ARTICLE 4
PROCEDURES

DIVISION 1: GENERAL

PURPOSE

The purpose of this article is to consolidate the procedures for filing and processing applications for development approval. The format is designed to allow users to quickly and efficiently ascertain the various steps involved in obtaining development approval—from the initiation and filing of an application, the administrative completeness review, and the review for compliance with substantive standards, through the public hearings.

- *Division 1: General*
- *Division 2: Conceptual Reviews*
- *Division 3: Quasi-Judicial and Legislative Approvals*
- *Division 4: Administrative Development Approvals*
- *Division 5: Zoning Procedures*
- *Division 6: Interpretations, Variances and Appeals*
- *Division 7: Enforcement, Violations, and Penalties*

SECTION 401 PROCEDURAL REQUIREMENTS

No development or development activity is permitted unless all development approvals applicable to the proposed development are issued in accordance with this article. Development approvals are required for all development, unless specifically excepted, to ensure compliance with the various adopted codes, standards, and laws, and to ensure consistency with the master plan and policies of the township. This division describes procedural elements common to all applications. *Division 2: Conceptual Reviews* through *Division 7: Enforcement, Violations, and Penalties* describe the procedures and requirements for processing particular types of applications. No application will be accepted if the affected land(s) are in violation of this Ordinance or any other Township ordinance, including the Township Financial Responsibility Ordinance, unless such application includes remediation of such violation.

SECTION 402 CATEGORIES OF DEVELOPMENT APPROVALS

There are three basic categories of development approvals pursuant to this article, defined in § 402.A. Legislative Development Approvals, § 402.B. Quasi-judicial Development Approval, and § 402.C. Administrative Development Approvals.

A. Legislative Development Approvals

Legislative development approvals involve a change in land-use policy. A public hearing is required but the procedural requirements of a quasi-judicial hearing do not apply. Legislative development approvals include any change in the master or specific plan, any change to the text of this ordinance, and any rezoning.

B. Quasi-judicial Development Approvals

A quasi-judicial development approval involves the application of a discretionary standard required by this article to an application. It requires a public hearing. Procedural due process requirements apply. Examples include planned development approvals, special use permits, variances, and administrative appeals.

C. Administrative Development Approvals

Administrative development approvals involve the application of the standards of this ordinance to an application by an administrative official. A public hearing is not required. Examples include some site plans, zoning certificates, land use permits and certificates of occupancy.

SECTION 403 COMPLETENESS REVIEW

This section applies to any application for a legislative or quasi-judicial development approval, unless otherwise provided in the regulations for the specific application. The following procedures shall be used to review any application for completeness unless a different procedure is established elsewhere in this article. *(For completeness review of an administrative development approval refer to § 416, Land Use Permits)*

A. Preapplication Conference

Before any application is filed, any applicant for a legislative or quasi-judicial development approval is encouraged to attend a preapplication meeting with the Planning Department. The purpose of the preapplication meeting is to discuss, in general, the procedures and substantive requirements for the application.

B. Application Materials

An application shall be accompanied by the information and fees required by Article 9, Specifications for Documents to Be Submitted, of this Ordinance. The Director of Planning or his/her designee shall review such information for sufficiency, and if determined adequate, accept the application for further consideration.

C. Waivers

The Director of Planning may waive the informational requirement(s) of this Section where the provision of such information is deemed unnecessary in deciding upon the application.

D. Jurisdiction

Unless the provisions pertaining to a particular application prescribe otherwise, all applications shall be reviewed by the Planning Department for completeness.

E. Time Limits for Processing

Whenever this article establishes a time period for processing an application, such time period does not commence until the Planning Department has reviewed such application for completeness in order to determine whether the application has been properly submitted and the applicant has corrected all deficiencies in the application. Reviews for completeness are solely for the purpose of determining whether preliminary information required for submission with the application is sufficient to allow further processing, and shall not constitute a decision as to whether an application complies with the provisions of this ordinance.

F. Review by Planning Department

(1) Not later than ten (10) working days after the Planning Department has received an application, the Planning Department shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant.

(2) The procedure of step (1) above shall be repeated until a complete application is received, provided that additional review fees may be required for a third or any subsequent completeness review.

(3) If the Planning Department fails to act within the time period required for completeness review, the application is deemed complete for the purpose of introducing the project before the Planning Commission.
(4) Nothing in this section precludes an applicant and the Planning Department from mutually agreeing to an extension of any time limit provided by this section.

G. Appeal of Completeness Review

A determination by the Planning Department that an application is not complete may be appealed in writing to the Planning Commission. Such appeal must specify the information provided in the application and relied upon by the applicant, and must include a description as to how such information satisfies the ordinance standard(s) referenced by the Planning Department in the completeness review.

H. Further Information Requests

After the Planning Department or the Planning Commission accepts a development application as substantially complete, the Planning Department or the Planning Commission may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required to render a final determination on the merits. This additional information to be submitted may be required prior to scheduling a public hearing or otherwise acting on the application.

SECTION 404 EXPIRATION OF APPLICATION

During the course of any administrative, legislative, or quasi-judicial application review, if an applicant has failed to proceed meaningfully towards application completion or application decision for a period of one-hundred and twenty (120) consecutive calendar days, then the application shall be considered expired. Following expiration of an application, the applicant shall be provided with written notice of said expiration.

SECTION 405 PERFORMANCE GUARANTEE

A. Generally

To ensure compliance with this ordinance and any conditions imposed there under, the Township may require that a cash deposit, certified check, irrevocable bank letter of credit, surety bond, or other form of financial guarantee acceptable to the Township be deposited with the Township Clerk. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The Township shall not require the deposit of the performance guarantee until it is prepared to issue the permit.

B. Amount

The performance guarantee shall be sufficient to cover the estimated cost of improvements associated with a project, as submitted by a representative of the applicant and deemed reasonable by the approving authority.

C. Improvements

For the purposes of this section, improvements shall mean those features and actions associated with a project that are considered necessary to protect natural resources or the health, safety and welfare of the residents of the Township and those future users and/or inhabitants of the project or project area. Improvements shall include, but may not be limited to, streets and internal roadways inclusive of

curbs and drainage facilities, lighting, electrical systems, utilities, sidewalks, drainage facilities inclusive of applicable retention and detention ponds and/or systems, landscaping and buffers.

D. Default; Drawing Upon Performance Guarantee

(1) If a Township official determines that a required improvement has not been made or that a condition of approval has been violated, and that the permit holder has not acted to correct the issue in a timely manner, the official may recommend to the Planning Commission that the performance guarantee be leveraged to bring about compliance. The Planning Commission shall decide whether to approve said recommendation for action to the Township Board. The Township Board shall then consider such action at its first meeting after the Planning Commission's review.

(2) The performance guarantee may only be drawn upon resolution of the Township Board. Said resolution shall find that the applicant has failed to do one or more of the following:

(a) Complete an improvement or improvements pursuant to the requirements of the development approval, as applicable and any required conditions thereto; or

(b) Conduct meaningful progress for more than one (1) year toward the completion of one or more of the improvements.

(3) Any resolution to draw upon the performance guarantee shall also direct the Zoning Administrator to take any action or procure any services which he or she deems necessary to bring about compliance.

E. Rebate of Cash Deposit for Work Completed

For Cash or Certified Check. The Township shall rebate to the applicant forty percent (40%) of the deposited funds when sixty percent (60%) of the required improvements are completed, and the remaining sixty percent (60%) of the deposited funds when one hundred percent (100%) of required improvements have been made. A written assessment of the amount of work completed shall be detailed in writing by the applicant and reviewed by Zoning Administrator, who shall certify in writing to the Township Treasurer that conditions for partial or full rebate of the cash deposit have been met. Such certification shall identify the condition, the amount of deposit specified for its guarantee, and any amount that has been used to enforce compliance with the remaining balance (if any). The Treasurer shall issue a check to the party named on the escrow account in the amount specified, following standard Township procedures for authorization of such disbursements.

F. Land Division

This Section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited under the land division act.

SECTION 406 NOTICE PROVISIONS

A. General

The notice requirements for each process or type of application are prescribed in State statute. Notice shall be provided in accordance with such standards.

B. Action to Be Consistent with Notice

The reviewing body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable) of the application, or denial of the application.

C. Amendments Not Requiring Re-notification

Proposed amendments which are considered Administrative (§ 423.G.(3)) or Minor (§ 423.G.(4)) shall not require re-notification.

SECTION 407 PUBLIC HEARING

A. Applicability

This section applies to any application or process requiring a public hearing pursuant to § 406.

B. Planning Commission

The Planning Commission shall hold regularly scheduled public hearings to receive and review public input on all applications and processes required by this article. The Planning Commission shall approve, approve with conditions, or deny applications on which it is required to render a final decision. The Planning Commission shall recommend that the Township Board approve, approve with conditions, or deny applications on which the Township Board is required to render a final decision.

C. Township Board

The Township Board shall hold regularly scheduled public hearings to act upon all items required by this article or state statute to be considered by the Township Board. The Township Board shall decide whether or not to approve, approve with conditions (if applicable), or deny such applications.

SECTION 408 REVOCATION OF A DEVELOPMENT APPROVAL

A. Authority

If substantial development and completion of the use and buildings does not proceed in conformance with a development approval, or physical or operational changes which violate the order, application, or data accompanying the application by the applicant, its successors, agents or assigns are identified, the Township shall have full authority to revoke the development approval.

B. Grounds for Revocation

The following are grounds for revocation of a development approval:

(1) The intentional provision of materially misleading information by the applicant (the provision of information is considered "intentional" where the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence); or

(2) The failure to comply with any condition of a development approval.

C. Termination, Suspension, or Amendment of Administrative Approval

Upon discovery of an alleged violation, the Zoning Administrator may issue a stop work order.

The Zoning Administrator shall investigate alleged violations and determine whether or not to revoke, suspend, approve a revised site diagram or administrative site plan, or confirm that development is proceeding in conformance with the original administrative approval. No action of the Zoning Administrator to approve a revised site diagram, administrative site plan, or to impose additional conditions and standards, shall take effect without the written consent of the applicant.

D. Termination, Suspension, or Amendment of Quasi-Judicial Approval

Upon discovery of an alleged violation, the Director of Planning may issue a stop work order.

The Director of Planning shall investigate alleged violations and recommend in writing to the original approving authority whether or not to revoke, suspend, approve a revised legislative or quasi-judicial approval, or confirm that development is proceeding in conformance with the original approval. The process to consider termination, suspension, or amendment shall follow the original approval process, including public hearings, recommendations, or decisions of the Planning Commission or Township Board, as applicable.

Notice of a public hearing shall be provided pursuant to Section 406 and shall advise of the Director of Planning's recommendation as well as the date and location of the hearing before the Planning Commission or Township Board, as applicable.

Following completion of the hearing, the Planning Commission, or Township Board, shall make a decision to revoke the development approval, require the submittal of an amendment addressing the deficiencies, or confirm the original approval. Such decision shall be included in a development order which contains findings that address the basis for the decision. The development order shall state the nature of any violation and the harm such violation has caused. In the case of a suspension of the use, the development order shall state the length of time within which such violation can be cured. In the case of a termination, the development order shall state the reason such violation cannot be cured.

No action of the approving authority to approve a project amendment, or to impose additional conditions and standards, shall take effect without the written consent of the applicant.

E. Appeals

An aggrieved party may appeal the agency's decision to a court of competent jurisdiction. The appeal shall be presented within the period of time authorized by state statute.

DIVISION 2: CONCEPTUAL REVIEWS

PURPOSE

The intent of the conceptual review process is to provide an opportunity for an informal dialogue between an applicant and the Planning Commission to discuss a potential development project.

SECTION 410 CONCEPTUAL REVIEWS BY PLANNING COMMISSION

A. Generally

At the request of the applicant, the Planning Commission shall conduct a conceptual plan review to identify potential issues and concerns that should be addressed prior to formal review of any application requiring Planning Commission review and approval. Conceptual plan review shall not constitute an approval of the application, nor shall statements by the Planning Commission, Township Staff and/or Township consultants be construed as a position regarding the merits of the application.

B. Design Considerations and Public Input Encouraged

Prior to any conceptual review by the Planning Commission, the applicant is strongly encouraged to review and incorporate the design elements of the New Designs for Growth Development Guidebook. The applicant is also strongly encouraged to host an open meeting with property owners in the vicinity to introduce the project and identify potential issues and concerns of the vested stakeholders of the community. At the discretion of the applicant, the conceptual review before the Planning Commission may take place following public notice of the meeting. Opportunity for public comment shall be provided during the conceptual review process when public notice has been provided.

C. Adequate Information and Materials

The benefits of a conceptual review process are likely to be enhanced through the provision of sufficient information to enable the Planning Commission to reasonably understand a proposed project and the issues being presented for discussion. In order to appear before the Planning Commission for a conceptual review, an applicant shall therefore submit adequate information and materials that describe the potential development project and outline the concepts that are intended to be discussed by the Planning Commission. Sketch plans drawn to a reasonable scale are encouraged. In providing written and/or sketch plan information to the Planning Commission for the purposes of a conceptual review, submittal of the following information, when known, is encouraged:

(1) The boundaries of the development site;
(2) The total number of acres in the project;
(3) The number of acres to be developed by each type of use;
(4) The number of residential units;
(5) The number and/or square feet and type of nonresidential uses;
(6) A description of the proposal in terms of its relationship and intended connections to surrounding land uses, development projects, public lands, and existing and future street networks;
(7) The general topography of the site and its relationship to adjoining land;
(8) A general description of the natural resources and natural features of the site and, where known, an indication of which will be preserved and which will be removed;
(9) The number of acres to be preserved as open or recreational space, and its general location;

(10) Variations from ordinance regulations that are being sought and the reasons to support the requested changes; and
(11) The public facilities intended to serve the planned unit development, such as sewage disposal, water supply, storm water systems, etc.

