement containing the conclusions relative to the special use under consideration that specifies the basis for the decisions and any condition imposed.

Section 9.3 - Zoning Board of Appeals Action

The Zoning Board of Appeals has jurisdiction to accept appeals of the decision of the Planning Commission with respect to special uses. The decision rendered by the Zoning Board of Appeals shall be final unless such decision is reversed or modified by a court of competent jurisdiction.

Section 9.4 - Special Use Approval Standards – General

In addition to compliance with the review standards in Article X §10.5 and with specific standards contained in §9.5 of this Ordinance, the Planning Commission shall require that the following general standards be satisfied before approving any special use:

- A.** Upon review of each application there shall be a determination as to whether each use on the proposed site conforms to the following standards:
1. Will be harmonious and in accordance with the general objectives or any specific objectives of the Village of Bellaire Master Plan.
 2. Will 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 will not change the essential character of the area.
 3. Will not be hazardous or disturbing to existing or future nearby uses.
 4. Will be compatible with adjacent uses of land and will promote the use of land in a socially and economically desirable manner.
 5. Will be served adequately by essential public services and facilities or that the persons responsible for the establishment of the proposed use will provide adequately any such service or facility.
 6. Will not create excessive additional public costs and will not significantly decrease property values of surround properties
 7. Will meet all the requirements and standards of this Ordinance and any other applicable laws, standards, Ordinances, and/or regulations.
 8. Shall provide a pedestrian circulation system, which is insulated as completely as reasonably possible from the vehicular circulation system.
 9. Exterior lighting shall be arranged as to deflect away from adjacent properties, not to impede the vision of traffic along adjacent streets and not unnecessarily illuminate night skies
 10. All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means to all sides.
 11. The proposed use will not create more traffic than presently entering the area and contribute to changing the character of the existing neighborhood.
- B.** As a minimum, or unless specifically modified by the provisions of Section 9.5, the dimensional standards and landscape, buffering and parking regulations otherwise applicable to the use and/or zoning district shall be maintained as outlined within the other various applicable articles of this Ordinance. For uses permitted by right in one district, the standards relating to the district in which the use is permitted by right shall serve as the minimum standards to which the site shall be designed. In such cases where there are conflicting standards, the most restrictive shall apply, unless specifically modified by the provisions of §9.5 or the approving body.
- C.** Upon review, the Planning Commission may stipulate such additional conditions and safeguards deemed necessary as referred to in §12.6.

Section 9.5 – Special Use Approval Standards - Specific

The specific requirements set forth in this section are additional requirements that must be met by certain special uses in addition to the general standards outlined or referenced in the above §9.4.

- A. The following uses shall be approved by the Planning & Zoning Commission as Special Land Uses in the districts listed in Section 5- provided the Special Land Use General Standards and the following Specific Standards are met:

1. Home-Based Businesses or Home Professional Offices.

It is the intent of this section to provide regulations and standards to allow for the establishment and operation of home occupations as specified below. It is also the intent to prohibit certain home occupations because of incompatibility with residential districts.

- A. The proposed home-based business will be conducted on the premises and/or the premises will serve as a base of operation from which to conduct the activity off-site.
- B. The proposed home-based business will be conducted in such a manner so as to retain the residential character of the property.
- C. There will be no more than one (1) non-resident employees.
- D. The proposed home-based business will not create a nuisance in fact for surrounding properties in terms of lighting, noise, fumes, odors, vibrations, or electrical interference.
- E. No more than one (1) on-site, non-illuminated sign 4² square feet or less in area per side is erected to direct attention to the activity. The sign may be attached to the building or located in the front yard provided it meets the sign setbacks of the district.
- F. Adequate off street parking will provide for patrons, clients and all nonresident employees.
- G. Any exterior storage of materials or equipment related to the home based business including the temporary storage of waste an trash, will be screened from the view of neighboring residents and from view by the general public along public rights-of- way by vegetation, natural topographic features, fencing or other constructed visual barriers.
- H. No more than fifty percent (50%) of the floor area of the dwelling will be devoted to the home-based business.
- I. Such home occupation or home professional office shall not require external alterations or construction features, not customary to dwellings.
- J. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front setback.
- K. The proprietor of the home occupation or home professional office shall reside at the premises.
- L. There shall be no exterior use, storage, display or visible evidence of the conduct of such home occupation. This shall prohibit the exterior storage of construction materials, mechanical equipment, supplies, merchandise or any other items associated with a home occupation

2. Gasoline/Service Stations

A. Standards - No subject facility existing on the effective date of this Ordinance shall be altered so as to provide a lesser degree of conformance with the provisions of this section than existed on said date.

