

# **ZONING RESOLUTION**

## **BERNE TOWNSHIP**

**FAIRFIELD COUNTY, OHIO**

**November 2000**

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**BERNE TOWNSHIP**  
FAIRFIELD COUNTY, OHIO

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# **PART ONE**

## ***AUTHORIZATION AND GENERAL PROVISIONS***

## **ARTICLE I**

### **AUTHORIZATION AND PURPOSE**

#### **Section 1.01 Title**

This Resolution shall be known and may be cited as the ***Zoning Resolution of Berne Township, Fairfield County, Ohio*** and shall be considered a comprehensive amendment to the Berne Township Zoning Resolution, which became effective November 14, 1971, along with any subsequent amendments to said Resolution. Unless otherwise provided herein or by the law or implication required, the same rules of construction, definition, and application shall govern the interpretation of the Resolution as those governing the interpretation of the Ohio Revised Code.

#### **Section 1.02 Purpose**

The Board of Township Trustees hereby find it necessary, advisable and beneficial to the residents of Berne Township to provide for the division of the unincorporated area of the Township into districts or zones. This Zoning Resolution is adopted to promote and protect the public health, safety, and general morals by the following:

- Regulating the use of land areas and the construction, restoration and/or alteration of buildings or other structures and uses therein,
- Restricting the area dimensions of land, yards and open spaces so as to secure adequate light, air and safety from fire and other dangers,
- Controlling the bulk, height, density, and location of buildings or other structures,
- Protecting and preserving existing natural resources.
- Assuring the orderly growth and development of lands,

all as permitted by the provisions of Chapter 519 of the Ohio Revised Code.

#### **Section 1.03 Applicability and Limitations**

Subject to the limitations specified in Section 519.211 of the Ohio Revised Code, the regulations set forth in this Zoning Resolution shall be applicable to all buildings, structures, uses and lands of any private individual or entity, or any political subdivision, district taxing unit or bond-issuing authority, located within the unincorporated area of Berne Township, Fairfield County, Ohio.

#### **Section 1.04 Interpretation and Consistency**

The provisions of this Resolution shall be held to be as the minimum requirements, and shall apply uniformly to each class or kind of building, structure or land. Where the provisions of this Resolution impose greater restrictions upon buildings, structures, uses or land, than required by other codes, laws, ordinances, or restrictive covenants running with the land, the regulations of this Resolution shall govern. Conversely, these regulations shall not be deemed or construed to repeal, amend, modify, alter or change any other law, resolution or regulation of Berne Township, or part thereof, not specifically repealed, amended, modified, altered or changed herein.

#### **Section 1.05 Separability**

The invalidation of any clause, sentence, paragraph, or section of this Resolution by a court of competent jurisdiction shall not affect the validity of the remainder of this Resolution either in whole or in part.

## ARTICLE II

### DEFINITIONS

#### Section 2.01 Interpretation

For the purpose of this Zoning Resolution, certain terms and words are to be defined as found in this Article. Words and terms not specifically defined carry their customarily understood meanings. Words used in the present tense include the future tense. The singular form shall include plural and plural shall include singular. The word "shall" is intended to be mandatory. "Occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".

Particular terms directly related to particular topics may be defined within the specific sections of the Resolution where those general requirements are found.

#### Section 2.02 Definitions

**"Accessory use"** means a use subordinate, secondary, incidental to, and customary in connection with the principal building or use and located on the same lot as the principal building or use. In residential districts, accessory uses include swimming pools, lakes and/or ponds, courts for private recreation.

**"Accessory building"** or **"accessory structure"** means a building or structure occupied by an accessory use.

**"Administrative and business offices"** means offices which carry on no retail trade with the public and maintain no stock of goods for sale to customers.

**"Adult family home"** means a residence or facility that provides accommodations for three to five unrelated adults and supervision and personal care services to at least three of those adults.