DIVISION 3: QUASI-JUDICIAL AND LEGISLATIVE APPROVALS

PURPOSE

The purpose of this division is to establish legal authority and procedures for hearings which are subject to public discourse.

SECTION 411 QUASI-JUDICIAL PUBLIC HEARINGS

A. Generally

This section applies to any application for a planned development approval, special use permit, variance, appeal, or any other action pursuant to this ordinance that is considered quasi-judicial under state law. In making quasi-judicial decisions, decision makers must investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land-use policies to individual properties as opposed to the creation of policy.

These decisions involve two key elements:

(1) The finding of facts regarding the specific proposal; and

(2) The exercise of discretion in applying the standards of the ordinance.

B. Conduct of Hearing

Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative. At any point, members of the body conducting the hearing may ask questions of the applicant, staff, public, or of any witness, through questions submitted to the chairperson of the body who will direct the questions to the appropriate person.

SECTION 412 LEGISLATIVE HEARINGS

A. Generally

Purpose: The purpose of a legislative hearing is to provide the public with an opportunity to be heard consistent with procedures provided by statute. Unlike quasi-judicial hearings, a legislative proceeding does not require written findings of fact. Similar to quasi-judicial hearings, legislative hearings are public hearings preceded by notice to interested parties. Public hearings are required for legislative review hearings, such as amendments to a master plan, or amendments to this ordinance (including zoning provisions of this ordinance and the zoning map).

B. Conduct of Hearing

Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative. The Planning Commission or Township Board may establish a time limit for testimony and may limit testimony where it is repetitive. Each hearing or appellate body may adopt administrative regulations and procedures governing the practice of that agency.

C. Record of Proceedings

The body conducting the hearing shall record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with state law.

D. Appeals

Unless otherwise provided by the provisions of this ordinance or state statute, no appeals of a decision by the Planning Commission or Township Board shall be taken to the Zoning Board of Appeals.

DIVISION 4: ADMINISTRATIVE DEVELOPMENT APPROVALS

PURPOSE

This Division establishes procedures for administration of the Zoning Ordinance.

SECTION 414 DEVELOPMENT APPROVAL

No land shall be disturbed and no building or structure shall be erected, added to, or structurally altered within the zoning jurisdiction until a development approval has been issued by the Zoning Administrator. All development approvals shall comply with the requirements of this ordinance. No grading approval, land use permit, building permit, or certificate of occupancy shall be issued for any building or structure or for any land disturbance where said construction, addition, alteration, or use violates any provision of this ordinance.

SECTION 415 GRADING AND LAND DISTURBANCE

A. Grading Development Approval

Separate grading development approval is required for disturbances of land that require the removal of soil prior to the issuance of any development approval. Such approval may be issued by the Zoning Administrator in the form of a grading permit and shall document the conditions under which the permit is issued, including the duration of the permit; which may be required in the event that development approval is not obtained and construction does not proceed.

(1) An engineered site plan shall be required, indicating the contour of the land, areas of disturbance, their location to surrounding uses, natural features, and any remediation activities.

(2) The extension of a permit shall be denied or a permit may be revoked should violations of the permit exist, including stock piling of materials, lack of continuation towards an approval or completion, failure to receive required permits, or disturbances of land exceeding that permitted.

(3) A performance guarantee per § 405 shall be provided to the Township prior to the issuance of the permit.

B. Land Disturbance Activity

Quarries, sand or gravel excavation, and substantial land alteration activities require a development approval pursuant to Article 7 of this Ordinance.

SECTION 416 LAND USE PERMITS

Purpose: The purpose of this section is to prescribe procedures for development approvals that do not require quasi-judicial, legislative notice, or a public hearing. A public hearing is not required for development approvals set forth in this section for one or more of the following reasons:

- If required, public hearings have already been conducted relating to the development approval application and the development approval application procedure is designed to ensure that the proposed use complies with a previously approved subdivision plat, condominium, site plan, specific plan, special use permit, or conditional rezoning (e.g., certificate of occupancy);
- The proposed use is permitted as of right, or with special conditions in the applicable zoning district (e.g., development approval or certificate of occupancy); or
- The proposed use is subject to expedited review in order to avoid an unconstitutional prior restraint on speech (e.g., sexually oriented businesses or signs) or because of federal law (e.g., telecommunications development approval).

A. Required

A land use permit shall be required for any of the following:

(1) To erect or move a structure having one hundred (100) or more square feet of floor area;
(2) To expand an existing structure or increase the height of an existing structure;
(3) To establish a new use or change in use for any premises or land in any zoning district;
(4) To establish a temporary use as allowed by this ordinance;
(5) To move, replace, erect, a sign or change a sign face or convert a sign face to an electronic sign in accordance with § 630 Signs;
(6) To grade land in accordance with § 415 Grading and Land Disturbance; or
(7) To move, replace, or erect exterior lighting fixtures to ensure compliance with § 517

B. Initiation

(1) The applicant shall file a complete application for a land use permit with the Zoning Administrator. If site plan review is required in accordance with this ordinance, the approved site plan shall be submitted with the application. An application is available from the Zoning Department. If the proposed development or development activity is subject to site plan review, the application shall also include the information required by Article 5 of this Ordinance.
(2) Applications shall require permits or approvals from applicable permitting agencies including the County Health Department, the County Road Commission, the County Soil Erosion Office, the Michigan Department of Natural Resources and/or Department of Environmental Quality or other regulatory agencies before an application is considered complete under § 416.C Completeness Review.

C. Completeness Review

(1) The Zoning Administrator shall review an application for completeness within ten (10) working days.
(2) The procedure of step (1) above shall be repeated until a complete application is received, provided that additional review fees may be required for a third or any subsequent completeness review.

D. Decision

The Zoning Administrator shall review the completed application for conformance with this ordinance. Within fifteen (15) working days of receipt of a complete application, the Zoning Administrator shall approve, approve with conditions, or deny the application for a land use permit. Applications that are denied shall have the reasons for denial, in writing, attached to the application. If the Zoning Administrator fails to render a decision relating to the application within this time period, the application shall be deemed approved. The applicant and the Zoning Administrator may agree in writing to extend the response time contained in this section.

E. Approval Criteria

(1) The land use permit shall be issued by the Zoning Administrator only if the application complies with all applicable provisions of this ordinance and any approved special use permit, rezoning or conditional rezoning, site plan or other development approval.
(2) Any financial guarantee required under § 405 Performance Guarantee shall be deposited with the Township prior to the issuance of the land use permit.

F. Amendments

Any revision to an application for a land use permit shall be processed in the same manner as the original application.

G. Scope of Approval

The land use permit shall be valid for a period of one (1) year unless the construction or use authorized by the land use permit has commenced.

H. Recording Procedures

The original signed application for a land use permit, diagrams, site plans, agency reviews and a copy of the approved land use permit shall be maintained in the files of the Zoning Department. The original signed copy of the approved land use permit shall be provided to the applicant.

SECTION 417 CERTIFICATE OF OCCUPANCY

All uses, including nonconforming uses, shall obtain a certificate of occupancy from the Garfield Township Building Department when a certificate is required by the State Construction Code. The Building Department shall enforce the applicable provisions of this ordinance and any permit or site plan authorized under this ordinance. All of the requirements and conditions contained in any development approvals applicable to the property, including zoning, site plan, and other Township approval, that have not been met at the time of the issuance of the development approval, shall be required to have been met before the issuance of any certificate of occupancy.

SECTION 418 TEMPORARY CERTIFICATE OF OCCUPANCY

A. Generally

If an applicant is prevented from completing, and having accepted, all requirements and conditions contained in a development approval applicable to a property, due to seasonal weather limitations or other cause beyond the applicant's reasonable control, a temporary certificate of occupancy may be issued by the Building Inspector. Such temporary certificate of occupancy may require a letter of credit or other financial guarantee, acceptable to the Township, in an amount sufficient to cover the costs of completion of all required improvements. The applicant shall also grant the Township, the Township's agent or contractor, a right of entry onto the property for the purpose of completing the improvements if the applicant has not completed, or caused to be completed, the improvements by such date as shall be established by the Building Inspector.

B. Prohibited

A temporary certificate of occupancy shall not be issued if completion of the required improvements is necessary to ensure the safety or health of persons, or the safety and security of property, as determined by the state construction code, local fire department, local sheriff's department, health department, Zoning Administrator, or other appropriate state, county or local agency.

DIVISION 5: ZONING PROCEDURES

PURPOSE

This Division establishes legal authority and procedures for all zoning text or map amendments considerations.

SECTION 421 ZONING ORDINANCE AMENDMENTS

This section provides uniform procedures for amendments to this ordinance or to the official zoning map.

A. Applicability

The provisions of this section apply to any application to:

(1) Revise or add to the text of this ordinance; or
(2) Reclassify a tract, parcel, or land area from one zoning district to another.

B. Initiation

(1) All petitions, applications, recommendations, or proposals for changes in the zoning district classification of property or for changes in the text of this ordinance shall be filed with the Planning Department.
(2) Text amendments may be proposed by any person.
(3) A proposed rezoning may be initiated by:
    (a) The Township Board or Planning Commission; or
    (b) An application properly signed and filed by the owner or, with the owner's specific written consent, a contract purchaser or owner's agent of a property included within the boundaries of a proposed rezoning, unless otherwise provided by this ordinance.

C. Completeness Review

The Planning Department shall conduct a completeness review as set forth in § 403 Completeness Review.

D. Decision

Upon determination by the Director of Planning that the application is complete and required fees have been paid, the application shall be deemed complete and referred to the Planning Commission for its review and recommendation.

(1) Planning Commission

The Planning Commission shall hold at least one (1) public hearing on such application, and as a result thereof shall transmit its final report to the Township Board.

(2) County Planning Commission

The proposed zoning ordinance amendment shall be submitted to the County Planning Commission for review and recommendation. The amendment shall not be approved by the Township Board prior to receipt of the County Planning Commission recommendation, or the passing of thirty (30) days from the date the proposed ordinance amendment is received by the County, whichever is sooner.

(3) Township Board

After receipt of the final report of the Planning Commission and following a public hearing, the Township Board shall approve or deny the map or text amendment.

(4) Type of Hearing

The public hearings before the Planning Commission and Township Board shall be conducted as legislative hearings and comply with MCL 125.3103, as amended.

E. Approval Criteria of Zoning Map Amendment

In its review of an application for rezoning, the Township should consider, but is not necessarily limited to, the criteria as defined in § 421.E.1 Master Plan Consistency through § 421.E.8 Other Factors. No single factor is controlling; instead, each must be weighed in relation to the other standards.

The applicant shall have the burden of justifying the amendment, including identifying specific reasons warranting the amendment, and providing any supporting data and information.

(1) Master Plan Consistency

Rezoning should be consistent with the intent and purpose of the adopted master plan.

(2) Adverse Impacts on Neighboring Lands

The Township shall consider the nature and degree of an adverse impact upon neighboring lands. Lots shall not be rezoned in a way that is substantially inconsistent with the uses of the surrounding area, whether more or less restrictive. The Township finds and determines that vast acreages of single-use zoning produces uniformity with adverse consequences, such as traffic congestion, air pollution, and social separation. Accordingly, rezoning may promote mixed uses subject to a high degree of design control.

(3) Suitability as Presently Zoned

The Township shall consider the suitability or unsuitability of the tract for its use as presently zoned. This factor, like the others, must often be weighed in relation to the other standards, and instances can exist in which suitably zoned lands may be rezoned upon proof of a real public need, substantially changed conditions in the neighborhood, or to effectuate important goals, objectives, policies, and strategies of the master plan, specification, or this ordinance.

(4) Changed Conditions

The Township shall consider whether any conditions have changed, since the zoning ordinance was adopted, that might justify the amendment.

(5) Health, Safety, and Welfare

The ordinance amendment must bear a substantial relationship to the public health, safety, or general welfare, or must protect and preserve historical and cultural places and areas. The rezoning ordinance may be justified, however, if a substantial public need or purpose exists.

(6) Public Policy

Certain public policies in favor of the rezoning may be considered. Examples include a need for affordable housing, economic development, mixed-use development, or sustainable environmental features, which are consistent with neighborhood, area, or specific plans.

(7) Size of Tract

The Township shall consider the size, shape, and characteristics of the tract in relation to the affected neighboring lands. Ordinance amendments shall generally not rezone a single lot when there have been no intervening changes or other saving characteristics. Proof that a small tract is unsuitable for use as zoned, or that there have been substantial changes in the immediate area, may justify an ordinance amendment.

(8) Other Factors

The Township may consider any other factors relevant to a rezoning application under state law.

F. Approval Criteria of Zoning Text Amendment

In its review of an application for zoning text amendment, the Township should consider, but is not necessarily limited to, the criteria as defined in § 421.F.(1) Master Plan Consistency through § 421.F.(5) Other Factors. No single factor is controlling; instead, each must be weighed in relation to the other standards.

The applicant shall have the burden of justifying the amendment, including identifying specific reasons warranting the amendment, and providing any supporting data and information.

(1) Master Plan Consistency

A text amendment should be consistent with the intent and purpose of the adopted master plan.

(2) Changed Conditions

The Township shall consider whether any conditions have changed since the zoning ordinance was adopted that might justify the amendment.

(3) Health, Safety, and Welfare

The ordinance amendment must bear a substantial relationship to the public health, safety, or general welfare, or must protect and preserve historical and cultural places and areas.

(4) Public Policy

Certain public policies in favor of the rezoning may be considered. Examples include a need for affordable housing, economic development, mixed-use development, or sustainable environmental features, which are consistent with neighborhood, area, or specific plans.

(5) Other Factors

The Township may consider any other factors relevant to a zoning text amendment application under state law.

G. Resubmittal of Application

(1) Applicability

The provisions of this subsection do not apply to any application for a text amendment that is initiated by the Township.