1. All repair, lubrication and service work shall be done within an enclosed building.
2. All outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by a six (6) foot high solid wall or fence.
3. The storage of automobiles, trucks or trailers for a period in excess of seventy-two (72) hours, or the sale or rental thereof, is expressly prohibited without specific approval as part of the special use approval.
4. Vacuuming activities shall be at least fifty (50) feet from any adjoining property line
5. All washing activities must be within a building, with the exception for special events registered with the Zoning Administrator. No vehicle wash establishment shall permit patrons to extend lines of vehicles off the premises

B. Access Drives

1. No more than two (2) curb cuts shall be permitted directly from any major thoroughfare or more than one (1) curb cut from any other public street to provide ingress and egress.
2. The curb cuts for ingress and egress to a service station shall not be permitted at such locations that tend to create traffic hazards on the streets immediately adjacent thereto. Entrances shall be no less than twenty-five (25) feet from a street intersection (measured from the road right-of-way) or from adjacent residential districts and not within ten (10) feet of any adjoining property line.
3. A minimum dimension of twenty (20) feet shall separate any two curb cuts giving access to a single street.
4. Lighting for parking areas or outdoor activity areas shall be shielded to prevent glare onto any property used or zoned for residential purposes.
5. The minimum lot area shall be twenty thousand (20,000) square feet, and so arranged that ample space is available for motor vehicles, which are required to wait for services.
6. Automobile service stations shall not be located within five hundred (500) feet of any school
7. Pump islands shall be a minimum of twenty-five (25) feet from any public right-of-way or lot line.
8. Automobile serve and gasoline stations shall comply with all applicable sign regulations, provided, however, the following additional regulations shall apply:
 - a. Fuel Pump Signs will be permitted with a maximum of two (2) square feet of sign area shall be permitted on each of the two (2) sides of each fuel-dispensing unit containing one (1) or more fuel dispensing nozzles. This restriction does not apply to any sign required by law
 - b. On gas station pump canopies, logo's may be allowed if painted into the lights of the canopy, and will not be counted against the signs allowed on the property. If the logo signs are configured so they could possibly be detached they will be counted against the number of sign allowed on the property. No logo may be located outside the width of the canopy fascia
 - c. No portable fuel price signs are permitted. Ground mounted signs may include changeable fuel price signs indicating the current price of fuel dispensed on the premises; provided the fuel price sign is erected as an integral part of the sign. The area of the fuel price sign shall be included in determining the sign area for the business.
 - d. No merchandising signs are allowed on sign posts, telephone post, etc.

3. Bed and Breakfast Establishments.

- a. The premises shall be the principal residence of the operation's owner and or operator when the establishment is active.
- b. The structure shall be erected or retained as a single-family structure. Commercial food preparation equipment and eating facilities within individual sleeping quarters shall not be installed.
- c. Meal services shall be limited to during normal and customary breakfast hours and shall be provided only to lodgers registered at the establishment, other than special events such as a wedding on site.
- d. Two (2) off-street parking spaces for the owner operator and one (1) off-street parking space per room to be rented shall be provided. When the Planning Commission finds the parking area will create an adverse effect on the neighboring property, they shall require a landscape buffer between lot and parking area.
- e. Rental of snowmobiles, ATV's, or similar vehicles, boats, and other marine equipment in conjunction with the operation of the establishment` shall be allowed if the vehicles are not stored on site. .
- f. Lighting for parking areas or outdoor activity areas shall be shielded to prevent glare spilling onto any property used or zoned for residential purposes.
- g. Compliance: All such facilities shall comply with all applicable local, county, and state building, occupant living area, plumbing, electrical, mechanical, fire and health codes