**"Adult group home"** means a residence or facility that provides accommodations to six to sixteen unrelated adults and provides supervision and personal care services to at least three of the unrelated adults.

**"Agricultural use"** means the same as stated in Section 519.01 of the Ohio Revised Code, as may be amended, to include farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including but not limited to the care and raising of livestock, equine and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.

**"Building"** means a structure with one (1) or more floors and a roof supported by columns or walls, used or intended to be used for shelter or enclosure of persons, animals and/or property.

**"Height of building"** means the vertical distance from the average grade surrounding the building to the highest point of the roof.

**"Building line"** means the front yard setback line established by this Zoning Resolution, generally parallel with and measured perpendicularly from the front lot line, defining the limits of a front yard in which no building or structure may be located.

**“Business services”** means any profit-making activity which renders services primarily to other commercial, institutional, or industrial enterprises, or which services and repairs appliances and machines used in other businesses.

**“Cemetery”** means land used or intended to be used for the burial of human dead.

**“Clinic, Human”** means an establishment where patients who are not lodged overnight are admitted for examination and/or treatment by a physician or group of physicians.

**“Conditional use”** means an uncommon or infrequent use which may be permitted in specific zoning districts subject to compliance with certain standards, explicit conditions, and the granting of a conditional use permit as specified in Article IX of this Resolution.

**“Congregate or group home”** means a residential care facility in which not less than six (6) but not more than sixteen (16) persons are provided with room, board, specialized care, rehabilitative services and supervision in a family environment.

**“Development”** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**“District”** means a part, portion, zone or geographic area within Berne Township within which certain development standards, as delineated by this Resolution, apply.

**“Dwelling”** or **“residence”** means any building or portion thereof which is designed or used for residential purposes, but not including a cabin, hotel, motel, rooming house, or other such accommodation used for transient occupancy.

**“Single family dwelling”** or **“single family residence”** means a building designed for or occupied exclusively by one family.

**“Two-family dwelling”** or **“two-family residence”** means a building designed for or occupied exclusively by two families living independently.

**“Multiple-family dwelling”** or **“multiple-family residence”** means a building designed or used as a residence for three or more families living independently and doing their own cooking therein.

**“Federal Emergency Management Agency (FEMA)”** means the agency with the overall responsibility for administering the National Flood Insurance Program.

**“Flood”** or **“flooding”** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

**“Flood Insurance Rate Map (FIRM)”** means an official map on which the Federal Emergency Management Agency has delineated the areas of special flood hazards within Berne Township and/or Fairfield County

**“Floodway”** means the channel of a creek, stream or other watercourse and the adjacent lands that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

**“Floor area”** of a building means the sum of the gross horizontal areas of the building floors, measured from the exterior faces of exterior walls. Floor area shall not include basements, elevator and stair bulkheads, unfinished attic spaces, terraces, breezeways, open porches, uncovered steps, or garages.

**“Frontage”** or **“lot frontage”** means the distance along a single street of a contiguous portion of the lot that directly abuts the street and has direct access thereto.

**“Home occupation”** means any occupation or profession conducted primarily by immediate resident family members, which is clearly incidental and secondary to the dwelling's residential use. A home occupation must meet the standards and requirements specified in Section 27.02 of this Ordinance.

**“Hospital”** means a building or structure containing beds for at least four (4) patients allowing for overnight or continuous care, diagnosis and treatment of human ailments.

**“Lot”** means a division of land separated from other divisions for purposes of sale, lease, or separate use, described on recorded subdivision plat, recorded map or by metes and bound, and includes the terms “plat” and “parcel”.

**“Corner lot”** means any lot at the junction of and abutting on two (2) or more intersecting streets, where the angle of intersection is not more than 135 degrees.

**“Lot coverage”** means the ratio of enclosed ground floor area of all buildings and/or pavement areas on a lot to the horizontally projected area of the lot, expressed as a percentage.