(2) Withdrawal After Planning Commission Hearing

No application for amendment shall be resubmitted if, during the previous one (1) year, the application was received or filed and withdrawn after a public hearing occurred on the amendment before the Planning Commission. However, if the applicant substantiates that there is new, relevant, and substantial evidence, which could not have been secured at the time of the original hearing, the Planning Commission may hear and consider the application.

(3) Denial of Amendment

No application for an amendment shall be resubmitted within one (1) year after the Township has denied an application for rezoning of the same property.

H. Scope of Approval

An amendment to this ordinance does not authorize the development of land. An amendment authorizes the applicant to apply for development approval consistent with the terms of the zoning district applicable to the property and all other standards and requirements of this ordinance.

I. Subsequent Zoning Amendments

Any subsequent amendment request requires a new application and shall be processed as set forth in Section 421.A. Applicability through Section 421.G. Resubmittal of Applications.

SECTION 422 CONDITIONAL REZONING

Purpose: The conditional rezoning procedure is designed to recognize that there are certain instances where it would be in the best interests of the Township, as well as advantageous to property owners seeking a change in zoning, if certain conditions could be proposed by property owners as part of a request for a rezoning. This section provides a process consistent with the provisions of the Michigan Zoning Enabling Act by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

A. Applicability

This section applies to any application for reclassification of a tract, parcel, or land area to a conditional rezoning district. A conditional rezoning district may also be applied as an overlay zoning district to any base zoning district.

B. Initiation

(1) Generally

An owner of land may voluntarily offer, in writing, conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.

(2) Application

A proceeding for approval of a conditional rezoning shall be initiated by filing an application with the Planning Department. The application shall be signed and filed by the owner or, with the owner's specific written consent, a contract purchaser or owner's agent of a property included within the boundaries of a proposed conditional rezoning.

(3) Offer of Conditions

(a) The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.

(b) The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.

(c) Any use or development, proposed as part of an offer of conditions that would require a special land use permit under the terms of this ordinance, may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this ordinance.

(d) Any use or development, proposed as part of an offer of conditions that would require a variance under the terms of this ordinance, may only be commenced if a variance for such development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this ordinance.

(e) Any use or development, proposed as part of an offer of conditions that would require site plan approval under the terms of this ordinance, may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this ordinance.

(f) The offer of conditions may be amended during the process of rezoning consideration, provided that any amended or additional conditions are entered voluntarily by the owner.

An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the Township Board provided that, if such withdrawal materially alters the intent and effect of the application, the Township Board shall refer the application back to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.

C. Completeness Review

The Planning Department shall conduct a completeness review as set forth in § 403 Completeness Review.

D. Decision

The procedure for approving a conditional rezoning is the same as is required for a rezoning and as further provided in this section.

(1) Statement of Conditions

If the Township Board approves the conditional rezoning request and offer of conditions, the offered conditions shall be incorporated into a formal written Statement of Conditions. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the Township Board to accomplish the requested rezoning.

The Statement of Conditions shall:

(a) Be in a form recordable with the Grand Traverse County Register of Deeds or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Township;

(b) Contain a legal description of the land to which it pertains;

(c) Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land;

(d) Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined;

(e) Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the Township with the Register of Deeds; and

(f) Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.

(2) Recording

(1) The applicant shall record promptly the Statement of Conditions, Affidavit or Memorandum with the Grand Traverse County Register of Deeds in the chain of title for each parcel or portion thereof to which the conditional rezoning and Statement of Conditions pertains. A copy of each recorded document shall be filed with the Township within ninety (90) days of final approval by the Township or approval shall be considered expired. No land use

permits shall be issued until all required recorded documents have been provided to the Township.

(2) The Township Board shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the Township or to any subsequent owner of the land.

E. Approval Criteria

Notwithstanding any provisions of this article to the contrary, a conditional zoning district may be permitted as provided in this section so long as the criteria of § 421.E, Approval Criteria of Zoning Map Amendment, are met.

F. Resubmittal of Applications

Any resubmittal of an application for conditional rezoning shall be governed by the standards of § 421.G. Resubmittal of Applications.

G. Subsequent Zoning Amendments

(1) Generally

Any subsequent conditional rezoning requires a new application and shall be processed as set forth in Section 422.A. Applicability through Section 422.G. Resubmittal of Applications.

(2) Amendment of Statement of Conditions

Any subsequent application to amend the Statement of Conditions shall be processed in the same manner as set forth in Section 422.A. Applicability through Section 422.G. Resubmittal of Applications.

(3) Rezoning

When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. The Township shall record with the Register of Deeds a notice that the Statement of Conditions is no longer in effect.

H. Scope of Approval

(1) Generally

Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

(2) Compliance with Conditions

(a) No permit or approval shall be granted under this ordinance for any use or development that is contrary to an applicable Statement of Conditions.

(b) Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and may result in initiation of a rezoning of the property to its base zoning classification and judicial and/or administrative action by the Township.

(3) Variances Prohibited

A variance shall not be granted to any condition imposed by the Township Board.

(4) Time Period

A conditional rezoning classification shall run with the land until such time that the zoning is changed.

(5) Base Zoning District Regulations Apply

A conditional zoning classification does not permit the applicant to use the subject property for uses other than those requested in the application for a conditional zoning classification. The granting of a conditional zoning classification does not waive the regulations of the underlying zoning district.

I. Township Right to Rezone

Nothing in the Statement of Conditions or in the provisions of this section shall be deemed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification.

J. Failure to Offer Conditions

The Township shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this ordinance.

SECTION 423 SPECIAL USE PERMITS

Purpose: This section provides for certain uses that, because of unique characteristics or potential impacts on adjacent land uses, are not permitted in zoning districts as a matter of right but which may, under appropriate standards and factors set forth in this ordinance, be approved. These uses shall be permitted through the issuance of a special use permit within a site plan adopted by the Planning Commission after ensuring that the use can be appropriately accommodated on the specific property; that it will conform to the master plan; that it can be constructed and operated in a manner that is compatible with the surrounding land uses and overall character of the community; and that the public interest, health, safety, and general welfare will be promoted.

No inherent right exists to receive a special use permit. Such authorization must be approved under a set of circumstances and conditions. Each application and situation is unique. Every special use permit application or amendment shall, at a minimum, be required to comply with every requirement contained in each article of this ordinance. Mere compliance with the generally applicable requirements, however, may not be sufficient and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

A. Applicability

The provisions of this section apply to any application for approval of a special use permit. Special uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but that require individual review of their location, design, and configuration, and the imposition of conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses that are cited as special uses in a zoning district, as set forth in the zoning regulations, shall be authorized by the Planning Commission. A special use permit is not required for a use permitted by right in a given zoning district.

B. Initiation

An owner of real property, or that owner's authorized representative, may apply for a special use permit for that property by filing an application with the Director of Planning. The application shall include the material required in Article 9, Specifications for Documents to Be Submitted, of this ordinance.

C. Completeness Review

The Planning Department shall review the application for the special use permit for completeness in accordance with § 403 Completeness Review. When the Director of Planning has certified that the application is substantially complete, it shall be deemed received and shall be referred to the Planning Commission for its review and decision.

D. Approval

The Planning Commission, after public notice in accordance with applicable state laws, shall hold at least one (1) public hearing on the application. The Planning Commission shall approve, approve with conditions or deny the application. If approved or approved with conditions, the decision of the Planning Commission shall be incorporated into a written report and decision order.

(1) Type of Hearing

The public hearing before the Planning Commission shall be conducted as a quasi-judicial hearing.

(2) Conditions

In approving any special use permit, the Planning Commission may impose such reasonable standards, conditions, or requirements, in addition to or that supersede any standard specified in this ordinance, as it may deem necessary to protect the public interest and welfare. Such additional standards may include, but need not be limited to:

(a) Financing;
(b) Availability of adequate public facilities or services;
(c) Dedication of land;
(d) Reservation of land;
(e) Creation of special assessment districts;
(f) Creation of restrictive covenants or easements;
(g) Special setbacks;
(h) Yard requirements;
(i) Increased screening or landscaping requirements;
(j) Area requirements;
(k) Development phasing; or
(l) Standards pertaining to traffic, circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, and similar characteristics.

E. Approval Criteria

A special use is permitted only if the applicant demonstrates that:

(1) The proposed use will be consistent with the purpose and intent of the master plan and this ordinance, including all regulations of the applicable zoning district;
(2) The proposed use will be designed, constructed, operated and maintained so as to be compatible, harmonious and appropriate with the existing or planned character and uses of the neighborhood, adjacent properties and the natural environment;
(3) The proposed use will not be detrimental, hazardous or disturbing to existing or future adjacent uses or to the public welfare by reason of excessive traffic, noise, dust, gas, smoke, vibration, odor, glare, visual clutter, electrical or electromagnetic interference;
(4) Potential adverse effects arising from the proposed use on the neighborhood and adjacent properties will be minimized through the provision of adequate parking, the placement of buildings, structures and entrances, as well as the provision and location of screening, fencing, landscaping, buffers or setbacks;
(5) The proposed use will retain as many natural features of the property as practicable, particularly where the natural features assist in preserving the general character of the neighborhood;
(6) Adequate public and private infrastructure and services such as streets, water and sewage facilities, drainage structures, police and fire protection, and schools, already exist or will be provided without excessive additional requirements at public cost;
(7) The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
(8) The public interest and welfare supporting the proposed use shall be sufficient to outweigh individual interests that are adversely affected by the establishment of the proposed use;
(9) Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads;

(10) Adequate measures shall be taken to provide vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks servicing the site in a safe and convenient manner; and

(11) The proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

F. Subsequent Applications

An application for a special use permit may be withdrawn at any time. If the application has been advertised in compliance with state law, an application requesting substantially the same use on all or part of the same described land shall not be reconsidered within one year of withdrawal. No application for a special use permit for any lot or parcel that requests the same use and same conditions shall be considered within one year of a final decision denying the application.

G. Amendments

(1) General

(a) An amendment is a request for any enlargement, expansion, increase in intensity, relocation, or modification of any condition of a previously approved and currently valid special use permit. Amendments shall be classified as an Administrative Amendment, a Minor Amendment or a Major Amendment and shall be processed in accordance with § 423.G.(4) Administrative Amendments, § 423.G.(5) Minor Amendments, or § 423.G.(6) Major Amendments.

(b) No amendment shall be processed if there is a violation of a previously approved and currently valid special use permit affecting the property, unless the requested amendment includes, as a primary or incidental purpose, the correction of such violation.

(2) Initiation

An owner of real property, or that owner's authorized representative, may apply for an amendment to previously approved and currently valid special use permit applying to that property by filing an application with the Planning Department.

(3) Completeness Review

The Planning Department shall review the application for the amendment for completeness in accordance with § 403 Completeness Review. When the Director of Planning has certified that the application is complete, it shall be deemed received.

(4) Administrative Amendments

(a) The Director of Planning may authorize the following amendments to an approved site development plan:

(i) Shifts in on-site location and changes in size, shape, or configuration of less than 15 percent, or a 15 percent or less change in either impervious surface or floor area over what was originally approved.

(ii) An increase in total building height of less than five (5) feet, provided that maximum height regulations of the underlying zoning district are met.

(iii) Minor adjustment of the location of utilities and walkways, provided however that no sidewalks or paths required by the approval authority may be eliminated.

(iv) The substitution of landscape material provided the substituted materials are of a similar nature and quality and will comply with the standards of § 530, Landscape Materials of Article 5, Development Standards, of this ordinance.

(v) Minor revisions to an internal street circulation pattern not increasing the number of lots or lowering the connectivity ratio.

(vi) Minor realignment of ingress and egress locations if required by the Grand Traverse County Road Commission or Michigan Department of Transportation.

(vii) A reduction in the number of proposed lots or the combination of units.

(b) Prior to approving an amendment under Sections 423.G(4)(a) the Director shall determine that the amendment meets the following criteria:

(i) No previous amendments have been granted that, together with the proposed amendment, would exceed the standards of this section;

(ii) There will be no detrimental impact on any adjacent property caused by significant change in the appearance or use of the property or any other contributing factor;

(iii) Nothing in the currently valid special use permit precludes or otherwise limits such expansion or enlargement;

(iv) The proposal conforms to this ordinance and is in keeping with the spirit and intent of the master plan; and

(v) The amendment proposes no increase in density.

(5) Minor Amendments

Following a determination that the review criteria of § 423.G(4)(b), above, are met, the Planning Commission may authorize the following amendments to an approved development plan without a public hearing:

(a) Changes to the timing or phasing of the proposed development, provided that the use and overall geographic land area remains the same and that required public improvements are not delayed.

(b) Increases in total building height of greater than five (5) feet provided that maximum height regulations are complied with.

(c) Any other proposed amendment which is determined by the Planning Commission to have no detrimental impact on any adjacent property and is not considered or classified a Major Amendment under § 423(6) Major Amendments.

(6) Major Amendments

Any proposed amendment other than those provided for in § 423.G.(4) Administrative Amendments and § 4.23.G.(5) Minor Amendments are considered a major amendment and shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original special use permit approval.

For the purposes of this section, "major amendments" include but are not necessarily limited to changes that:

(a) Increase the number of dwelling units, floor area, height, impervious surface development, or any additional land-use disturbance other than as provided for in subsections (4) or (5), above;

(b) Introduce different land uses than that requested in the application;

(c) Request larger land area than indicated in the original application;

(d) Request greater relief than that requested in the application;

(e) Allow any decrease in buffer or transition areas, reduction in landscaping, reduction of required yards, or any change in the design characteristics or materials used in construction of the structures;

(f) Reduce or eliminate conditions attached to a legislative or quasi-judicial development order; or
(g) Reduce or eliminate pedestrian circulation.

(7) Condominium Developments

Amendments to a development site which has been subdivided according to the Condominium Act (Act 59 of 1978, as amended) shall also be subject to the amendment procedure of § 429 L, Condominium Amendments.

