

**ARTICLE 21
SPECIAL LAND USE APPROVAL**

50.2100 [Special Land Use Approval Requirements.] For all special land uses, a Site Plan shall be submitted to the Planning Commission and conform to the requirements of procedures for Site Plan review as described in Section 50.2000. If the plans meet the required standards of this Chapter, Article and applicable Section and indicate no adverse effects which in the opinion of the Planning Commission could cause injury to the residents, users or adjoining property, or the City as a whole, the Planning Commission shall approve the use. The Planning Commission shall have sole power to approve or disapprove all special land uses. In consideration of all applications for special approval use, the Planning Commission shall review each case individually as to its applicability and must review each of the following standards of the proposed special land use if it is to be approved. Such uses shall be subject to conditions, restrictions and safeguards deemed necessary within the scope of the law as set forth above.

(1) The proposed special land use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district in which it is to be located.

(2) The proposed use shall be of a nature that will make vehicular and pedestrian traffic no more hazardous or congested than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicular interfacing in residential districts.

(3) The proposed use shall be designed as to the location, size, intensity, site layout and periods of operation of any such proposed use to

eliminate any possible nuisance emanating therefrom which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.

(4) The proposed use shall be such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

(5) The proposed use shall relate harmoniously with the physical and economic aspects of adjacent land uses as regards prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the City.

(6) The proposed use shall be so designated, located, planned and be operated that the public health, safety and welfare will be protected.

(7) The proposed use shall not cause substantial injury to the value of other property in the neighborhood in which it is to be located and will not be detrimental to existing and/or other permitted land uses in the zoning district.

50.2101 [Cluster Zoning Option.] The primary objective of the cluster zoning option is to preserve open space or specific geologic features for the common use and enjoyment of property owners by the clustering or grouping together of housing units. This option shall not increase the number of dwelling units otherwise permitted on a parcel of property. (See Section 50.301(12), Maximum Density, Residential.)

If an applicant requests special land use approval of a cluster zoning option, the Planning Commission shall consider the following, in addition to the review criteria found in Section 50.2100 above:

After notice and hearing as required by MCLA 125.584(b); MSA 5.29(2), as amended, the Planning Commission may approve cluster zoning for a development project in those districts where cluster developments are permitted, subject to the conditions hereinafter set forth.

The cluster option is only available to innovative developments, or those substantially affected by unique geographic, topographic, or natural or manmade features that may otherwise be lost in a normal development process. No increase in density of use of a site is permitted. The development must justify permitting the alteration of use, area, height, bulk or placement requirements. It must be determined that the cluster development is compatible with the overall character of the district in which it is proposed and will not be injurious to adjoining property. Cluster approval is limited to single family, duplex and multiplex buildings on a minimum lot size of one (1) acre. The Planning Commission shall review any application for cluster development and determine whether or not the proposed development best serves the intent of this ordinance, and the public health, safety and welfare.

In reviewing an application for a cluster zoning option, the following must be considered:

- Location
- Density
- Adequacy of Schools, Parks and Other Public Facilities
- Traffic Volume and Circulation
- Pedestrian Circulation
- Compatibility with Existing Area Development
- Adequate Provision for Light and Air
- Accessibility for Fire and Police Protection

Before a vote on whether to approve cluster zoning, the Planning Commission must consider each of the following standards:

(1) Is the proposed plan innovative, or is it a plan substantially affected by unique

geographic, topographic or natural or manmade features?

(2) Is the public health, safety and welfare better served by this proposal than other legal alternatives?

(3) Is the proposal compatible with objectives of the Master Plan?

(4) Have adequate provisions been made for streets/driveways and parks/open space?

(5) If applicable, are exceptions from district regulations within reason to this Chapter?³⁰

50.2102 Decision by Commission. After the Planning Commission has reviewed all seven (7) standards in Section 50.2100, and all five (5) standards in Section 50.2101 when applicable, it may then give final consideration to the proposed special land use. Approval of the proposed special land use, or approval with conditions will require a minimum of six (6) affirmative votes of the Planning Commission. In the event six (6) affirmative votes on a motion to approve a proposal are not received, the proposal will be deemed to have been denied.