**“Rear lot line”** means that lot line which is opposite and furthest removed from the front lot line. In the case of a corner lot, the rear lot line is opposite and furthest removed from the front lot line of least dimension.

**“Side lot line”** means the lot line running from the front lot line to the rear lot line. This line is also the line dividing two (2) interior lots.

**“Lot of record”** means any lot which individually or as a part of a subdivision has been recorded in the Office of the Recorder, Fairfield County, Ohio, as of the effective date of this Resolution.

**“Minimum area of lot”** means the area of a lot computed exclusive of any portion of the right-of-way or any public thoroughfare.

**“Lot width”** is the width of a lot as measured along the frontage of the parcel..

**“Manufactured Home”** shall mean a building unit or assembly of closed construction fabricated in an off-site facility, that conforms with the federal construction and safety standards established by the Secretary of Housing and Urban Development pursuant to the Manufactured Housing Construction and Safety Standards Act of 1974”, and that has a label or tag permanently affixed to it certifying compliance with all applicable federal construction and safety standards.

**“Permanently sited manufactured home”** shall mean a manufactured home that meets all the following criteria:

- 1) The structure is affixed to a permanent foundation and is connected to appropriate facilities.
- 2) The structure, excluding any addition, has a width of at least 22 feet at one point, a length of at least 22 feet at one point, and contains at least 900 square feet , excluding garages, porches or attachments.
- 3) The structure has a minimum 3:12 residential roof pitch, conventional residential siding, and a six in-inch minimum eave overhang, including appropriate guttering.
- 4) The structure was manufactured after January 1, 1995”

**“Manufactured Home Community”** shall mean a development constructed primarily for manufactured homes, with continuing local general management and with special facilities for common use by occupants, including such items as common recreational buildings and/or common open space.

**“Manufactured Home Subdivision”** shall mean a development constructed primarily for manufactured homes, in which each lot in the development is independently owned by the respective owners of the dwelling units located on such lots.

**"Modular Home"** means a non-site-built home that is certified as meeting the requirements of the State of Ohio Building Code for *modular housing*. For the purposes of this Ordinance, once certified by the State of Ohio, modular homes shall be subject to the same standards as site-built homes

**"Mobile Home"** shall mean a transportable, non-site-built dwelling unit designed to be used as a year-round residential dwelling, and built prior to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Because mobile homes, as herein defined, were not constructed to accepted standards, such mobile homes shall not be considered as a permitted or conditional use in any zoning district.

**"Nonconforming use"** means the use of land, building, other structure, or a portion thereof, which does not conform with the use regulations of the district in which it is situated, which use was lawful prior to the enactment of this Zoning Resolution.

**"Nursery"** or **"Day care center"** means a facility which temporarily assumes responsibility for more than four (4) children other than those related to the resident of the premises. Such responsibility shall consist of administering to the needs of those children during any part of a twenty-four hour day for a period of two (2) consecutive days.

**"Nursing home"** includes convalescent and extended care facilities; an establishment which specializes in providing necessary care, shelter and nursing services and services to those unable to be responsible for themselves.

**"Off-street parking space"** means any parking space located wholly off any street, alley, or sidewalk, either in an enclosed building or on an open lot and where each parking space conforms to the standards as specified in this Resolution.

**"Person"** means any individual, corporation, company, business, partnership, association or legal entity.

**"Personal services"** means any enterprise, conducted for gain, which primarily offers services to the general public such as shoe repair, watch repair, retail dry cleaning, barber and beauty shops, and related activities.

**"Professional offices"** means the offices which engage in the providing to the general public services of a professional nature such as legal, medical, accounting, and architectural services.

**"Recreational facilities"** means public or privately-operated uses such as country clubs, golf courses, swimming pools, or other areas maintained for the purpose of providing active and passive recreation.

**"Restaurant"** means a business establishment where food and beverages are prepared and presented for human consumption on the premises.

**"Retail store"** means a store primarily engaged in selling merchandise for personal or household consumption and in rendering services incidental to the sale of goods.