4. Arcades, billiard parlors and other similar indoor recreation facilities.

- a. The number of arcade or game machines shall not exceed one (1) machine per each thirty (30) square feet of floor area.
- b. The facility shall be fully and adequately lighted for easy observation of all areas of the premises
- c. Walls of the facility shall be soundproofed to absorb the noise generated within.
- d. At least one (1) public telephone shall be provided
- e. No amplified music shall be audible on the exterior of the premises
- f. The premises shall be continuously maintained in a safe, clean and orderly Condition.
- g. Bicycle storage racks shall be maintained off the public sidewalk to adequately accommodate bicycles utilized by arcade patrons

5. Transportation freight terminals and yards, public utility and private contractor storage and service yards in association with special services requiring bases of operation and outdoor storage of equipment and materials, excluding the major repair of equipment.

- a. The minimum setback for use and structures other than employee and customer parking shall be fifty (50) feet from the street right-of-way and thirty-five (35) feet from side or rear property lines.
- b. A greenbelt and/or buffer shall be required along all property lines.
- c. Repair of vehicles shall be done within a totally enclosed building.
- d. The storage of vehicle parts or inoperable vehicles shall be done within an enclosed building.
- e. Except for visitor parking, operable vehicle parking and storage shall be within a fenced area.
- f. Lighting for parking areas or outdoor activity areas shall be shielded to prevent glare spilling onto any property used or zoned for residential purposes.

6. Truck terminals.

- a. Minimum lot size shall be five (5) acres.
- b. The lot location shall be such that at least one (1) property line abuts a paved primary street. The ingress and egress for all vehicles shall be directly from said thoroughfare.
- c. The main and accessory buildings shall be set back at least seventy five (75) feet from all property lines.
- d. Truck parking and staging areas shall be fenced and screened from the view of any abutting Residential District or use by a decorative fence or wall, or a landscaped equivalent.
- e. Access driveways shall be located no less than fifty (50) feet from the nearest part of the intersection of any street or any other driveway.

7. Outside storage yards of construction contractor's equipment and supplies, building materials, sand, gravel, or lumber.

- a. All outdoor storage shall be located in the rear yard only and shall be fenced with a six (6) foot high fence or screen wall, according to fencing regulations of zoning district.
- b. All outdoor storage yards shall be paved or provided with a durable, dustless surface approved by the Planning Commission

8. Automobile Dealers, Other Motor Vehicle Dealers, Automotive Rental and Leasing, and Manufactured Home Dealers

- A. In all districts where the outside display or storage of vehicles for sale is permitted, such display shall be allowed only as an accessory use to the main use on the same lot or tract of land. The requirements of this section in reference to zoning regulations, such as set backs, etc., will override the zoning district requirements
- B. In all districts where the outside display of goods is permitted, such display of goods for sale incidental to a retail use, plant nursery, sales and rental of motor vehicles, mobile homes, boats or trailers, or the outside display of automobile-related merchandise for sale shall not be required to be screened.
- C. Outside display shall be situated so as not to create a visibility obstruction to moving vehicles within a parking lot. Where outside display is located at the intersection of two (2) or more maneuvering aisles within a parking lot, the displayed merchandise shall not exceed 30 inches in height above the grade level of the parking lot.
- D. Mobile property may be displayed in the side and rear setbacks up to five feet (5') of the property line. If property is adjacent to residential property, then the district set back shall remain in effect for that side of the property.
- E. Mobile property may be displayed in the front yard setbacks up to ten feet (10') of the front property line.
- F. 10% of the open space of the property must be left open for customer parking. Driveway area may not be counted in the 10% open space for parking.
- G. No outside display shall be located within, nor encroach upon, a fire lane, maneuvering aisle, or a parking space necessary to meet the minimum parking requirements of the other use(s) of the lot or parcel.
- H. Featured "display, directional lighting" of items must be turned off during the hours of 11:00 PM and 7:00 AM. Example: A new car on display outside a dealership, with special lighting to bring attention to the new design. This type of lighting would be considered "display or directional lighting." This does not include security lighting. Lighting for parking areas or outdoor activity areas shall be shielded to prevent light from spilling onto any property used or zoned for residential purposes.
- I. Outside equipment must be displayed in rows with at least 2 feet between display items.
- J. Repair vehicles or vehicles used for parts only, must be moved off the lot within 30 days of arrival.