H. Nonconforming Uses

For an existing and currently valid special use that is no longer allowed as a special use in the zoning district in which it is located, the Planning Commission, upon receipt of an application, may review and approve an amendment to said development approval, provided that such amendment does not allow the use to be enlarged, expanded, increased in intensity, relocated, or continued beyond any limitation specified in the existing special use development approval or established in Article 8, Nonconformity, of this ordinance.

I. Scope of Approval

(1) Generally

Once a special use permit is granted, such use may be enlarged, extended, increased in intensity, or relocated only in accordance with this section unless the Planning Commission, in approving the initial special use permit, has specifically established alternative procedures for consideration of future expansion or enlargement. The provisions of Article 8, Nonconformity, of this ordinance, relative to expansion of nonconforming uses, do not supersede this requirement unless the use for which the development approval was initially granted is no longer a use permitted as of right or as a special use in the zoning district in which it is located.

(2) Required Compliance

Development activities subject to this section shall conform to the approved special use permit, any approved plans referenced by the special use permit, and any conditions or restrictions imposed thereon. Any deviation from the approved special use permit or plans, unless approved in advance and in writing by the Director of Planning in the case of an administrative site plan or the Planning Commission in the case of a minor or major amendment, is deemed a violation of this ordinance.

J. Period of Effect

The special use permit and any amendment to it shall remain in effect unless:

(1) The special use permit order or amendment has not been recorded in accordance with § 423.L. Recording Procedures;
(2) Substantial construction has not commenced within two (2) years of final approval by the township or an extension of time granted by the Planning Commission pursuant to § 423.K. Expiration of Approval; or
(3) The special use permit order has been revoked by the Planning Commission pursuant to § 423.M.

K. Expiration of Approval

If substantial construction or, if the special use permit involves no construction, the permitted use has not commenced and proceeded meaningfully toward completion within two (2) years from the date the special use permit order was executed, the special use permit shall expire automatically. Prior to expiring, the applicant may submit a written request for an extension of the special use permit. If the Planning Commission finds that there is sufficient evidence that the applicant will in fact commence construction and proceed meaningfully toward completion, the special use permit may be extended for one (1) additional year provided the following conditions are met:

(1) The applicant is able to demonstrate that construction or establishment of the use has been delayed by factors that are beyond their control and that construction or use will commence and continue meaningfully toward completion within the one (1) year extension;

(2) There have been no significant changes in the character of the surrounding area that were not known or anticipated at the time of approval;

(3) There have been no development approvals granted in the surrounding area that would be in conflict with the approved special use permit; and

(4) There have been no changes to the master plan or this ordinance that would conflict with the approved special use permit.

L. Recording Procedures

(1) The applicant shall record promptly the special use permit order with the Grand Traverse County Register of Deeds in the chain of title for each parcel or portion thereof to which the order pertains. Alternatively, a memorandum of special use permit may be prepared by the township in such recordable form as deemed appropriate and shall then be recorded promptly by the applicant with the Grand Traverse County Register of Deeds. A copy of each recorded document shall be filed with the Director of Planning within thirty (30) days of final approval by the township or approval shall be considered expired. No land use permits shall be issued until a copy of all required recorded documents has been provided to the township.

(2) The Director of Planning shall have authority to waive this requirement if it is determined that, given the nature of the special use permit and the conditions imposed, the recording of such a document would be of no material benefit to the township or to any subsequent owner of the land.

M. Revocation

Pursuant to § 408 the Township shall have the authority to revoke any special use permit after it has been proved that the holder of the permit has failed to comply with any of the applicable requirements in this Article of the zoning ordinance. After revocation notice has been given, the use for which the permit was granted must cease within sixty (60) days.

SECTION 424 SITE PLANS

Purpose: Site diagrams and plans are intended to ensure the orderly integration of development with adjacent sites and uses, minimize impacts on adjacent parcels, ensure the continued safety and function of the street system and minimize impacts on sensitive environmental features. In this context, site diagrams and plans will be used to determine if the proposed development is in compliance with current statutes, ordinances, regulations, the Township's master plan, this ordinance, specific or neighborhood plans, and other applicable requirements.

A. Applicability

The submission of a site diagram, an administrative site plan or a site development plan is mandatory for any use requiring a land use permit, a special use permit, a grading and land disturbance permit, any other permit required by this ordinance, or for any amendment thereto, unless specifically exempted from this requirement by the standards of this ordinance.

(1) Site Diagram

A site diagram is required for:

(a) Any use not requiring an administrative site plan or a site plan by this Section;
(b) A grading and land disturbance as regulated by this Ordinance;
(c) Single or two-family residential dwelling units and accessory structures permitted by right by this Ordinance.

(2) Administrative Site Plan

An administrative site plan is required for:

(a) Three or more residential dwelling units permitted by right by this Ordinance;
(b) Any non-residential use or building permitted by right by this Ordinance.

(3) Site Development Plan

A site development plan is required for:

(a) Any land use or building requiring a special use permit under § 423.
(b) Any development submitted under § 425 through § 430, inclusive.
(c) Any land use that will generate (upon build out) 500 or more vehicle trips per day, as determined by reference to the latest edition of the Trip Generation Manual promulgated by the Institute of Transportation Engineers.

B. Approval Authority

(1) Site Diagram

(a) The Zoning Administrator shall be the approval authority for a site diagram.
(b) At the discretion of the Zoning Administrator, any site diagram may be referred to the Director of Planning for review and determination, in which case the Director of Planning shall be the approval authority for that site diagram.

(2) Administrative Site Plan

(a) The Director of Planning, or his shall be the approval authority for an administrative site plan.
(b) At the discretion of the Director of Planning, any administrative site plan may be referred to the Planning Commission for review and determination, in which case the Planning Commission shall be the approval authority for that administrative site plan.

(3) Site Development Plan

The Planning Commission shall be the approval authority for a site development plan required under § 423, § 427, or § 428 (Special Use Permits, Planned Unit Residential Developments, or Open Space Preservation Option). The Planning Commission shall be the recommending body and the Township Board shall be the approval authority for a site development plan required under § 426 or § 429 (Planned Unit Developments or Condominium Developments).

C. Data Requirements

(1) Applications for approval under this subsection shall include the information and data specified in Article 9, Specifications for Documents to Be Submitted.

(2) In addition to the requirements set forth in Article 9 the approval authority may require additional information if it is deemed to be necessary.

D. Waivers

The Director of Planning may waive a particular element of information or data otherwise required for a site diagram, administrative site plan, or site development plan upon a finding that the information or data is not necessary to determine compliance with this ordinance or that such information or data would not bear on the decision of the approval authority.

E. Review Procedures

(1) Submittal

An application for approval shall be made on the form provided by the Township. An application for site diagram approval shall be submitted to the Zoning Administrator. An application for administrative site plan or site development plan approval shall be submitted to the Director of Planning.

(2) Completeness Review

Completeness review shall be governed by this section and § 403, Completeness Review, to the extent consistent with this section. The Zoning Administrator shall determine within ten (10) working days after submittal indicating whether or not a site diagram is complete. The Director of Planning shall determine within ten (10) working days after submittal indicating whether or not an administrative site plan or a site development plan is complete. The applicant shall file a written response to any staff comments or resolve outstanding issues prior to final approval of a site diagram or an administrative site plan or the scheduling of a site development plan before the Planning Commission. This response shall occur within thirty (30) days of the mailing date of staff comments, unless a time extension is requested and granted in writing, or the application shall be considered to have been withdrawn by the applicant and shall be closed without further action by the Township. The maximum limit on an extension is six months from the original staff comment date. The appellate agency for purposes of completeness review (see § 403 Completeness Review) is the Planning Commission.

(3) Consultant Review

(a) In the course of reviewing a site diagram, administrative site plan, or a site development plan application, the Township may determine that outside consulting services such as, but not limited to, legal, planning, engineering, traffic and environmental services, are required. Such determination shall be made by the Zoning Administrator, Director of Planning or the Planning Commission at the earliest possible time based upon available

information. The revelation of information during the review process shall not preclude the approval authority from halting proceedings at any time and requiring that escrow funds, in an amount determined by the approval authority to be necessary to complete a full and proper review of an application, be deposited with the Township.

(b) The Township reserves the right to consult with such consultants of its choice. Funds to cover such costs shall be the responsibility of the applicant, in accordance with the escrow policies of the Township.

(c) The applicant shall deposit such escrow funds, as determined by the Township to be necessary, with the Township prior to the application being considered complete under § 424.E.(3), Completeness Review.

(4) Decision

The approval authority shall approve, deny or approve with conditions the site diagram, administrative site plan or site development plan, as applicable. The approval authority may impose conditions in conformance with § 424.G., Conditional Approvals. A site diagram, administrative site plan or site development plan shall be deemed approved only upon the signature of the appropriate person on the diagram or plan, as set forth in § 424.N, Site Plan Record and Signature.

F. Review Standards

(1) Standards for Approval – Site Plan or Site Development

An administrative site plan or site development plan shall conform to all provisions of this ordinance and to the following site development standards which shall be reflected on the plan:

(a) **Required Information**. All required information shall be provided.

(b) **Outside Agencies**. All applicable standards of outside agencies shall be met and all required permits and approvals from outside agencies shall be secured, or be made a condition of approval.

(c) **Essential Facilities and Services**. Adequate essential facilities and services, including highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools, shall be available.

(d) **Natural Features**. Sensitive natural features, or existing natural features that provide a buffer between adjoining properties, or assist in preserving the general appearance of the neighborhood, or help control soil erosion or stormwater, shall be preserved to the greatest extent possible.

(e) **Site Design**. All buildings and structures shall be designed, situated, constructed, operated and maintained so as to be harmonious, compatible, and appropriate in appearance, with the existing or intended character of the general vicinity. Site design shall minimize adverse effects upon owners and occupants of adjacent properties and the neighborhood.

(f) **Orientation**. Primary buildings or structures shall be oriented so that their main entrance faces the street upon which the lot fronts. If the development is on a corner lot, the main entrance may be oriented to either street or to the corner.

(g) **Vehicle and Pedestrian Systems**. The development, where possible, shall provide vehicular and pedestrian circulation systems which reflect and extend the pattern of streets, pedestrian and bicycle ways in the area. A proper relationship between existing and proposed roadways and parking areas shall be demonstrated, and the safety and convenience of pedestrian and vehicular traffic shall be assured. Travelways which

connect and serve adjacent development shall be designed appropriately to carry the projected traffic.

(h) **Shared Drives**. Where the opportunity exists, developments shall use shared drives. Unnecessary curb cuts shall not be permitted.

(i) **Impervious Surfaces.** The amount of impervious surface has been limited on the site to the extent practical.

(j) **Master Plan**. The proposal is not in conflict with the land use policies, goals and objectives of the Township Master Plan.

(2) Required Approval

No site diagram, administrative site plan or site development plan shall be approved unless it conforms to all applicable requirements of each article of this Ordinance.

G. Conditional Approvals

The approval authority may attach conditions to the approval of a site diagram, administrative site plan or site development plan when such conditions:

(1) Would ensure the provision of public services and facilities that are capable of accommodating the increased service and service facility capacities caused by the proposed land use or activity;

(2) Would protect the built and natural environment;

(3) Would ensure compatibility with adjacent uses of land; and

(4) Would ensure compliance with the standards and regulations of this ordinance.

H. Performance Guarantees

A performance guarantee may be required by the approval authority in conformance with § 405, Performance Guarantee.

I. Amendments

(1) Site Diagram and Administrative Site Plan Amendments

Amendments to a site diagram or an administrative site plan shall be approved in the same manner as the initial submittal.

(2) Site Development Plan (Quasi-Judicial Approval) Amendments

Requests to amend a site development plan which was required as part of a Quasi-Judicial development approval shall be subject to the applicable Quasi-Judicial amendment procedure. Refer to § 423 and § 425 - § 430, inclusive.

J. Subsequent Applications

If an administrative site plan or site development plan is denied, a new plan proposing the same development for the same property shall not be filed within twelve (12) months after a final decision.

K. Expiration of Approval

Site diagram, administrative site plan or site development plan approval shall remain valid unless:

(1) Substantial construction has not commenced and moved meaningfully toward completion within twelve (12) months from the date of approval;

(2) An extension of time has not been granted in writing by the approval authority on the basis that the owner or applicant maintains a good faith intention to proceed with construction;

(3) Approval has not been revoked in accordance with § 424.M.

L. Required Compliance

Development activities subject to this section shall conform to the approved site diagram, administrative site plan or site development plan and any conditions or restrictions imposed thereon. Any deviation from the approved plan, unless approved in advance and in writing by the Zoning Administrator in the case of a site diagram or the Director of Planning in the case of an administrative site plan or site development plan, is deemed a violation of this ordinance.

M. Revocation of Site Plan Approval

Pursuant to § 408 the Township shall have the authority to revoke any site plan approval after it has been proved that the holder of the permit has failed to comply with any of the applicable requirements in this Article of the Zoning Ordinance. After revocation notice has been given, the use for which the permit was granted must cease within sixty (60) days.

N. Site Plan Record and Signature

The approved site diagram, administrative site plan or site development plan shall be maintained in the permanent files of the Township. The signature of the Zoning Administrator shall be affixed to every approved site diagram. The signature of the Director of Planning shall be affixed to every approved administrative site plan and site development plan.

SECTION 425 PLANNED DEVELOPMENTS

Purpose: This section provides for planned developments to further the health, safety, and general welfare of Township residents by permitting the Township flexibility in the regulation of land development and encouraging innovation and variety in land use and design of projects.

Planned developments are not permitted by right, but may under appropriate standards and factors set forth in this section, be approved by the Township. Planned development approvals shall be incorporated into a written Report and Decision Order and shall be recorded in the chain of title of each parcel to which the planned development order applies.