**"Right-of-way"** means a strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting and drainage facilities, and may include special features required by the topography or treatment such as grade separation, landscaped areas, viaducts and bridges.

**"Similar use"** means a use not specifically listed in any of the permitted building or use classifications of any district, but which may be found analogous and added to the classification, according to the procedures and requirements of Section 11.02.05 of this Resolution.



**“Street”, “road” or “thoroughfare”** means a public way for the purpose of vehicular travel, including the entire area within the right-of-way.

**“Structure”** means anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground, including among other things walls, buildings, and patios. “Structure” does not include fences. Notwithstanding anything to the contrary, the term “structure” shall include mobile and/or moveable structures.

**“Structural alteration”** means any change that would replace or tend to prolong the life of a supporting member of a structure, such as bearing walls, columns, beams, or girders.

**“Telecommunications tower”** means any freestanding structure or structure attached to another structure, that meets all of the following criteria:

- 1) Construction is proposed to begin on or after October 31, 1996.
- 2) The tower is proposed to be owned or principally used by a public utility engaged in telecommunications services.
- 3) The tower is proposed to have a height of greater than thirty-five (35) feet.
- 4) The tower is proposed to have attached to it radio frequency transmission or reception equipment.

**“Township”** means Berne Township, Fairfield County, Ohio.

**“Use”** means the purpose for which a building is arranged, designed, or intended, or for which either land, lot, piece or parcel thereof or a building located thereon may be occupied or maintained.

**“Variance”** means a modification from the strict terms of the relevant regulations where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of action by the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

**“Yard”** means a required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three (3) feet above the general level of the graded lot upward.

**“Front yard”** means that portion of a lot extending across the front of the lot between the side lot lines and being the minimum horizontal distance between the street right-of-way and the front of the building or structure.

**“Rear yard”** means that portion of a lot extending across the rear of the lot between the side lot lines and being the required minimum horizontal distance between the rear lot line and the rear of the building or structure.

**“Side yard”** means that portion of a lot that is located between the side lot line and the nearest building or structure.

**“Zoning permit”** means an official statement certifying that a proposed building or use complies with all the provisions of this Zoning Resolution.

**“Zoning District”** means a portion of the Township within which certain regulations and requirements or various combinations thereof apply under the provisions of this Zoning Resolution.

**“Zoning District Map” or “Zoning Map”** means the map of the Township showing the locations of established zoning districts, together with all amendments subsequently adopted by the Township Trustees, and established pursuant to Section 12.02 of this Resolution.

**“Zoning Inspector”** means the enforcement officer, hired by the Board of Township Trustees, who is charged with enforcing the provisions of this Zoning Resolution.

# **PART TWO**

## ***ADMINISTRATION AND ENFORCEMENT***

## **ARTICLE III**

### **ADMINISTRATIVE BODIES AND THEIR DUTIES**

#### **Section 3.01 Zoning Inspector**

##### **3.01.01 Office of Zoning Inspector Established**

The Zoning Inspector, appointed by the Board of Township Trustees, shall enforce the Zoning Resolution. All officials and/or employees of the Township shall assist the Zoning Inspector by reporting any new construction, reconstruction, or apparent violations to this Resolution.

##### **3.01.02 Relief From Personal Liability**

The Zoning Inspector, acting in good faith and without malice in the discharge of his/her duties during enforcement of this Resolution is relieved of all personal liability for any damage that may accrue to persons or property as a result of such acts of alleged failure to act. Further, he/she shall not be held liable for the costs in any action, suit, or proceeding that may be instituted against him/her as a result of the enforcement of this Resolution. In any of these actions, the Zoning Inspector shall be defended or represented by the jurisdiction's attorney-at-law until the final termination of the proceedings.