9. Secondary Dwelling Units.

The purpose of this section is to allow a minor amount of space on a lot or within a dwelling to be rented or leased as separate living quarters for extended family or non-family members in all residential neighborhoods within the village. The following regulations shall apply:

- a. One (1) secondary dwelling unit is allowed per lot.
- b. The secondary dwelling unit shall be rented or leased so the tenants are permanent residents rather than transients, with a month-to-month lease.
- c. The secondary unit shall not exceed 600 square feet, so that it remains an accessory use to the primary dwelling and does not result in the creation of a duplex or apartment building.
- d. The secondary dwelling unit shall be provided electricity, plumbing, and heat in addition to being serviced by municipal water and sewer. Utilities shall not be metered separately from the primary residence.
- e. The secondary unit shall contain only one (1) bedroom.
- f. The secondary unit shall not be located in the front yard.
- g. The secondary unit shall be a self-contained unit and may be located above a garage or may be attached to the primary dwelling or garage or located totally within a primary dwelling. The secondary unit shall not solely constitute a separate standing building.
- h. The secondary unit shall have a separate exterior entrance that shall not be visible from the front yard.
- i. The residents of the primary structure shall maintain the secondary unit and shall ensure that no excessive noise, traffic, or blight occurs on the property.
- j. The secondary unit shall conform to Antrim County building code standards.
- k. An owner is to occupy either the principal dwelling unit or the secondary suite if located in the R1 Zoning District.

10. Vehicle major and minor repair facilities.

1. In locations where the use abuts a Residential District or use the Planning Commission may require additional screening or landscaping to minimize any potential adverse effects, such as noise, dust, odor, etc.
2. No outside storage of parts and/or materials shall be allowed unless contained with a totally screened area, six (6) feet in height using an evergreen hedge or other natural landscaping, or if specifically approved by the Planning Commission, a solid uniformly painted fence or wall. Any screening materials, landscaping, fence, or wall shall be maintained in good condition.
3. No more than six (6) vehicles shall be within the outdoor storage area
4. When located within an integrated group of establishments served by a common parking area, the use shall be located on the periphery to prevent vehicular obstructions or pedestrian movement conflicts and shall be designed to integrate the use with the site plan and architecture of the other establishments.
5. No outside storage of parts and/or materials shall be allowed.

11. Restaurants or other establishments serving food and/or beverage using drive-in windows.

1. Sufficient stacking capacity for the drive-through portion of the operation shall be provided to ensure that traffic does not extend into the public right-of-way. A minimum of ten (10) stacking spaces for the service ordering station shall be provided. Vehicles not using the drive-through portion of the facility shall locate stacking spaces so as not to interfere with vehicular circulation and egress from the property.
2. The parking and maneuvering areas of the site shall be fenced and screened from the view of any abutting Residential District or use by a decorative fence or wall, or a landscaped equivalent.
3. Outdoor speakers for the drive through facility shall be located in a way that minimizes sound transmission toward neighboring property and uses.

12. Mineral mining and extraction operations

Intent and Purpose: It is the intent and purpose of this section to promote the underlying spirit and intent of the entire Zoning Ordinance, but at the same time allow for the extraction of minerals in locations where they have been naturally deposited, and to insure that mineral mining activity shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use, and, to insure that mineral mining activities are consistent with the public health, safety and welfare of the Village.