No inherent right exists to receive a planned development approval. Such authorization must be approved under a specific set of circumstances and conditions. Each application and situation is unique. Every planned development or amendment thereto shall at a minimum be required to comply with the requirements contained in this section and follow the spirit and intent of the Charter Township of Garfield Master Plan. Mere compliance with the generally applicable requirements, however, may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

A. Applicability

(1) Generally

The provisions of this section apply to any application for planned development, including any application for planned unit development and planned unit residential development.

(2) Planned Unit Developments

In addition to the provisions of this section, the provisions of § 426 Planned Unit Development shall also apply to any application for planned unit development.

(3) Planned Unit Residential Developments

In addition to the provisions of this section, the provisions of § 427 Planned Unit Residential Development shall also apply to any application for planned unit residential development.

B. Pre-application Submission and Review

Prior to submission of a complete application, at the discretion of the Planning Director or as requested by an applicant, any proposed planned development may be presented to the Planning Commission for informal review and comment. Sufficient information to provide an overview of the planned development including proposed land uses, project density, general layout and design, proposed circulation patterns and existing site conditions shall be presented at this time. Detailed plan preparation is neither required nor encouraged at this stage in the approval process.

C. Initiation

An owner of real property, or that owner's authorized representative, may apply for approval of a planned development by filing an application with the Director of Planning. **The application shall include the materials required in § 957, Specifications for Documents to be Submitted**, of this Ordinance.

D. Completeness Review

The Director of Planning shall conduct a completeness review as set forth in § 403, Completeness Review. When the Director of Planning has certified that the application is complete, it shall be deemed received and shall be referred to the Planning Commission for its review and preliminary decision.

E. Procedure

(1) Planned Unit Development (PUD)

Planned unit development applications shall be reviewed in a two step process in accordance with § 426.B. Preliminary Review and Decision and with § 426.C Final Review and Decision.

(2) Planned Unit Residential Development (PURD)

Planned unit residential development applications shall be reviewed in a one step process in accordance with § 427.B. Review and Decision and with §427.C Final Review and Decision.

(3) Cross-Jurisdictional Applications

Consideration of, deliberation over and decision-making with respect to a cross-jurisdictional planned development shall, to the extent practical or feasible, be conducted jointly with the appropriate Planning and/or legislative bodies of the adjoining municipality. The substantive standards and conditions of this ordinance shall apply. To the extent the adjoining jurisdiction has substantive standards or conditions which differ from the conditions or standards contained in this ordinance, such adjoining jurisdiction's substantive standards and conditions may be adopted and incorporated by reference as part of this ordinance pursuant to authority at MCL 125.3503(10), as amended.

F. Conditions

In approving any planned development, the Township may:

(1) Impose such reasonable standards, conditions, or requirements, in addition to or that supersede any standard specified in this ordinance, as it may deem necessary to protect the public interest and welfare. Such additional standards may include, but need not be limited to:
   (a) Availability of public facilities or services;
   (b) Dedication of land;
   (c) Low impact design requirements(rain gardens, bio swales, pavers, permeable pavement etc);
   (d) Creation of special assessment districts;
   (e) Creation of restrictive covenants or easements;
   (f) Increased or decreased setbacks;

(g) Yard requirements;
(h) Increased screening, landscaping requirements or open space;
(i) Area requirements;
(j) Development phasing;
(k) Protection of natural resources and environmentally sensitive areas;
(l) Standards pertaining to traffic, circulation, noise, lighting, hours of operation, and similar characteristics; and
(m) Construction of non-motorized facilities for public use.

(2) Require that a performance guarantee, acceptable in form, content, and amount to the Township, be posted by the applicant to ensure continued compliance with all conditions and requirements as may be specified;
(3) Require that a development agreement be entered into by the applicant; and
(4) Require that the standards of other governmental agencies be met, provided, however, that if at any time a requirement of another agency conflicts with a requirement or condition of the Township, the matter shall be brought before the Planning Commission for reconsideration.

G. Phased Planned Developments

Where a planned development is proposed for development in phases, a phasing plan that provides for the timely and integrated development of all proposed uses, infrastructure and other improvements shall be submitted. Before approving the planned development phasing plan, the Township shall determine that:

(1) Each phase shall contain all necessary infrastructure, improvements and uses necessary for each phase to be self-contained;
(2) Upon completion, each phase shall contain the necessary components to ensure protection of natural resources and the health, safety, and welfare of the users of the project and the residents of the surrounding area;
(3) Each phase shall be designed to provide, at a minimum, a proportional share of open space, infrastructure improvements, public benefits, and mix of proposed land uses as determined necessary by the Township to recognize the public benefits upon which approval of the planned development is based. Where open space is required, the Planning Commission may permit such open space to be placed wholly within a particular phase of the development to encourage the dedication of useable tracts of open space. In the event that the proposed open space will be within a later phase, a performance guarantee may be required to ensure its future construction and accessibility;
(4) Provisions for each phase, satisfactory to the Township, have been made to provide for the financing of any improvements shown on the planned development for open spaces and common areas which are to be provided by the applicant; and
(5) The cost of installing all streets and necessary utilities has been assured for each phase by a means satisfactory to the Township.

The Township shall make appropriate findings of fact to substantiate the need for any required changes to the applicant's proposed phasing plan.

H. Recording Procedures

(1) Upon final approval the Township shall issue a planned development Report and Decision Order. The applicant shall record promptly the Order with the Grand Traverse County Register

of Deeds in the chain of title for each parcel or portion thereof to which the order pertains. Alternatively, a memorandum of planned development may be prepared by the Township in such recordable form as deemed appropriate and shall then be recorded promptly by the applicant with the Grand Traverse County Register of Deeds. A copy of each recorded document shall be filed with the Township within thirty (30) days of final approval by the Township or approval shall be considered to have expired. No land use permits shall be issued until a copy of all required recorded documents has been provided to the Township.

(2) The Director of Planning shall have authority to waive this requirement if it is determined that, given the nature of the planned development and the conditions imposed, the recording of such a document would be of no material benefit to the Township or to any subsequent owner of the land.

I. Resubmittal of Application

(1) Applicability

The provisions of this subsection apply to the resubmission of any application for a planned development that has previously been submitted by an applicant.

(2) Withdrawal After Planning Commission Hearing

No planned development application shall be resubmitted if, during the previous six (6) months, the application was received or filed and withdrawn after a public hearing occurred on the planned development before the Planning Commission. However, if the applicant substantiates and certifies with a sworn affidavit that the evidence is new, relevant, and substantial, and could not have been secured at the time set for the original hearing, the Planning Commission may hear and consider the resubmitted application.

(3) Denial of Planned Development

No application for planned development shall be resubmitted within one (1) year after the Township has denied an application for planned development of the same property.

J. Amendments

(1) General

(a) An amendment is a request for any enlargement, expansion, increase in intensity, relocation, or modification of any condition of a previously approved and currently valid planned development. Amendments shall be classified as an Administrative Amendment, a Minor Amendment or a Major Amendment and shall be processed in accordance with § 423.G.4 Administrative Amendments, § 423.G.5 Minor Amendments, or § 423.G.6 Major Amendments.

(b) No amendment shall be processed if there is a violation of a previously approved and currently valid planned development affecting the property unless the requested amendment includes, as a primary or incidental purpose, the correction of such violation.

(c) An amendment for land within a Planned Development which has been subdivided pursuant to the Condominium Act (Act 59 of 1978, as amended) shall also be subject to review in accordance with § 429, Condominium Developments. In the case of conflict between the sections, the standards of § 429 shall prevail.

(2) Initiation

An application to amend an approved planned development shall be filed with the Planning Department. The application shall be signed by the owner(s), or the owner's agent, of any real property which would be directly affected by the amendment. The application shall also include:

(a) Written consent to the application by the owner(s) of at least sixty (60) percent of approved development sites within the planned development; OR

(b) Written consent to the application by the owner(s) of at least sixty (60) percent of land area within the planned development.

(3) Completeness Review

The Planning Department shall review the application for the amendment for completeness in accordance with § 403 Completeness Review. When the Director of Planning has certified that the application is complete, it shall be deemed received.

K. Division of Land Within Planned Development

The division of land within an approved Planned Development, whether by Land Division Act or Condominium Act, shall not occur prior to Planning Department authorization. The Planning Department and Township Attorney shall review draft condominium or division documents for consistency with the approved development plan, conditions of approval, and with all other applicable sections of this Ordinance.

L. Scope of Approval

(1) Planned Development Effect

After final approval of a planned development, the land to which it pertains shall only be developed and used in accordance with the following:

(a) As authorized and described in the order approving the planned development, any approved plans referenced by the planned development approval, and any conditions or restrictions imposed thereon; or

(b) As authorized by the provisions of this ordinance that would apply if the planned development order had not been issued and upon rescindment of the planned development order pursuant to § 425.O Rescindment of Planned Development Approval.

(2) Period of Effect

The planned development order and any amendment to it shall remain in effect unless:

(a) The planned development order or amendment has not been recorded properly pursuant to §425.H Recording Procedures;

(b) The planned development order or amendment has expired pursuant to § 425.L.(3) Expiration of Approval;

(c) The planned development order has been rescinded pursuant to § 425.O Rescindment of Planned Development Approval; or

(d) The planned development order has been revoked by the Township pursuant to §425.M Revocation of Planned Development Approval.

(3) Expiration of Approval

(a) Preliminary approval by the Township Board shall act as the date of approval for a preliminary PUD plan submitted under § 426.B Preliminary Review and Decision. The applicant shall submit a complete application in accordance with §426.C., Final Review and Decision, or within 12 months of the preliminary approval or the preliminary plan approval shall be considered expired.

(b) Preliminary approval by the Planning Commission shall act as the date of approval for a preliminary PURD plan submitted under § 427.B Preliminary Review and Decision. The applicant shall submit a complete application in accordance with §427.C., Final Review and Decision, or within 12 months of the preliminary approval or the preliminary plan approval shall be considered expired.

(c) Execution of the planned development Report and Decision Order shall act as the date of final approval. If substantial construction or, if the order involves no construction, the permitted use has not commenced and proceeded meaningfully toward completion within two (2) years from the date of final approval, the planned development order shall expire automatically.

(d) Prior to expiring, extensions of the planned development order may be requested by the applicant. If the Planning Commission finds that there is sufficient evidence that the applicant will in fact commence construction and proceed meaningfully toward completion by the end of the third year, the planned development order may be extended for one (1) additional year where all of the following conditions are met:

(i) The applicant is able to demonstrate that construction has been delayed by factors that are beyond its control and that construction will commence and continue meaningfully toward completion within the one (1) year extension;

(ii) There have been no significant changes in the character of the surrounding area that were not known or anticipated at the time of approval;

(iii) There have been no development approvals granted in the surrounding area that would be in conflict with the approved planned development order; and

(iv) There have been no changes to the master plan or this Ordinance that would conflict with the approved planned development order.

M. Revocation of Planned Development Approval

If substantial development and completion of the use and buildings do not proceed in conformance with the approved planned development order, or physical or operational changes which violate the order, application, or data accompanying the application by the applicant, its successors, agents or assigns are identified, the Township shall have full authority to revoke approval of the planned development. Upon discovery of a violation, the Director of Planning may issue a notice to appear before a public hearing of the Planning Commission. Notice of such hearing shall be provided in accordance with State statute for public hearings.

In the case of a Planned Unit Development, following completion of the hearing, the Planning Commission shall transmit its recommendation to the Township Board to revoke the planned development approval, require the submittal of an amendment addressing the deficiencies, or confirm the original approval. Upon receipt of the Planning Commission's recommendation, the Township Board shall hold a public hearing prior to making a determination. Following completion

of the hearing, the Planning Commission shall make a decision to revoke the planned development approval, require the submittal of an amendment addressing the deficiencies, or confirm the original approval.

In the case of a Planned Unit Residential Development, following completion of the hearing, the Planning Commission shall make a decision to revoke the planned development approval, require the submittal of an amendment addressing the deficiencies, or confirm the original approval.

N. Ordinance Amendment

A planned development approval shall not be considered an ordinance amendment.

O. Rescindment of Planned Development Approval

Provided that no portion of the planned development has been constructed, the planned development order may be rescinded by the Township upon request in writing by the owner of the land to which the order pertains. A written agreement rescinding the planned development order shall be executed between the owner of the land and the Director of Planning.

Upon rescindment, the use of the land shall revert to and be governed by the provisions of this Ordinance that would apply if the planned development order had not been issued.

SECTION 426 PLANNED UNIT DEVELOPMENTS

Purpose: This section provides for planned unit developments to further the health, safety, and general welfare of Township residents by permitting the Township flexibility in the regulation of land development and encouraging innovation and variety in land use and design of projects. The standards of this section are intended to encourage and provide for a more efficient arrangement of land uses, buildings, circulation systems, and infrastructure.

A. Eligibility

(1) Generally

An application for a planned unit development may be submitted on any parcel or contiguous parcels within the Township where the site meets one (1) or more of the following criteria:

(a) Mixed or varied uses are proposed that cannot be achieved under a single zoning district;
(b) The site exhibits unusual topography or a unique setting within the community;
(c) Innovation and variety of design are proposed that are not achievable under the current zoning districts of this ordinance;
(d) Additional amenities are made possible by and incorporated within the development;
(e) A substantial public benefit is proposed within or as a result of the project;
(f) A cross-jurisdictional development is proposed that warrants flexibility in terms of design and layout.

Approval will not be granted when the planned unit development is determined to be sought primarily to avoid the imposition of standards and requirements of existing zoning classifications rather than to achieve the objectives of this ordinance.

(2) Minimum Site Size

The site on which an application for planned unit development is proposed shall be self-contained and shall contain no less than twenty (20) contiguous acres (exclusive of all existing public and private road rights- of -way on the perimeter of the site). Notwithstanding anything contained in the preceding sentence to the contrary, in the event that a planned unit development is proposed which lies partially within and partially outside the jurisdictional boundary of the Township and that portion lying within the Township is less than twenty (20) acres in size, that portion lying within the Township may, in the discretion of the Planning Commission, be combined with the acreage of those areas of the proposed planned unit development lying beyond the Township's jurisdictional boundaries for purposes of establishing whether the twenty (20) acre minimum has been met.