Approval or denial of special land uses shall be governed by the following:

(1) **[Approval.** If the Planning Commission determines that the particular special land use(s) should be allowed, it shall endorse its approval thereof on the written application and clearly set forth in writing thereon the particular use(s) which has been allowed. Thereafter, the enforcing officer may issue a building permit in conformity with the particular special approval use so approved. In all cases where a particular special land has been granted as provided herein, application for a building permit in pursuance thereof must be made and received by the City not later than one (1) year thereafter, or such approval shall automatically be revoked; provided, however, the Planning Commission

may grant an extension thereof for good cause shown under such terms and conditions and for such period of time not to exceed six (6) months as it shall determine to be necessary and appropriate.]¹⁴⁷

(2) **Denial.** If the Planning Commission shall determine that the particular special land use(s) requested does not meet the standards of this Chapter or otherwise will tend to be injurious to the public health, safety, welfare or orderly development of the City, it shall deny the application by a written endorsement thereon which clearly sets forth the reason for such denial.

(3) **Record.** The decision on a special land use shall be incorporated in a statement of conclusions relative to the special land use under consideration. The decision shall specify the basis for the decision and any conditions imposed. The Planning Commission may impose such conditions or limitations in granting approval as may be permitted by State law or this Chapter which it deems necessary to fulfill the spirit and purpose of this Chapter. The conditions may include: conditions necessary to insure that public services and facilities affected by a proposed land use of activity will be capable of accommodating increased service and facility loads caused by the land use of activity; to protect the natural environment and conserve natural resources and energy; to insure compatibility with adjacent uses of land; and to promote the use of land in a socially and economically desirable manner.

Conditions imposed shall do all the following:

(a) Be designated to protect natural resources, the health, safety and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in this Chapter for the land use or activity under consideration; and be necessary to insure compliance with those standards.

(d) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The Planning Commission shall maintain a record of changes granted in conditions.

50.2103 Appeal. A proposal which has been denied by the Planning Commission under this Article may not be appealed to the Zoning Board of Appeals.”^{16,21}

[ARTICLE 22 DELETED]^{16,20}

**ARTICLE 23
PLANNED UNIT DEVELOPMENT**

50.2300 Planned Development. The provisions of this Article shall apply only to those districts where planned developments are permitted.

(1) **Intent.** It is the intent of this Special Use to provide a more desirable living environment by retaining the natural character of the City through the preservation of open spaces, woodlands, streams, ponds, waterfrontage, hills, and similar natural assets. It is further intended that this permitted use encourage a more creative approach to residential development through the planned reduction or grouping of lots while maintaining the overall density of the zoning district.

(2) **General Provisions.**

(a) Minimum site shall be ten (10) acres.

(b) Ownership shall be under one proprietor and shall be developed and administered as an integral unit. ("Proprietor to be defined as a person, firm, association, partnership, corporation or combination of any of them, which may hold any interest of ownership in the Planned Development.)

(c) Average residential density shall not exceed one (1) dwelling unit per acre.

(d) For all area gained through the reduction or grouping of lots, an equal area shall be set aside for the common use of the lot owners or residents within the development. This area shall be under legal procedure which shall grant a covenant or deeded interest therein so that it shall be assured of remaining undeveloped.

(3) **Permitted Uses and Structures.**

Within any Planned Development, no structure shall hereafter be used, erected, converted or altered externally in whole or in part if said use is not in accordance with the intent as stated in this Section except as otherwise provided in this Ordinance, for any other than one or more of the following-permitted uses:

- (a) Principal Uses and Structures.

- (i) Single family residences.

- (ii) Recreational areas for the private use of the Planned Development lot owners including, but not limited to, golf courses, tennis courts, swimming pools and skiing trails.

- (iii) Open spaces including, but not limited to, fields, wooded areas, streams, ponds, waterfront parks and scenic hills.

- (iv) General farming.

- (b) Accessory Uses and Structures.

- (i) Carports and garages.

- (ii) Clubhouses and structures incidental to permitted recreational uses.

- (iii) Barns and structures associated with general farming, provided that they are located on the designated individual lot.