- a. Use Restriction. Mineral mining and extractive operations may be considered as a special use in the Commercial Zoning District. The extraction, removal, and/or processing of sand, gravel, stone and/or other mineral mining in the Village shall be prohibited unless first authorized by the grant of a special approval use application by the Planning Commission in accordance with this section.
- b. Exemption. Usual and customary land balancing by cutting and filling, in preparation for immediately planned and approved development in accordance with this and all other applicable ordinances and law, shall be exempted from the provisions of this section.
- c. Application. An application shall be filed with the Zoning Administrator and shall include the following:
 1. Site plan prepared in accordance with Article XIII.
 2. Duration of proposed operation, and location, timing, and any other relevant details with respect to the phasing and progression of work on the site;
 3. Land use study/drawing showing the existing land uses with specification of type of use, e.g., single-family residential, multiple-family residential, retail, office, etc., and density of individual units in areas shown, including:
 4. Geological/hydrological/engineering survey prepared by appropriate and qualified experts.
 5. Description of the vehicles, machinery and equipment proposed for use on the property, specifying with respect to each, the anticipated noise and vibration levels.

Reclamation. Reclamation of the site shall be in accordance with a reclamation plan approved by the Planning Commission as part of the application review process. There shall be no final slopes having a grade in excess of a minimum ratio of one (1) foot vertical to five (5) feet horizontal, and, for permanent water areas, for a distance of not less than ten (10) feet nor more than fifty (50) feet, the submerged slopes shall be graded from the water's edge at a grade not in excess of a minimum ratio of one (1) foot vertical to seven (7) feet horizontal; the entire site shall be planted with sufficient vegetation so as to sustain short and long term growth, in order to avoid erosion and washout, and, to the extent necessary to achieve this objective, suitable soils shall be placed on the property; and, all structures, machinery, equipment and improvements shall be removed from the site, unless, following approval of the Planning Commission the same are deemed consistent with the zoning district in which the site is situated. The Planning Commission shall have the right to impose performance bonds or letters of credit to insure that the reclamation and restoration plans as submitted are implemented.

13. Telecommunication Tower or Alternative Tower Structure

PURPOSE AND INTENT: The purpose and intent of the Section of this ordinance pertaining to wireless telecommunication towers, structures and antennas is to establish general guidelines for the location of wireless telecommunication towers, alternative tower structures and antennas. The Village recognizes that it is in the public interest to permit the location of wireless telecommunication towers, alternative tower structures and antennas within the Village. The Village also recognizes the need to protect the scenic beauty of the Village of Bellaire from unnecessary and unreasonable visual interference, and that wireless telecommunication towers, alternative tower structures and antennas may have negative aesthetic impacts upon adjoining and neighboring uses. As such, this ordinance seeks to:

- A. Protect residential areas from potential adverse impact of towers and antennas;
- B. Encourage the location of towers in nonresidential areas;
- C. Minimize the total number of towers throughout the community;
- D. Encourage the joint use of new and existing tower sites rather than the construction of additional towers;
- E. Encourage developers of towers and antennas to configure them in a way that minimizes their adverse visual impact;
- F. Enhance the ability of providers of telecommunication services to provide such services to the community quickly, effectively, and efficiently;
- G. Consider the public health and safety of telecommunication towers and alternative tower structures; and avoid potential damage to adjacent property from tower failure.

a. Application Requirements. The following information shall be provided in support of an application to construct a wireless telecommunication tower:

- (1) Certification from a Michigan licensed professional engineer as to the manner in which the proposed wireless telecommunication tower is designed to collapse.
- (2) A map depicting the existing and known proposed location of wireless telecommunication facilities, including wireless telecommunication antenna attached to alternative tower structures, within 2.5 miles surrounding the Village of Bellaire as well as within the proposed service area radius.
- (3) The name, address, and telephone number of the person to contact regarding site maintenance or other notification purposes. This information shall be periodically updated by the tower owner.
- (4) A statement which indicates the applicant's intent to allow the co-location of other antenna, provided that the cost of modifying the existing tower is borne by the co-locating entity and reasonable compensation is paid by the co-locating entity.