##### **3.01.03 Duties of Zoning Inspector**

For the purposes of this Resolution, the Zoning Inspector shall have the following duties:

- A. Enforce the Zoning Resolution and take all necessary steps to remedy conditions found in violation by ordering, in writing, the discontinuance of illegal uses or work in progress, and direct cases of noncompliance to the appropriate entity for action.
- B. Issue zoning certificate(s) to the owner of a parcel or his/her agent, when the provisions of the Zoning Resolution have been met, or refuse to issue the same in the event of noncompliance.
- C. Collect designated fees as, established by separate resolution, for zoning certificates, appeals, variances and conditional uses.
- D. Make and keep all records necessary and appropriate to the office including records of issuance and denial of zoning certificates and receipt of complaints of violation of the Zoning Resolution and action taken on the same.
- E. Inspect any buildings or lands to determine whether any violations of the Zoning Resolution have been committed or exist.
- F. Advise the Zoning Commission and the Board of Zoning Appeals of relevant matters pertaining to the enforcement of and amendments to the Zoning Resolution.

#### **Section 3.02 Zoning Commission**

##### **3.02.01 Establishment**

Pursuant to Ohio Revised Code Chapter 519, there is hereby established a Rural Zoning Commission in and for Berne Township. Such Commission shall consist of five (5) residents of the unincorporated area of the Township as appointed by the Board of Township Trustees. The terms of members shall be of such length and so arranged that the term of one member shall expire each year; however, each member shall serve until his/her successor is appointed.

##### **3.02.02 Removal of Members**

Members of the Zoning Commission shall be removable, at the discretion of the Trustees, for non-performance of duty, misconduct in office, or other just cause by the Board of Township Trustees, after public hearing and notification.

### 3.02.03 Proceedings

The Zoning Commission shall elect a Chairman and adopt rules necessary for the conduct of its affairs consistent with the provisions of this Resolution. One of the members shall be appointed Secretary who shall keep records of the actions of the Commission. Meetings shall be held at the call of the Chairman, and at such other times as deemed appropriate by the Commission, as determined by majority vote. All meetings shall be open to the public. The Commission shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. Such minutes shall be public record, and shall be immediately filed in the office of the Commission. For the purpose of taking action, the concurring vote of three (3) members of the Commission shall be required.

### 3.02.04 Powers and Duties

For the purposes of this Resolution, the Zoning Commission shall have the following powers and duties:

- A. Initiate amendments to this Resolution, pursuant to Article VI.
- B. Review proposed amendments to this Zoning Resolution and make recommendations to the Board of Township Trustees.

## **Section 3.03 Board of Zoning Appeals**

### 3.03.01 Establishment

There is hereby established a Board of Zoning Appeals, which shall have the authority as specified in Sections 519.13 through 519.15 of the Ohio Revised Code, subject to such rules of a procedural nature as said Board may adopt and promulgate for the purposes of acting on matters properly before it.

The Board of Zoning Appeals shall consist of five (5) members appointed by the Board of Township Trustees. Every member shall be a resident of the unincorporated territory of Berne Township, Fairfield County, Ohio. The terms of members shall be of such length and so arranged that the term of one member shall expire each year; however, each member shall serve until his/her successor is appointed. Vacancies shall be filled by resolution of the Board of Township Trustees for the non-expired term of the member affected.

### 3.03.02 Removal of Members

Members of the Board of Zoning Appeals shall be removable at the discretion of the Trustees, for non-performance of duty, misconduct in office, or other just cause by the Board of Township Trustees, after public hearing and notification.

### 3.03.03 Proceedings

The Board shall organize annually and elect a Chairman, and Secretary. Meetings of the Board shall be held at the call of the Chairman, and at other such times as the Board shall determine. The Board shall adopt, from time to time, such rules and regulations as it may deem necessary to implement the provisions of this Zoning Resolution. All meetings of the Board shall be open to the public.

The Secretary of the Board shall keep minutes of its proceedings, showing the vote of each member upon each question; or, if absent or failing to vote, indicating such fact; and shall keep records of its examinations and other official action, all of which shall be a public record and be open for public inspection.