(4) **Area, Height and Placement Regulations.**

Within any Planned Development, no structure shall hereafter be used, erected, converted or altered externally in whole or in part if said use is not in compliance with the following regulations:

- (a) Maximum height: 35

- (b) Minimum lot area:

- (i) Single Family

Dwelling: 8,000 sq. ft.

- (c) Minimum yards:

- (i) Front: 25

- (ii) Side: 15

- (iii) Rear: 40. The Planning

Commission may reduce this requirement for individual lots if the rear yard of the lots abuts common land, open space or recreation area as required in Paragraph (4) under General Provisions, above.

- (d) Perimeter Setbacks: There shall be a required yard along all exterior boundary lines of the Planned Development site which shall not be less than the minimum yard requirements for the R-1 Single Family Residential Estate zoning district.

(5) **General Site and Development Requirements.**

(a) **Access Drive.** There shall be hard-surfaced access drives which shall provide unrestricted access to a public road or highway from the Planned Development site. There shall be a distance of no less than 600 feet between access drives along public roadways.

(b) **Parking.** There shall be hard-surfaced, well-drained, off-street parking areas within the Planned Development at the following ratios:

(i) Residences: 2 spaces per dwelling.

(ii) Mixed or combined uses in the same lot; sum of requirements for the individual uses computed separately.

(6) Application Requirements. The Application for a Special Use Permit for the Planned Development will be accompanied by all necessary plans, drawings, specifications and reports indicating all proposed structures and facilities in the Planned Development. For unsubdivided land, all of the Site Plan requirements of Article 20 shall be met. For subdivided land, all the requirements for the submission of a tentative preliminary plan shall be met. Concept sketches and preliminary drawings may be submitted prior to the final official submission (one-half the applicable fee will be charged for concept submission with balance due at the time of full submission).

50.2301 [Planned Development – Central Business District (CBD) Overlay. The provisions of this Section shall apply only to that portion of the Central Business District lying west of Gardner Street, south of Main Street, east of Spring Street, and north of Bay Street in the City of Harbor Springs. This area of the CBD shall be hereinafter referred to as the “CBD PD District.” The regulations of this Section 50.2301 shall be referred to as the “CBD District PD Overlay,” and are available at the option of an applicant for zoning approval of a proposed project (a “Planned Development”) within the CBD PD District.

(1) Intent. It is the intent of this Special Use to accomplish the objectives of the Zoning

Code through a land development review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the Central Business District by encouraging innovation in land use, design, layout and type of structure constructed; to achieve economy and efficiency in the use of land, natural resources, energy and to provide better employment and economic development and shopping opportunities particularly suited to the needs of the community and the Central Business District.

(2) General Provisions.

(a) The minimum lot size for any Planned Development in the CBD PD District shall be .5 acre (21,780 square feet). Unless a site has such a minimum area, it shall not qualify for Planned Development under this Section.

(b) Ownership shall be under one Proprietor and the Planned Development shall be developed and administered as an integral unit (“Proprietor” is defined as one person, partnership, corporation or limited liability company owning the site).

(3) [Permitted Uses and Structures.

Within any Planned Development in the CBD PD District, no structure shall hereafter be used, erected, converted or altered externally in whole or in part unless such structure could be permitted as a principal or special land use within the underlying zoning district where the structure is to be located.]¹⁵⁰

(4) Height and Density Regulations.

Within any Planned Development in the CBD PD District, the height and story limitations of Section 50.1203 shall not be modified, unless the applicant shall show by good and sufficient evidence, and City Council, upon recommendation of the Planning Commission, shall find, in its discretion, as follows:

(a) that facilities benefiting the public at large, or the general Downtown District are to be provided within the Planned Development, such that a variation from a strict

application of the height and story limitations is appropriate under the circumstances; or,

(b) there are dedications of open space within the proposed project that make a better site development than if the strict application of the height and story limitations were adhered to; or,

(c) that the project as a whole promotes desirable economic development in the Central Business District to such an extent, and the economics of the project are such, that a variation from a strict application of the height and story limitations is appropriate under the circumstances; and,

(d) that the project as a whole promotes the health, safety and welfare of the City of Harbor Springs; and,

(e) that the project will not cause the interests of adjacent property owners to be damaged or injured.