- b. **Evidentiary Requirements.** The applicant must demonstrate that no existing tower, alternative tower structure or alternative technology not requiring the use of towers or alternative tower structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other alternative towers or alternative technology. Evidence submitted to demonstrate that no existing tower, alternate tower structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- (1) No existing towers or alternative tower structures are located within the geographic area that meets applicant's engineering requirements.
 - (2) Existing towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements.
 - (3) Existing towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or alternative tower structures, or the antenna on the existing towers or alternative tower structures would cause interference with the applicant's proposed antenna.
 - (5) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or alternative tower structure or to adapt an existing tower or alternative tower structure for sharing are unreasonable.
 - (6) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - (7) The applicant demonstrates that an alternative technology that does not require the use of towers or alternative tower structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wire line system is unsuitable.
- c. **Setbacks.** The following setback requirements shall apply to all towers for which a special use permit is required.
- (1) Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.
 - (2) Guys and accessory buildings or structures must satisfy the minimum zoning district setback requirements.
- d. **Security fencing.** Towers and attendant accessory structures shall be enclosed by security fencing not less than six feet (6') in height and shall also be equipped with an appropriate anti-climbing device.

- e. **Landscaping.** The following requirements shall govern the landscaping surrounding towers for which a special use permit is required.
- (1) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four feet (4') wide outside the perimeter of the compound.
 - (2) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
 - (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
- f. **State or Federal Requirements.** The applicant must demonstrate that any proposed tower meets or exceeds current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- g. **Aesthetics.** Towers and antennas shall meet the following requirements:
- (1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - (2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
 - (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - (4) Where a feasible alternative exists, towers, alternative tower structures and supporting structures shall not utilize a power source which generates noise able to be heard by a person of normal aural acuity at adjoining property lines or public property; however, this section shall not be construed as limiting the use of temporary generators or similar devices used to create power during periods of interruption of the primary power.

- h. Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. No strobe lights shall be allowed.
- i. Compliance with Codes.** Antenna and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical connections and wiring and as to structural integrity with all applicable state and local building codes and the applicable standards for towers published by the Electronic Industries Association, as amended from time to time.
- j. Interference with Residential Reception.** Towers shall be located so that they do not interfere with television and radio reception to neighboring residential areas.
- k. Signs.** No signs other than signs required pursuant to federal, state, or local law or ordinance shall be allowed on an antenna or tower.
- l. Spacing - Towers.** Towers shall be located no closer than one (1) mile from an existing telecommunication tower or alternative tower structure, as measured in a straight line between the base of the existing tower and the proposed base of the proposed tower.
- m. Spacing - Residences.** A tower shall not be located within two hundred feet (200') or three hundred percent (300%) of the height of the tower, whichever is greater, of a single family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. Distance for the purpose of this section shall be measured from the base of the tower structure to the lot line of the single family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons.
- n. Removal of Abandoned Antennas and Towers.** Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Village notifying the owner of such abandonment. Along with said removal, said owner shall restore the site of said antenna or tower to its original condition prior to location of the antenna or tower subject to reasonable wear and tear. Failure to remove an abandoned antenna or tower within said ninety (90) day shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. The Planning Commission may require the applicant to file a bond equal to the reasonable cost of removing the tower, antenna, alternative tower structure or other supporting structure(s) as a condition of a special use permit given pursuant to this section.

14. Public and Semi-Public Institutional Uses.

The Planning & Zoning Commission shall only issue a special use permit for institutional structures and uses as designated in Section 5.9 Table 3 that must comply with the following site development standards:

1. All development permitted under the provisions of this section shall conform to the applicable site development requirements contained in Article X.
2. Public and Semi-Public Institutional uses located in the Central Business District (CBD) shall conform to the requirements of that district.
3. Lighting for parking areas or outdoor activity areas shall be shielded to prevent glare spilling onto any property used or zoned for residential purposes
4. Except for ingress and egress locations, parking lots shall be surrounded by the buildings they serve, a greenbelt, a fence meeting the requirements of Section 3.20 of this Ordinance and/or a buffer strip. The buildings, greenbelt, fence, and/or buffer strip shall be designed and located so as to not pose a safety hazard for vehicles entering or leaving the parking area