The Board shall have the power to subpoena witnesses, administer oaths and may require the production of documents, under such rules as it may establish.

### 3.03.04 Powers and Duties

In exercising its duties, the Board may, as long as such action is in conformity with the terms of this Resolution, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or

determination appealed from and may make such order, decision, or determination as ought to be made, and to that end shall have the powers of the Zoning Inspector from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, decision, or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this Resolution or to effect any variation in the application of this Resolution. For the purpose of this Resolution, the Board has the following specific responsibilities:

- A. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Inspector, in accordance with Article VII of this Resolution.
- B. Authorize such variances from the terms of this Resolution as will not be contrary to the public interest, where, owing to special conditions of the land, a literal enforcement of this Resolution will result in unnecessary hardship in accordance with the provisions of Article VIII of the Resolution.
- C. Interpret the boundaries of the Official Zoning Map, in accordance with the provisions of this Resolution.
- D. Permit conditional uses as specified in the Official Schedule of District Regulations and under the conditions specified in Article IX of this Resolution, and such additional safeguards as will uphold the intent of the Resolution.
- E. Authorize the substitution or extension of nonconforming uses, as specified in Article V of this Resolution.
- F. Authorize extensions of time for completion of work specified in zoning certificate, in accordance with Section 4.08 of this Resolution
- G. Declare zoning permits void, pursuant to Section 4.09 of this Resolution.

### **Section 3.04 Board of Township Trustees**

The powers and duties of the Board of Township Trustees pertaining to this Zoning Resolution are as follows:

- A. Appoint members to the Zoning Commission and Board of Zoning Appeals.
- B. Initiate and/or act upon suggested amendments to the Zoning Resolution text or Official Zoning District Map
- C. Override a written recommendation of the Zoning Commission on a text or map amendment, provided such action is passed by a unanimous vote of all members of the Board.

### **Section 3.05 Powers of Zoning Inspector, Board of Zoning Appeals, and Board of Township Trustees on Matters of Appeal**

It is the intent of this Resolution that all questions of interpretation and enforcement shall first be presented to the Zoning Inspector. Such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Zoning Inspector, and recourse from the decisions of the Board of Zoning Appeals shall be only to the courts as provided by law. It is further the intent of this Resolution that the powers of the Board of Township Trustees in connection with this Resolution shall not include hearing and deciding questions of interpretation and enforcement that may arise. The Board of Township Trustees shall not have the authority to override the decisions of the Board of Zoning Appeals and/or the Zoning Inspector on matters of appeal or variance. Nonetheless, nothing in this Resolution shall be interpreted to prevent any official of the Township from appealing a decision of the Board of Zoning Appeals to the courts pursuant to Chapters 2505 and 2506 of the Ohio Revised Code. Such appeal shall be made within ten (10) days of the Board's written decision.

## **ARTICLE IV**

### **ENFORCEMENT AND PENALTY**

#### **Section 4.01 Zoning Certificate Required**

It shall be unlawful for any owner or other person to use or to permit the use of any non-agricultural structure, building or land, or part thereof, hereafter constructed, created, erected, changed, structurally altered, converted or enlarged until a zoning certificate shall have been issued by the Zoning Inspector. Such zoning certificate shall show that such building or premises or a part thereof, and the property use thereof, are in conformity with the provisions of this Resolution. The Zoning Inspector shall issue no such certificate until the requirements of this Resolution have been met.

A zoning certificate is required for any of the following subject to the limitations of section 519.211 of the Ohio Revised Code:

- A. Construction, structural alteration or enlargement of any non-agricultural building or structure, including accessory buildings, except portable storage buildings 144 square feet or less which are located in a residential district and are not located in the flood plain overlay district.
- B. Change in use of an existing building or accessory building, except agricultural uses, to a use not listed as a permitted use in the zoning district where the building is located.
- C. Occupancy and use, excepting agricultural use, of vacant land.
- D. Change in the use of land to a use not listed as a permitted use in the zoning district where the land is located.
- E. Any alteration, expansion or other change of a lawful nonconforming use as regulated by Article V.