Upon the Council’s finding in the affirmative as to one or more of items (a), (b) and (c) above, and both of (d) and (e), a variation of the height restriction of the CBD regulations may be granted, but not to more than 39 feet, and a variation of the story limitation of the CBD regulations may be granted, but not to more than three (3) stories [, provided structures for a commercial use in the CBD PD District may be permitted on a roof top deck of a building to serve the primary principal use of the building or an accessory use, subject to special land use approval by the Planning Commission and the following special restrictions:

(i) No structure shall extend more than forty-nine (49) feet high.

(ii) Any structure other than a restroom or mechanical, heating, or cooling element or one that is required by the Building Code as a health or safety feature, or one that is determined by the Planning Commission to be essential to the proposed roof top deck usage, must be one that provides shade or other protection from inclement weather, and must have at least fifty (50%) percent of the side wall areas open, so that the structure is not enclosed.]¹³⁷

(5) [Dimensional Regulations. Within any Planned Development in the CBD PD District, the dimensional regulations of the underlying zoning district shall not be modified, unless the applicant shall show by good and sufficient evidence, and City Council, upon recommendation of the Planning Commission, shall find, in its discretion, as follows;

(a) that modified setbacks are in keeping with other similar uses facing the same street as the proposed project that creates the predominate character of the neighborhood, such that a variation from a strict application of the setback limitations is appropriate under the circumstances; or,

(b) there is open/green space within the proposed project that make a better site development than if the strict application of setback limitations were adhered to; or,

(c) that the project as a whole promotes a desirable development in the Central Business District and surrounding neighborhood to such an extent that a variation from a strict application of the setback limitations is appropriate under the circumstances; and,

(d) that the project as a whole promotes the health, safety and welfare of the City of Harbor Springs; and,

(e) that the project will not cause the interests of adjacent property owners to be damaged or injured; and,

(f) that the modified setback will not cause a safety or fire hazard based on input received from the Police and Fire Chief of the City of Harbor Springs.

Upon the Council’s finding in the affirmative as to one or more of items (a), (b) and (c) above, and all of (d), (e) and (f), a variation of the dimensional regulations of the underlying zoning regulations district may be granted, but not more than a 50% reduction, and there shall be green area on the site of at least 40% of the land area dedicated to the area of modification, subject to special land use approval by the Planning Commission and the special restrictions that the modified setback will be sufficient to maintain a clear vision corner when adjacent to two intersecting streets.

(6) General Site and Development Requirements. All other provisions, requirements and regulations of the underlying zoning districts shall apply to a Planned Development within the CBD PD District.

(7) Application Requirements and Procedure.

(a) The Applicant for a Planned Development in the CBD PD District shall submit a site plan meeting all of the Site Plan requirements of Article 20, and for those uses requiring special land use approval, shall submit such additional information and drawings as are required by Article 21 of this Code. Concept sketches and preliminary drawings may be submitted prior to the final official submission (one half the applicable fee will be charged for concept submission with balance due at the time of full submission), for the purpose of initiating discussion and obtaining input prior to formal application to the Planning Commission.

(b) The Planning Commission shall review the Application for a Planned Development in the CBD PD District, and shall hold a public hearing thereon before making a recommendation to the City Council as provided for in subparagraph (c).

(c) After the public hearing as required by subparagraph (b), the Planning Commission shall prepare a recommendation to the City Council to approve, approve with conditions, or to deny such Planned Development in the CBD PD District. If the proposed Planned Development is a special land use, the Planning Commission in its transmittal of a recommendation for the Planned Development shall include its findings on the specific criteria of approval for special land uses as provided in Article 21.

(d) The City Council shall hold at least one public hearing on the request for a Planned Development in the CBD PD District. The City Council shall deny, approve, or approve with conditions, the request. If the City Council approves the Planned Development, a written agreement shall be entered into between the City and the applicant, specifying the terms and conditions of the approval granted, and the

scope and details of the project, which agreement shall be binding upon the Applicant, and shall be recorded with the Emmet County Register of Deeds, to run with the land in the Planned Development for the benefit of the City of Harbor Springs, and shall bind successors in interest in the Planned Development, in perpetuity.]]^{107,150}