15. Sexually Oriented Business

PURPOSE AND INTENT: The purpose and intent of the Sections of this Ordinance pertaining to the regulation of sexually oriented businesses is to regulate the location and operation of, but not to exclude, sexually oriented businesses within the Village, and to minimize their negative secondary effects. It is recognized that sexually oriented businesses, because of their very nature, have serious objectionable operational characteristics that cause negative secondary effects upon nearby residential, educational, religious and other similar public and private uses. The regulation of sexually oriented businesses is necessary to ensure that their negative secondary effects will not contribute to the blighting or downgrading of surrounding areas and will not negatively impact the health, safety and general welfare of village residents. The provisions of this Ordinance are not intended to offend the guarantees of the First Amendment to the United States Constitution or to deny adults access to sexually oriented businesses and their products, or to deny sexually oriented businesses access to their intended market. Neither is it the intent of this Ordinance to legitimize activities that are prohibited by Village ordinance, state or federal law. If any portion of this Ordinance relating to the regulation of sexually oriented businesses or referenced in those sections is found to be invalid or unconstitutional by a court of competent jurisdiction, the Village intends said portion to be disregarded, reduced and/or revised so as to be recognized to the fullest extent possible by law. The Village further states that it would have passed and adopted what remains of any portion of this Ordinance relating to regulation of sexually oriented businesses following the removal, reduction or revision of any portion so found to be invalid or unconstitutional

- a. No sexually oriented business shall be permitted in a location in which any principal or accessory structure, including signs, is within one thousand feet (1000') of any principal or accessory structure of another sexually oriented business.
- b. No sexually oriented business shall be established on a parcel that is within two hundred feet (200') of any parcel zoned R-1, R-2, and R-3.
- c. No sexually oriented business shall be established on a parcel within two hundred feet (200') of any residence, park, school, child care organization, or place of worship. The distance between a proposed sexually oriented business and any residence, park, school, child care organization, place of worship, or other sexually oriented business is to be located to the nearest property line of the residence, school, child care organization, place of worship, or other sexually oriented business.
- d. The proposed use shall conform to all specific density and setback regulations, etc. of the zoning district in which it is located.
- e. The proposed use must meet all applicable written and duly promulgated standards of the Village of Bellaire and of other governments or governmental agencies having jurisdiction, and that to the extent required, the approval of these governments and/or governmental agencies has been obtained or is reasonably assured.
- f. 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 roadways.

- g. Any sign or signs proposed for the sexually oriented business must comply with the provisions of this Ordinance relating to the regulation of signage, and shall not otherwise include photographs, silhouettes, drawings, or pictorial representations of any type, or include animated or flashing illumination.
- h. Entrances to the proposed sexually oriented business must be posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business, and using lettering no less than two (2) inches in height that: 1) "Persons under the age of 18 are not permitted to enter the premises", and 2) "No alcoholic beverages of any type are permitted within the premises unless specifically allowed pursuant to a license duly issued by the Michigan Liquor Control Commission."
- i. No product or service for sale or gift, or any picture or other representation of any product or service for sale or gift shall be displayed so as to be visible from the nearest adjoining roadway or a neighboring property.
- j. Hours of operation shall be limited to 8:00 AM to 12:00 AM, Monday through Saturday.
- k. All off-street parking areas shall be illuminated during all hours of operation of the sexually oriented business, and until one hour after the business closes.
- l. Any booth, room or cubicle available in any sexually oriented business, except an adult motel, used by patrons for the viewing of any entertainment characterized by the showing of Specified Anatomical Areas or Specified Sexual Activities:
 - (1) Is handicap accessible to the extent required by the Americans With Disabilities Act;
 - (2) Is unobstructed by any door, lock or other entrance and exit control device;
 - (3) Has at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;
 - (4) Is illuminated by a light bulb of wattage of no less than 25 watts;
 - (5) Has no holes or openings in any side or rear walls.