#### **Section 4.02 Application for Zoning Certificate**

The owner or applicant shall sign three (3) copies of an application for a zoning certificate, attesting to the truth and exactness of all information supplied on the application. At a minimum, the application shall contain the following information:

- A. Name, address, and telephone number of the applicant.
- B. Legal description of property, as recorded in Fairfield County Recorder's office.
- C. Existing use.
- D. Proposed use.
- E. Zoning district in which property is presently located.
- F. Plans in triplicate drawn to approximate scale, showing the actual dimensions and shape of the lot to be built upon; the exact dimensions and location of existing buildings of the lot, if any; and the location and dimensions of the proposed building(s) or alteration.
- G. Height of proposed buildings.
- H. Number of proposed dwelling units.
- I. An approval by the Fairfield County Health Department of the proposed method of water supply and for disposal of sanitary wastes prior to approval by the Zoning Inspector.
- J. Such other material and information as may be requested by the Zoning Inspector to determine conformance with, and provide for the enforcement of this Resolution.

Where complete and accurate information is not readily available from existing records, the Zoning Inspector may require the applicant to furnish a survey of the lot by a registered surveyor. In particular cases, the Zoning Inspector may reduce the submittal requirements for an application, when the proposed action warrants.

### **Section 4.03 Approval of Zoning Certificates**

Within thirty (30) days after the receipt, the application shall be either approved or disapproved by the Zoning Inspector, in conformance with the provisions of this Resolution, unless the provisions of Section 4.04 are applicable. Zoning certificates issued on the basis of plans and applications approved by the Zoning Inspector shall authorize only the use and arrangement as set forth in such approved application. All zoning certificates shall be conditional upon the commencement of work within one (1) year. One (1) copy of the application shall be returned to the applicant by the Zoning Inspector, after such copy is marked as either approved or disapproved and attested to same by the signature of the Zoning Inspector, or his/her designated agent on such copy. In the case of disapproval, the Zoning Inspector shall state on the returned plans the specific reasons for disapproval. The Zoning Inspector shall retain two (2) copies of plans, similarly marked. One (1) copy retained by the Zoning Inspector shall be forwarded to the County Auditor upon issuance of a certificate of zoning compliance along with one (1) copy of the application.

### **Section 4.04 Submission to the Director of the Department of Transportation**

Before any zoning certificate is issued affecting any land within 300 feet of the centerline of a proposed new highway or a highway for which changes are proposed as described in the certification to local officials by the Director of the Department of Transportation, or any land within a radius of 500 feet from the point of intersection of said centerline with any public road or highway, the Zoning Inspector shall give notice, by registered or certified mail to the Director of the Department of Transportation. The Zoning Inspector shall not issue a zoning certificate for 120 days from the date the notice is delivered to the Director of the Department of Transportation. If the Director of the Department of Transportation notifies the Zoning Inspector that he/she shall proceed to acquire the land needed, then the Zoning Inspector shall refuse to issue the Zoning Certificate. If the Director of the Department of Transportation notifies the Zoning Inspector that acquisition at this time is not in the public interest, or if the Zoning Inspector does not receive notification of action, the Zoning Inspector shall, if the application is in conformance with all provisions of this Resolution, issue the zoning certificate.

### **Section 4.05 Record of Zoning Certificates**

A record of all zoning certificates shall be kept on file in the Office of the Zoning Inspector, or his/her designated agent, and copies shall be furnished upon request to any resident and/or person.

### **Section 4.06 Expiration of Zoning Certificates**

If the work described in any zoning certificate has not begun within one (1) year from the date of issuance thereof, or has not been completed within two (2) years from the date of issuance thereof, said certificate shall expire; it shall be revoked by the Zoning Inspector, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the expired permit shall not proceed unless and until a new zoning certificate has been obtained or extension granted by the Board of Zoning Appeals.