To encourage flexibility and creativity consistent with the objectives of the zoning ordinance, the Planning Commission may approve projects of less than twenty (20) acres. Such a deviation shall be approved through a finding of fact by the Planning Commission that the deviation meets the purpose of a planned unit development set forth in § 426.E, Approval Criteria. In granting such a deviation, the Planning Commission shall consider factors such as preservation of steep topography, soils unsuitable for development, surrounding land uses which may make the parcel

unsuitable for traditional development, transfer of acreage or easements to the Township or other appropriate organization for broadly beneficial public projects, or truly innovative design. Such a dimensional deviation is not subject to variance approval by the Zoning Board of Appeals.

(3) Site Accessibility

A planned unit development shall be directly accessible from major thoroughfares as designated on the Major Thoroughfare Plan for the Township. The Township may authorize a project that does not have direct access to a major thoroughfare, provided appropriate findings of fact are made demonstrating that:

(a) The project is directly accessible from a public road of suitable design and construction to handle any anticipated traffic that will be generated by the project;
(b) The anticipated traffic volumes are not reasonably expected to result in adverse impacts for those uses and properties along the public road system; and
(c) The efficiency and safety of the overall public road system will not be negatively impacted.

(4) Open Space

A Planned Unit Development shall be designed to incorporate a minimum of 20% useable open space to supplement the residents of the PUD and/or Garfield Township. These areas are anticipated to provide recreational opportunities such as parks, trails, playgrounds, and other similar opportunities.

B. Preliminary Review and Decision

(1) Generally

Preliminary review shall establish proposed land uses, project density, site layout and design, proposed vehicular and pedestrian circulation patterns, natural resource protection areas, open space, land use buffers, grading, storm water management patterns, and site servicing. Final engineering is not required for preliminary review and decision. In addition to provisions of this Section, the provisions of § 425 Planned Developments shall also apply.

(2) Completeness Review

The Director of Planning shall conduct a completeness review in accordance with § 403 and § 425.D.

(3) Planning Commission

(a) The Planning Commission shall hold a public hearing on the development application.
(b) Following review and public hearing on the application, the Planning Commission shall make a preliminary recommendation to the Township Board on whether to approve or deny the request for preliminary planned unit development approval. Preliminary recommendation of a planned unit development shall specify all conditions that must be satisfied prior to submission of the planned unit development under § 426.C., Final Review and Decision.
(c) Preliminary plans may not be changed or amended except as required by final engineering.

(4) Township Board

(a) Upon receipt of the Planning Commission's recommendation, the Township Board may hold a public hearing on the application for preliminary planned unit development approval and may specify additional conditions or requirements that shall be satisfied prior to submission of the planned unit development under § 426.C. Final Review and Decision.

(b) Preliminary plans may not be changed or amended except as required by final engineering.

C. Final Review and Decision

(1) Generally

Final review shall address all conditions imposed by the Planning Commission and/or Township Board in the preliminary decision on the planned unit development. Applications for final review and decision shall not be considered until all conditions have been addressed.

(2) Completeness Review

The Director of Planning shall conduct a completeness review to determine that all conditions of the preliminary decision have been addressed. No application shall be referred to the Planning Commission until this standard has been satisfied. The appellate agency for purposes of this completeness review is the Planning Commission. Upon certification by the Director of Planning that all requirements of the preliminary recommendation have been satisfied, the application shall be referred to the Planning Commission for its final review and recommendation.

(3) Planning Commission

(a) The Planning Commission may hold a public hearing on such application for final review and decision.

(b) After review, the Planning Commission shall transmit its final recommendation to the Township Board to approve, approve with final conditions, or deny the request.

(4) Township Board

(a) The Township Board shall hold a public hearing on the application for final review and decision.

(b) Following review and public hearing, the Township Board shall deny, approve, or approve with final conditions the request for final planned unit development approval. Approval of a planned unit development shall be incorporated in a Report and Decision Order that shall include the decision, the basis for the decision and any final conditions imposed.

D. Reserved

E. Approval Criteria

In its review of an application the Township shall, at a minimum, consider the criteria as defined in § 426.E.(1) Scope of Authority - Uses through § 426.E.(4) Criteria.

(1) Scope of Authority - Uses

A planned unit development may include any principal and other use(s) permitted by right, permitted under special condition or permitted by special use permit in the zoning district where the land is located. The Township Board may also authorize principal and other uses not

permitted in the zoning district where the land is located, provided appropriate findings of fact are made demonstrating that:

(a) The proposed uses, within the context of the overall development plan, are harmonious and compatible with the planned uses of the site and the surrounding area, as provided for within the master plan;
(b) The proposed density is in accordance with the policies and objectives set out in the master plan; and
(c) In areas where the surrounding lands have been substantially developed in accordance with a particular land use character, pattern and density, the planned unit development shall be consistent and compatible with that existing land use character, pattern and density.

(2) Scope of Authority – Dimensional Standards

A planned unit development may alter and establish lot size limits, required facilities, buffers, open space areas, density limits, setback requirements, height limits, building size limits, off-street parking regulations, landscaping rules, miscellaneous regulations, and intensity limits where such regulations or changes are consistent with the intent of this section and the standards set forth herein.

(3) Objectives

The following objectives shall be considered in reviewing any application for a planned unit development:

(a) To permit flexibility in the regulation of land development;
(b) To encourage innovation in land use and variety in design, layout, and type of structures constructed;
(c) To achieve economy and efficiency in the use of land, natural resources, energy, and the providing of public services and utilities;
(d) To encourage useful open space; to provide improved housing, employment, and shopping opportunities particularly suited to the needs of the Grand Traverse Region;
(e) To encourage the innovative use, re-use, and improvement of existing sites and buildings; and
(f) To permit development in accordance with the policies and objectives of the Charter Township of Garfield Master Plan.

(4) Criteria

In order to foster the attractiveness of a planned unit development and its surrounding neighborhoods, preserve property values, provide an efficient road and utility network, ensure the movement of traffic, implement comprehensive planning, and better serve the public health, safety, and general welfare, the following criteria apply to planned unit developments. These criteria shall neither be regarded as inflexible requirements, nor are they intended to discourage creativity or innovation.

(a) The uses will be compatible with the natural environment, and with adjacent and surrounding land uses and properties, and will not have an adverse economic, social or environmental impact on adjacent and surrounding land uses and properties;

(b) The uses will be compatible with the capacity of existing public services and facilities, or of planned and feasible future public services and facilities, and such use is consistent with the public health, safety and welfare of the Township residents;
(c) The uses and development are warranted by the design of additional amenities made possible with, and incorporated by, the development proposal;
(d) Insofar as practicable, the landscape shall be preserved in its natural state by minimizing tree and soil disturbance and removal;
(e) Existing important natural, historical and architectural features within the development shall be preserved;
(f) Proposed buildings shall be sited harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings;
(g) With respect to vehicular and pedestrian circulation and parking, special attention shall be given to the location and number of access points to public streets, minimizing potential motorized/non-motorized conflict points, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of parking areas that are safe and convenient and, insofar as is practicable, do not detract from the design of proposed structures and neighboring properties;
(h) Landscaping is provided to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property and, where applicable, to create a pleasant pedestrian scale outdoor environment;
(i) The development consolidates and maximizes useable open space;
(j) The benefits of the development are not achievable under any single zoning classification; and
(k) The development is compatible with the intent and purpose of the adopted master plan.

F. Amendments

Amendments to an approved Planned Unit Development shall be considered according to § 423.G. of this Ordinance.

SECTION 427 PLANNED UNIT RESIDENTIAL DEVELOPMENTS (PURD)

The purpose of this section is to provide for a degree of flexibility and creativity in the planning and design of residential development projects. The standards of this section invite efficient, clustered development on portions of a site so that developers are better able to provide amenities and infrastructure improvements.

Planned Unit Residential Developments may incorporate any residential use which is permitted by right, under conditions, or under Special Use Permit within the Township's various residential zoning districts. It is expected, however, that the proposed use or mix of uses will be compatible within the site itself, but more so be compatible with and similar to existing and planned residential uses in the surrounding area.

A. Eligibility

(1) Generally

An application for a planned unit residential development may be submitted for any property zoned for residential use, and is especially encouraged on properties designated for redevelopment by the Garfield Township Master Plan. In order to qualify for a PURD the project should be developed using clustered methods and innovative design while providing desirable open space and pedestrian connectivity. In exchange, the Township may authorize reductions in minimum lot size and increases in maximum density which would otherwise apply. Applications which do not meet the purpose and intent of this section will not be accepted. In addition to provisions of this Section, the provisions of § 425 Planned Developments shall also apply.

(2) Site Accessibility

A planned unit residential development shall be directly accessible from major thoroughfares as designated on the Major Thoroughfare Plan for the Township. The Township may authorize a project that does not have direct access to a major thoroughfare, provided appropriate findings of fact are made demonstrating that:

(a) The project is directly accessible from a public road of suitable design and construction to handle any anticipated traffic that will be generated by the project; and
(b) The anticipated traffic volumes are not reasonably expected to result in adverse impacts for those uses and properties along the public road system; and
(c) Access management controls and connectivity to adjacent properties are utilized to ensure the efficiency and safety of the public road system will not be negatively impacted.

B. Preliminary Review and Decision

(1) Generally

Preliminary review shall establish proposed land uses, project density, site layout and design, proposed vehicular and pedestrian circulation patterns, natural resource protection areas, open space, land use buffers, grading, storm water management patterns, and site servicing. Final engineering is not required for preliminary review and decision.

(2) Completeness Review

The Director of Planning or designee shall conduct a completeness review in accordance with § 403 and § 425.D.

(3) Planning Commission

(a) The Planning Commission shall hold a public hearing on the PURD.

(b) Following review and public hearing on the application, the Planning Commission shall approve or deny the request for preliminary planned unit residential development approval. Preliminary recommendation of a planned unit development shall specify all conditions that must be satisfied prior to submission of the planned unit residential development under § 426.C., Final Review and Decision.

(c) Preliminary plans may not be altered or amended except as required by final engineering and authorized by the Director of Planning.

(d) Pursuant to § 425.L(3), preliminary approvals are valid for 12 months and not subject to an extension. Preliminary approval shall expire automatically.

C. Final Review and Decision

(1) Generally

Final review shall address all conditions imposed by the Planning Commission in the preliminary decision on the planned unit residential development. Submissions for final review and decision shall not be considered until all conditions have been addressed.

(2) Completeness Review

The Director of Planning or designee shall conduct a completeness review to determine that all conditions of the preliminary decision have been addressed. Once the plans and conditions are deemed substantially complete the project shall be referred to the Planning Commission for its final review and decision. No application shall be referred to the Planning Commission until this standard has been satisfied.

(3) Planning Commission

(a) The Planning Commission may hold a public hearing on such application for final review and decision.

(b) Following review, the Planning Commission shall render a decision to approve, approve with final conditions, or deny the request. Approval of a planned unit residential development shall be incorporated in a Report and Decision Order that shall include the decision, the basis for the decision and any final conditions imposed.

D. Approval Criteria

In its review of an application the Township shall, at a minimum, consider the criteria as defined in § 427.D.(1) Scope of Authority - Uses through § 427.D.(4) Criteria.

(1) Scope of Authority - Uses

A planned unit residential development may include any residential use(s) permitted by right, permitted under special condition or permitted by special use permit in the various agricultural

or residential zoning districts within the Township, provided appropriate findings of fact are made demonstrating that:

(a) The proposed density is in accordance with the policies and objectives set out in the master plan; and

(b) In areas where the surrounding lands have been substantially developed in accordance with a particular land use character, pattern and density, the PURD shall be consistent and compatible with that existing residential uses, land use character, pattern and density.

(2) Scope of Authority – Dimensional Standards

A planned unit residential development may alter and establish lot size limits, buffers, open space areas, density limits, setback requirements, height limits, building size limits, landscaping rules, miscellaneous regulations, and intensity limits where such regulations or changes are consistent with the intent of this section and the standards set forth herein.

(3) Site Design Requirements

Generally, the design of a site must be found to meet the overall purpose and intent of this section. Additionally, the following specific design standards must be met.

(a) The site shall be designed in a compact, clustered manner which maximizes the preservation of usable and consolidated open space.

(b) Open spaces are intended to function as a public areas or parks to encourage neighborhood interaction and recreation opportunities. These areas incorporate amenities such as play structures, pedestrian circulation, pavilions, and other similar design features.

(c) Sidewalks shall be provided along all streets. Generally, sidewalks should be constructed on each side of the street except where found to serve no useful purpose, such as if there are no homes on one side of the street. Sidewalks along streets shall be constructed of concrete to a minimum width of four (4) feet and shall be separated from the street by a grassy lawn area.

(d) In addition to the street sidewalks, hard-surfaced pathways connecting open areas, parks and other points of interest shall be provided.

(e) In mixed-residential settings, each residential use (i.e. single family, multiple family, etc.) shall stand on its own in meeting the integrated site design requirements of this section. The intent of this requirement is for each area to resemble a traditional neighborhood with interior park areas. Useable open space shall be designed so that it is directly accessible to nearby residents.

(f) There shall be a direct relationship between the residential use, density, and useable space of each project area, and each such areas shall be self contained. For example, an open area located within a far corner of a high-density setting may not meet the intent of this requirement in providing open space and recreation for a neighboring low-density area of the site. However, centrally located open areas which encourage interaction between residential uses by creating shared park-like settings are supported and encouraged.

(g) The project shall be served by municipal water and sewer services.