Section 9.6 - Appeal Process for Sexually Oriented Businesses

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

- A. If the Planning Commission determines that the application is complete, it shall within sixty (60) days of said determination make and adopt specific findings with respect to whether the proposed sexually oriented business is in compliance with the standards designated in §9.5(A)(14)(L). If the Planning Commission has not made and adopted findings of fact with respect to a proposed sexually oriented business and either approved or denied the issuance of a special approval for same within sixty (60) days of its determination that a completed application has been filed, then the special approval shall be deemed to have been approved.
- B. Prompt judicial review of adverse determination: If the Planning Commission denies a special approval application for a sexually oriented business pursuant to the above paragraphs, then the applicant shall be entitled to prompt judicial review by submitting a written request to the Zoning Administrator. The Village shall within three (3) business days of receipt of such written notice do the following:
 - 1. File a petition in the Circuit Court for the County of Antrim seeking a judicial determination with respect to the validity of such denial and, in conjunction therewith, apply for a preliminary and permanent injunction restraining the applicant from operating the sexually oriented business in violation of the Village Zoning Ordinance;
 - 2. Request that the application for issuance of a preliminary injunction be set for a show-cause hearing within five (5) business days or as soon thereafter as is possible after the filing of such petition. In the event the applicant appears at or before the time of such show-cause hearing, waives the notice otherwise provided by Michigan Court Rules, and requests that at the time set for such hearing the Court proceed to hear the case under applicable rules of civil procedure for the issuance of such permanent injunction on its merits, the Village shall be required to waive its application for preliminary injunction and shall join in such request.

In the event that the applicant does not waive notice and/or does not request an early hearing on the Village's application for permanent injunction, it shall nevertheless be the duty of the Village to seek the earliest possible hearing date under Michigan law and the Michigan Court Rules.

The filing of written notice of intent to contest the Planning Commission's denial of a special approval shall not in any way affect the validity of such denial, but such denial shall be deemed invalid and the special approval application automatically approved if, within fifteen (15) business days of the filing of Village's petition, a show-cause hearing has not been scheduled.

Section 9.7 - Reapplication

No application for a special use permit which has been denied wholly or in part shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on grounds of the newly discovered evidence or proof of changed conditions found to be sufficient to justify reconsideration by the Planning Commission.

Section 9.8 – Revised Special Use Permits

A. Revised Special Use Permits

A revised Special Use Permit is required when any of the following is proposed:

1. Alter exterior dimensions of principal building(s).
2. Increase of impervious surface and/or parking requirements.
3. Significant changes to the original application and approval conditions as determined by the Zoning Administrator.

B. Multi-Use Lots and/or Buildings: Bed & Breakfasts, Home Based Businesses, and Home Professional Offices:

A Revised Special Use Permit is required only if the proposed changes will alter the portion of the building and/or lot utilized for the Special Use. A Revised Special Use Permit is not required if the proposed changes will affect only the residential portion of the building or lot.

C. Approval Process:

The procedure for approval for a Revised Special Use Permit shall be the same as the procedure for the original Special Use Permit as described in Section 9.2. If the Zoning Administrator determines that the change is not minor, the Planning & Zoning Commission at a regular meeting, without a public hearing may approve the changes to the original application if it is due to business growth and the special use permit was issued more than 5 years ago. This approval process will be used if the decision can be made by in a thirty-minute time frame before the Planning Commission

Section 9.9 – Expiration of Special Use Permits

- A. An approved Special Use Permit shall expire one (1) year following approval by the Planning & Zoning Commission, unless substantial construction has begun pursuant to the permit prior to the expiration, or the property owner applies to the Planning Commission for an extension prior to the expiration of the Special Use Permit. The Planning Commission may grant one (1) extension of a an approved Special Use Permit for an additional one (1) year period if it finds:
 - 1. The property owner presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the property owner;
and
 - 2. The requirements and standards for Special Use Permit approval that is reasonably related to the development has not changed.
- B. If the Special Use Permit expires pursuant to subsection A above, no work pursuant to the Special Use Permit may be undertaken until a new Special Use Permit is obtained from the Planning Commission following the procedures for a new Special Use Permit.