(4) General Criteria

The PURD is intended to encourage well designed neighborhoods that emphasize safe movement of pedestrian traffic and open areas that encourage active lifestyles and quality of life. The Planning Commission shall determine if the project meets the following standards of approval:

(a) The project is compatible and harmonious with adjacent and surrounding land uses and properties;

(b) The project minimizes motorized / non-motorized conflict points and creates a separation of pedestrian and vehicular traffic;

(c) The development consolidates and maximizes useable open space while encouraging neighborhood interaction;

(d) The proposed use will retain as many natural features of the property as practicable, particularly where the natural features assist in preserving the general character of the neighborhood;

(e) The development is compatible with the intent and purpose of the adopted master plan.

E. Amendments

Amendments to an approved Planned Unit Residential Development shall be considered according to § 423.G.

SECTION 428 OPEN SPACE PRESERVATION OPTION

Purpose: This section provides for Open Space Preservation developments in accordance with Section 506, Open Space Preservation, of the Michigan Zoning Enabling Act. The intent of this development option is to encourage and promote clustered development patterns in a manner that protects developable areas containing natural features and open space.

A. Eligibility

Any parcel or contiguous parcels may be developed under the Open Space Preservation option where the site meets all of the following criteria:

(1) The land is zoned at a density equivalent of two (2) or fewer dwelling units per acre or, if the land is served by the public sewer system, a density equivalent of three (3) or fewer dwelling units per acre;

(2) The development does not depend upon the extension of a public sewer or public water system, unless development of the land without exercising the Open Space Preservation development option would also depend upon such extension; and

(3) The open space preservation option has not been previously exercised with respect to the land.

B. Initiation

An owner of real property, or that owner's authorized representative, may apply for approval of an Open Space Preservation development by filing an application with the Zoning Administrator. The application shall include the material required by § 959 of this Ordinance.

C. Completeness Review

The Director of Planning shall conduct a completeness review in accordance with § 403.

D. Procedure

The Planning Commission shall act as the legislative body for the purposes of final review and approval. Upon receipt of a complete application and after public notice in accordance with applicable state laws, the Planning Commission shall hold at least one public hearing on the application. An Open Space Preservation development shall be approved by the Planning Commission if the application complies with all applicable provisions of this ordinance.

In its review of an application, the Planning Commission shall, at a minimum, consider the criteria of this Section.

(1) Scope of Authority - Uses

An Open Space Preservation development may include any residential use permitted by right in the underlying zoning district.

(2) Scope of Authority – Lot Size and Width Variation

The minimum lot area and lot width requirements of the underlying zoning district shall not apply to individual residential lots within an Open Space Preservation development, provided

that all rules relating to the suitability of groundwater for on-site water supply, for land not served by public water, and to the suitability of soils for on-site sewage disposal, for lands not served by public sewers, shall be complied with.

(3) Scope of Authority –Dimensional Standards

With the exception of minimum lot area and minimum lot width, any residential use permitted under the Open Space Preservation option shall comply with the minimum setbacks and other dimensional standards of the underlying zoning district.

(4) Density

The maximum number of residential dwelling units shall be equal to or less than the maximum number of residential dwelling units permitted by the underlying zoning district, as determined by the net acreage calculations of § 427.C(2)(b)(I).

(5) Required Open Space

Open space within an Open Space Preservation development shall meet all of the following criteria:

(a) Open space shall comprise not less than 50% of the land that could otherwise be developed under the standards and regulations of this ordinance;

(b) Open space shall remain perpetually dedicated in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land;

(c) Open space shall be a minimum of five (5) contiguous acres, or a contiguous 25% of the total development area, whichever is greater;

(d) Minimal areas between buildings and narrow strips along the perimeter of a development shall not be included in the open space required for an Open Space Preservation project; and

(6) Open Space Development Plan Approval Order

If the Planning Commission approves the open space development plan, it shall prepare a written order setting forth the conditions upon which such approval is based. Such order shall be entered into between the Township and applicant prior to the issuance of a land use permit for any construction in accordance with the approved development plan. All reasonable costs related to the preparation of said order, as established by the Township, shall be paid by the petitioner to the Township prior to Township signature and issuance of such order.

(7) Duration of Approval

Approval of the open space development plan by the Township shall be for a period of two (2) years from the date of execution of the Report and Decision Order, after which it shall expire automatically. Prior to expiring, the two (2) year approval period may be extended by the Planning Commission for an additional one (1) year if an extension is applied for in writing by the applicant. The applicant shall be required to demonstrate that the reasons for such extension are beyond their control and that the development will commence and continue meaningfully toward completion within the one (1) year extension.

E. Amendments

Amendments to an approved Open Space Development shall be considered according to § 429 (L), Condominium Amendments.

SECTION 429 CONDOMINIUM DEVELOPMENTS

Purpose: This section provides procedures and standards for the review and approval or denial of condominium developments implemented under the provisions of the Condominium Act (Act 59 of 1978, as amended) and to insure that such developments are consistent and compatible with conventional platted subdivisions as provided for through the Land Division Act (P.A. 288 of 1967, as amended). These regulations are enacted by authority of the Condominium Act, the Michigan Zoning Enabling Act, and this ordinance, as amended, whereby all developments utilizing any form of condominium subdivision of land shall be reviewed and approved or disapproved by the Township.

A. Applicability

(1) Generally

Prior to recording of the master deed, required by Section 72 of the Condominium Act, a condominium development shall undergo review and approval by the Township in accordance with the provisions of this section. Approval under this section shall be required as a condition to the right to construct, expand or amend a condominium project in the Township.

(2) Condominium Conversions

The conversion of existing buildings or structures into a condominium form of ownership shall not require review and approval under this section provided that the condominium development shall comply with all regulations of the zoning district in which it is located.

(3) Plat Approval

Nothing in this section shall be construed as requiring a condominium subdivision to obtain plat approval under the Township Subdivision Control Ordinance.

(4) Planned Developments

Developments approved pursuant to § 425 Planned Developments are exempt from the requirements of § 429.F Site Condominium Subdivision Review Procedures of this Section.

B. Consultation

In determining whether to approve a condominium development plan, the Planning Commission may consult with the Township Attorney or Township Engineer regarding the adequacy of the master deed, deed restrictions, utility systems and streets, subdivision layout and design, and compliance with all requirements of the Condominium Act. All reasonable costs related to said consultation, as established by the Township, shall be paid by the petitioner to the Township prior to Township signature and issuance of an approval order.

C. General Requirements

(1) Compliance with Federal, State and Local Laws

All condominium projects shall comply with all applicable Federal, State and local laws and ordinances. No condominium documents shall conflict with the standards of this Ordinance.

(2) Required Content

All condominium development plans shall include the information required by Section 66 of the Condominium Act **and the material required by § 956 of this Ordinance**.

(3) Utility Easements

The condominium development plan shall include all necessary easements for the purpose of constructing, operating, inspecting, maintaining, repairing, altering, replacing, and/or removing pipelines, mains, conduits, and other installations of a similar character providing public utilities.

(4) Private Roads

All private roads in a condominium subdivision shall comply with the specifications of this ordinance.

(5) Encroachment Prohibited

Encroachment of one condominium unit upon another, as described in Section 40 of the Condominium Act, shall be prohibited by the condominium bylaws and recorded as part of the master deed.

(6) Performance Guarantees

As a condition of the approval of the condominium plan by the Township, a performance guarantee may be required to ensure the construction of required improvements and the completion of filing requirements before land use permits are issued. Upon fulfillment of all requirements and filings, the developer shall apply to the Township for release of performance guarantees.

D. Mobile/Manufactured Home Condominium Development

(1) Generally

Mobile/manufactured home condominium developments shall conform to the requirements of this ordinance, in accordance with the Condominium Act and other applicable Local and State laws, ordinances and regulations. Such developments shall be located only in a zoning district that provides for Mobile Home Parks.

(2) Approval Criteria

The review of a mobile/manufactured home condominium development shall be processed in accordance with § 429.F Site Condominium Subdivision Review Procedures through § 429.L Amendments, below.

E. Site Condominium Subdivisions

(1) Generally

For the purpose of this section, a site condominium subdivision shall include all developments, in any zoning district, proposed under the provisions of the Condominium Act (Act 59 of 1978, as amended). The procedural provisions of this section shall not apply to condominium developments which are reviewed and approved through the Special Use Permit - Planned Unit Development procedure.

(2) Standards and Design for Site Condominium Subdivision Projects

The site condominium subdivision plan shall indicate specific unit dimensions with front, rear and side site condominium lot lines allocated to each condominium unit. For the purpose of this section and to assure compliance with the provisions herein, these parcels shall be referred to as site condominium lots. The description, size, location and arrangement of the site condominium lots shall conform to the requirements of this ordinance. All site condominium subdivision lots shall be deeded as limited common elements for the exclusive use of the owners of the condominium subdivision units. Each condominium dwelling unit shall be located within a condominium lot.

F. Site Condominium Subdivision Review Procedures

(1) Agency Submittal

The applicant shall provide copies of the proposed site condominium subdivision plan to the following Grand Traverse County Agencies: Health Department (or Department of Public Works if proposed on municipal water and/or sanitary sewer), Drain Commissioner (or Township designee), Soil Erosion-Sedimentation Control Director (or Township designee), Road Commission (or Michigan Department of Transportation if proposed on a state highway), and the Metro Fire Department.

(2) Independent Review

An independent engineer or other consultant may be hired, at the applicant's expense, to review the project and make recommendations to the Township.

(3) Public Hearing

The Planning Commission shall hold a public hearing on the proposed site condominium subdivision plan, for the purpose of reviewing and making a recommendation of approval, approval with conditions, or denial to the Township Board.

(4) Planning Commission Determination

If the Planning Commission determines that the proposed plan meets all requirements of this ordinance and the Condominium Act, the Planning Commission shall recommend approval or approval with conditions of the site condominium subdivision plan and shall send notice of action taken with comments to the Township Board.

If the Planning Commission determines that the site condominium subdivision plan does not meet all requirements, the Planning Commission shall state its reason in its official minutes, shall forward same to the Township Board, and shall recommend disapproval of the plan by the Township Board until the objections causing disapproval have been changed to meet the requirements of this ordinance and the Condominium Act.

(5) Township Board Procedure

The Township Board shall not review, approve or reject a site condominium subdivision plan until it has received from the Planning Commission its report and recommendation.

(6) Township Board Determination

The Township Board shall approve the site condominium subdivision plan, with or without conditions, reject the plan and give its reasons, table the proceedings pending further review or pending changes to the plan to make it acceptable to the Board, or refer that application back to the Planning Commission for further review and report.

G. Site Condominium Subdivision Review Criteria

For purposes of making a decision to approve, approve with conditions or to deny a site condominium subdivision plan, the Township shall consider and make findings with respect to the following criteria:

(1) That each condominium lot in a site condominium subdivision shall be considered as a single lot and shall comply with all regulations of the zoning district in which it is located. In a condominium development containing single-family detached dwelling units, not more than one (1) dwelling unit shall be located on a condominium lot, nor shall a dwelling unit be located on a condominium lot with any other principal structure or use. Required yards shall be measured from boundaries of a condominium lot. These requirements shall be made part of the bylaws and recorded as part of the master deed;

(2) That there is a proper relationship between the existing streets and highways within the vicinity, and proposed deceleration lanes, service drives, entrance and exit driveways, and parking areas to assure the safety and convenience of pedestrian and vehicular traffic, and that the proposed streets and access plan conform to any street or access plan adopted by the Township or the County Road Commission;

(3) That as many natural features of the landscape shall be retained as possible, particularly where they furnish a barrier or buffer between the project and adjoining properties used for dissimilar purposes, and where they assist in preserving the general appearance of the neighborhood or help control erosion or the discharge of storm waters;

(4) That any adverse effect of the proposed development and activities emanating therefrom upon adjoining residents or owners shall be minimized by appropriate screening, fencing or walls, or landscaping;

(5) That all provisions of this ordinance are complied with;

(6) That all site condominium lots shall be provided access by either public or private roads in conformance with the requirements of this ordinance. All site condominium units shall be accessible to emergency vehicles;

(7) That a plan for erosion control and storm water discharge has been approved by the appropriate public agency; and

(8) That the plan as approved is consistent with the intent and purpose of zoning to promote public health, safety and general welfare; to encourage the use of lands in accordance with their character and adaptability to avoid the overcrowding of population; to lessen congestion on the public roads and streets; to reduce hazards to life and property; to facilitate adequate provisions for 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 to conform with the most advantageous uses of land, resources and

properties; to preserve property values and natural resources; and to give reasonable consideration to character of a particular area, its suitability for particular uses and the general appropriate trend and character of land, building, and population development and is otherwise in compliance with law.

H. Conditions and Limitations of Approval

The approval by the Township will indicate that the proposed site condominium subdivision plan meets the provisions of Section 141(1) of the Condominium Act relating to the ordinances and regulations of Garfield Township. Such approval does not cover additional permits that may be required after the Master Deed has been recorded. Condominium Protective Covenants and Deed Restrictions which hold harmless the Township for improvements within the site condominium subdivision and which require conformance with all conditions and requirements of condominium plan approval and this ordinance shall be required.

Condominiums may not be amended without Township consent. Therefore, the Condominium Master Deed and Bylaws shall include the following statement: "Condominium Amendments which are recorded prior to the receipt of written Garfield Township Planning Department approval shall be considered null and void."

I. Site Condominium Subdivision Plan Approval Order

If the Township Board approves the site condominium subdivision plan, it shall prepare a written order setting forth the conditions upon which such approval is based. Such order shall be entered into between the Township and applicant prior to the issuance of a land use permit for any construction in accordance with the approved site condominium subdivision plan. All reasonable costs related to the preparation of said order, as established by the Township, shall be paid by the petitioner to the Township prior to Township signature and issuance of such order.

J. Duration of Approval

Approval of the site condominium subdivision plan by the Township shall be for a period of two (2) years from the date of execution of the Report and Decision Order, after which it shall expire automatically. Prior to expiring, the two (2) year approval period may be extended by the Planning Commission for an additional one (1) year if an extension is applied for in writing by the applicant. The applicant shall be required to demonstrate that the reasons for such extension are beyond their control and that the development will commence and continue meaningfully toward completion within the one (1) year extension.

K. Additional Filings Required

(1) Documents

Subsequent to the recording of the condominium plan, master deed, bylaws and deed restrictions, the developer shall file two (2) copies of each document, including all pertinent attachments, with the Township.

(2) Certification and As-Built Drawings

Subsequent to the construction of all improvements, the developer shall file with the Township two (2) copies of the as-built condominium plan and a certification from the developer's engineer that the improvements have been installed in conformance with the approved construction drawings.

L. Condominium Amendments

An approved condominium plan may be amended as indicated below and following the submittal of a completed application to the Planning Department, a description of the intended changes, and all necessary condominium documents, plans, and agency reviews, when necessary.

(1) Minor Amendments

The Director of Planning may authorize the following amendments to an approved condominium plan:

(a) The relocation of internal boundaries, as described in Section 48 of the Condominium Act, may be approved by the Director of Planning provided such change conforms to all requirements of this ordinance for the zoning district in which the project is located. The requirement for Township approval of any relocation of boundaries shall be made part of the condominium bylaws and recorded as part of the master deed.

(b) Secondary residential access may be approved by the Director of Planning provided the access meets the standards of Section 521 Street Standards and is limited to not more than two (2) properties.

(c) Minor changes to an approved site condominium subdivision plan that alter the size, shape, intensity or configuration of a condominium unit, or that permit the realignment of a condominium unit or building location, or that adds roads or secondary access in excess of two (2) but no more than four (4) units may be authorized by the Planning Commission without further public hearing, provided that such minor changes comply with the following criteria:

(i) No new condominium unit may be created by the change;

(ii) No previous amendments have been granted that, together with the proposed amendment, would exceed the standards of this section;

(iii) There will be no detrimental impact on any adjacent property caused by significant change in the appearance or use of the property, or any other contributing factor;

(iv) Nothing in the currently valid condominium development approval order precludes or otherwise limits such change; and

(v) The proposal conforms to this ordinance and is in keeping with the spirit and intent of any adopted master plan.

(2) Major Amendments

Any proposed amendment to a condominium other than as indicated in this section are considered a major amendment and shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original condominium approval.

SECTION 430 (Reserved)

DIVISION 6: INTERPRETATIONS, APPEALS AND VARIANCES

PURPOSE

The purpose of this division is to establish procedures for interpretations, appeals, and variances of this ordinance to the Zoning Board of Appeals. The Zoning Board of Appeals shall comply with the requirements of the Michigan Zoning Enabling Act (MZEA), PA 110 of 2006, as amended, as well as, the requirements of this ordinance.

SECTION 451 GENERALLY

A. Powers and Duties of the Zoning Board of Appeals

(1) The Zoning Board of Appeals shall consider and decide all applications for interpretations, appeals and variances, except as otherwise provided in this ordinance, and take testimony and evidence as provided in this ordinance.

(2) Failure to comply with or maintain compliance with any decision or conditions imposed by the Zoning Board of Appeals in a decision or permit shall constitute a violation of this ordinance.

(3) The Zoning Board of Appeals shall not amend, alter, or interpret in any manner a Quasi-Judicial determination or order of the Township Board or Planning Commission.

B. Land Use Permits

Following a Zoning Board of Appeals decision, the Zoning Administrator may, upon application, issue a Land Use Permit. If the applicant proceeds with construction based on the Zoning Board of Appeals decision and prior to the expiration of the appeal period described in the MZEA and in this Article, the applicant proceeds at its own risk.

C. Reapplication

No application for an interpretation, variance or appeal which has been denied wholly or in part by the Zoning Board of Appeals shall be re-submitted for a period of one (1) year after such denial, except on grounds of new evidence or proof of changed conditions as determined by the Zoning Administrator.

SECTION 452 INTERPRETATIONS BY THE ZONING BOARD OF APPEALS

A. Applicability

(1) The Zoning Board of Appeals shall hear and interpret, upon request, the provisions of this ordinance in such a way as to carry out the intent and purpose of this ordinance.

(2) The Zoning Board of Appeals shall hear and interpret, upon request, the zoning map and determine the precise location of the boundary lines between zoning districts.

B. Initiation

A request to interpret the provisions of this ordinance may be initiated a member of the public, by the Zoning Administrator, or by Director of Planning.

C. Decision

The Zoning Board of Appeals shall hold a public hearing after Notice is provided as set forth by State Law. The Zoning Administrator shall submit a report to the Zoning Board of Appeals which provides background information, including any previous interpretations relevant to the request, and which evaluates the requested interpretation. The Zoning Board of Appeals shall render an interpretation after considering the evidence presented at this hearing. Interpretations shall be promptly reported to the Planning Commission to consider the need for amending the Zoning Ordinance.

D. Precedent

An earlier determination under this section shall not be considered a precedent for other applications proposing the same request in the land use district.

SECTION 453 APPEALS TO THE ZONING BOARD OF APPEALS

A. Applicability

The Zoning Board of Appeals shall hear and decide appeals where it is alleged that there is an error in a previously granted written order, requirement, decision, interpretation, or determination made by the Zoning Administrator or the Director of Planning in the enforcement of this zoning ordinance that specifically provides for appeal to the Zoning Board of Appeals. Appeals may be filed by any person aggrieved, by the Zoning Administrator, or by an officer of the Township.

B. Initiation

An appeal and supporting documents shall be filed with the Zoning Administrator. The application shall state fully and in detail the basis of the appeal, the variance requested and the special conditions and circumstances applying to the building, other structure or land for which such variance is sought. The Zoning Administrator may reject an application that does not meet the requirements of this ordinance.

C. Stay of Proceedings

When an appeal is filed to the Zoning Board of Appeals, all proceedings in furtherance of the action affected by the decision being appealed shall be stayed unless a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life or property.

D. Decision

(1) The Zoning Board of Appeals shall give public notice of the hearing in accordance with State Law, shall hold the hearing, and shall decide the appeal within a reasonable time.

(2) Any person may appear before the Zoning Board of Appeals at any hearing, in person, or by agent or attorney.

(3) The Zoning Board of Appeals may:

  (a) Reverse or affirm, wholly or partly, or may modify a previously granted order, requirement, decision, or determination appealed;

  (b) Make such order, requirement, decision, or determination as ought to be made; and

  (c) Exercise all the powers of the officer or agency from whom the appeal is taken.

E. Reserved

SECTION 454 VARIANCES

A. Applicability – Dimensional Variances

The Zoning Board of Appeals may authorize a non-use variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this ordinance, or to any other non-use related standard of this ordinance, that comply with the requirements of this section.

B. Applicability – Use Variances

The Zoning Board of Appeals shall not grant a use variance or take any action that would have the effect of granting a variance from the permitted use of land.

C. Initiation

A variance application and supporting documents shall be filed with the Zoning Administrator. The application shall state fully and in detail the variance requested and the special conditions and circumstances applying to the building, other structure or land for which such variance is sought. The Zoning Administrator may reject an application that does not meet the requirements of this ordinance.

D. Decision

The Zoning Board of Appeals shall hold a public hearing. Notice shall be provided as set forth in State Law. The Zoning Administrator shall submit a report to the Zoning Board of Appeals and the applicant which evaluates the application based on the criteria required by this section. The Zoning Board of Appeals shall render a decision and deny, approve, or approve with conditions the variance after considering the evidence presented at this hearing. In addition to the specific conditions of approval called for in this ordinance, such other conditions regarding location, character, landscaping or treatment as are reasonably necessary to the furtherance of the intent and spirit of this ordinance and the protection of the public interest may be attached to the decision.

E. Approval Criteria

(1) Practical Difficulty

To qualify for a dimensional variance, the applicant shall be required to show "practical difficulty" by demonstrating compliance with all of the following criteria:

(a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);

(b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;

(c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;

(d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance; and

(e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.

(2) General Criteria

Where the applicant is able to demonstrate "practical difficulty" by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:

(a) The requested variance shall relate only to property that is under the control of the applicant;

(b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;

(c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;

(d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located; and

(e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.

(3) Special Conditions or Circumstances

Special conditions or circumstances to be considered for the purposes of § 454.E.(1) shall include, but not be limited to, the circumstances as described below:

(a) Physical Conditions

The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.

(b) Significant Vegetation or Natural Features

The proposed project site contains significant vegetation or other natural features identified as Stream Environment/Wetland by the Garfield Township Master Plan.

(c) Substandard Lot(s)

The proposed project involves the utilization of an existing legal nonconforming lot(s).

(d) Historic Resources

The proposed project site contains historical significance.

(e) Neighborhood Character

The proposed project promotes the established historic or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

F. Voiding of Variance

Each variance granted under the provisions of this ordinance shall become null and void one (1) year after the date the variance was granted, unless the construction authorized by such variance or permit has begun and is pursued diligently to completion, or the occupancy and operation of land or buildings authorized by such variance has taken place.

G. Declared Voiding of Variance

A variance granted by the Zoning Board of Appeals may be declared null and void by the Zoning Administrator where there has been a change in a material circumstance or fact upon which the variance was issued, such as, but not limited to, destruction of a building or natural feature, vacation of a street or a change in topography. Before so declaring a variance null and void, the Zoning Administrator shall notify the landowner in writing and, that declaration shall be subject to appeal to the Zoning Board of Appeals.

DIVISION 7: ENFORCEMENT, VIOLATIONS, AND PENALTIES

PURPOSE

This Division establishes legal authority and procedures for enforcement of the Zoning Ordinance.

SECTION 461 TYPES OF VIOLATIONS

A. Municipal Civil Infraction

A person who violates any provision of the Ordinance is responsible for a municipal civil infraction. Each day a violation is permitted to exist constitutes a separate offense.

B. Nuisance Per Se

Any structure which is erected, altered or converted, or any use of any structure or land which is commenced or changes after the effective date of this ordinance, in violation of any of the provisions herein, is declared to be a nuisance per se, and may be abated by order of any Court of competent jurisdiction. Any use of land or dwellings, buildings, or structures, including tents and trailer coaches, used, erected, altered, razed or converted in violation of any provision of this ordinance is hereby declared to be a nuisance per se. The Court shall order such nuisance abated and the owners and/or agent in charge of such dwelling, structure, tent, trailer coach or land shall be adjudged guilty of maintaining a nuisance per se.

SECTION 462 CIVIL ENFORCEMENT

A. Enforcement Actions

The Zoning Administrator, or any proper person, may institute any appropriate civil action or proceedings to prevent violations or threatened violations of these regulations. In particular, but without limitation, in case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this ordinance, the Zoning Administrator, or any proper person, may institute any appropriate action or proceedings to:

(1) Prevent such unlawful acts and restrain, correct, or abrogate such violation;
(2) Prevent the occupancy of the building, structure, or land; or
(3) Prevent any illegal act, conduct, business, or use in or about such premises, including, but not limited to, all remedies provided in the Michigan Zoning Enabling Act.

The imposition of any penalty does not preclude the Township, or any proper person, from instituting any appropriate action or proceedings to require compliance with the provisions of this ordinance, and with administrative orders and determinations made under this ordinance.

In addition to the municipal civil infraction remedies provided above, the violation of any provision of this ordinance may be legally enjoined and otherwise abated in any manner provided by law.

SECTION 463 VIOLATION OF CONDITIONS

A. Penalty

The violation of any condition imposed pursuant to a development order, or a development approval pursuant to this ordinance, including, but not limited to, a special use permit, a planned unit development or a conditional zoning approval, is a violation of this ordinance and may be prosecuted in municipal court regardless of whether civil or administrative action is taken against the development approval holder.

B. Revocation of Development Approval

The Zoning Administrator is authorized to issue any administrative order necessary to terminate or suspend a use found by the Planning Commission, as a result of the administrative processes noted in this article, to be in violation of a condition.

C. Civil Action

The Zoning Administrator may request the Township attorney to institute a civil action as prescribed in this article regardless of whether a criminal or administrative action is taken against the development approval holder.

SECTION 464 RESERVED

SECTION 465 COMPLETION OF SITE IMPROVEMENTS

A. Liability

Applicants for development under this ordinance shall be held liable to the Township for the completion of all site improvements required by these regulations, until such time as the improvements shall have been actually completed and accepted by the Township.

B. Remedy

If the construction of site improvements has been guaranteed by any form of security and such improvements have not been completed and accepted by the Township within the time period prescribed by these regulations, the Township, after written notification has been given to the applicant, shall take such action as may be required to cause payment to be made to the Township of the amounts of money secured by a guarantee of performance. Such amounts of money shall be used by the Township to finance the completion of the required improvements. In the event that the amounts of money referred to above are insufficient to finance the completion of the required improvements, the Township shall so notify the applicant in writing and shall require the applicant either to complete the improvements without delay or to make available to the Township the amount of money required to finance their completion. Should the applicant fail to do either of the above, and such failure is not due to strikes, riots, acts of God, acts of a public enemy, injunction, or other court action, or any other cause similar to those enumerated beyond the applicant's control, the Township shall refer the matter to the Township attorney for such action as the Township attorney may deem appropriate to compel the applicant to comply with the provisions of the improvement agreement entered into by the applicant as a condition precedent to the approval of the application, or to pursue any other remedy that may be available to the Township.

C. Exemptions

This section does not apply if an applicant is prevented from completing and having accepted such required site improvements within the prescribed time by reason of strikes, riots, acts of God, acts of a public enemy, injunction, or other cause similar to those enumerated beyond the applicant's reasonable control. The applicant shall be entitled to an extension of time equal to the time of such delay that shall be fixed by written certificate made by the Township. It is expressly declared that no such allowance of time will be made unless claimed by the applicant and allowed and certified in writing by the Township at the end of each period of such delay.