### **Section 4.07 Certificate of Zoning Compliance**

It shall be unlawful to use or occupy, or permit the use or occupancy of any building or premises hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefore by the Zoning Inspector, stating that the proposed use of the building or land, as completed, conforms to the requirements of this Resolution. Such certificate of zoning compliance may be processed as an indication of final approval on the zoning certificate



## **Section 4.08 Schedule of Fees, Charges and Expenses**

The Board of Township Trustees shall establish, by separate Resolution, a schedule of fees, charges, and expenses and a collection procedure for zoning permits, certificates of zoning compliance, appeals, and other matters pertaining to this Resolution. The schedule of fees shall be posted in the Township Offices, and may be altered or amended only by the Board of Township Trustees. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application.

## **Section 4.09 Void Zoning Certificate**

A zoning certificate shall be void if any of the following conditions exist:

- A. The zoning certificate was issued contrary to the provisions of this Resolution by the Zoning Inspector.
- B. The zoning certificate was issued based upon a false statement by the applicant.
- C. The zoning certificate has been assigned or transferred.

When a zoning certificate has been declared void for any of the above reasons by the Board of Zoning Appeals pursuant to this Resolution, written notice of its revocation shall be given by certified mail to applicant, and sent to the address as it appears on the application. Such notices shall also include a statement that all work upon or use of the building, structure, or land cease unless, and until, a new zoning certificate has been issued.

## **Section 4.10 Violation and Penalty**

### **4.10.01 Construction and Use to be as Provided in Applications, Plans, Permits, and Certificates**

Zoning certificates or certificates of occupancy issued on the basis of plans and applications approved by the Zoning Inspector authorize only the use, and arrangement set forth in such approved plans and applications or amendments thereto. Any use, arrangement, or construction not in conformance with that authorized shall be deemed a violation of this Resolution, and punishable as provided in Section 4.10.03.

### **4.10.02 Complaints Regarding Violations**

Whenever a violation of this Resolution occurs, or is alleged to have occurred, any resident or owner of property within the Township may file a written complaint. Such complaint shall state fully the causes and basis thereof, and shall be filed with the Zoning Inspector. The Zoning Inspector shall record properly such complaint, immediately investigate, and within thirty (30) days take such appropriate action thereon as may be necessary and provided for by this Resolution.

### **4.10.03 Penalties for Violation**

Violation of the provisions of this Resolution or failure to comply with any of its requirements (including violations of conditions and safeguards established in various sections of this Resolution) shall constitute a misdemeanor. Any person who violates this resolution or fails to comply with any of its requirements shall be fined up to the greater of \$500 or as permitted under Ohio Revised Code Section 519.99. Each day such violation continues, after receipt of violation notice, shall be considered a separate offense. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who knowingly commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the Township, the County Prosecutor, or any adjacent property owner from taking such other lawful action as is necessary to prevent or remedy any violations.

#### 4.10.04 Late Application

In the event that application for a zoning certificate, conditional use certificate, variance, or zoning amendment is made after development begins or a use changes, the zoning inspector shall double the fee. This shall be in addition to any other penalty(s) for a zoning violation.

## **ARTICLE V**

### **NONCONFORMITIES**

#### **Section 5.01 Intent**

Within the districts established by this Resolution, or amendments hereinafter adopted, there may exist lots, structures, uses of land and structures which were lawful before this Resolution was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Resolution or future amendments. It is the intent of this Resolution to permit these nonconformities, as defined in Section 5.02 below, to continue until they are removed and to permit reasonable extensions and improvements as allowed by law.

#### **Section 5.02 When Permitted**

##### **5.02.01 Existing Land or Buildings**

Any use of land or buildings existing on the effective date of this Resolution may be continued, even though such use does not conform to the provisions herein, so long as such use was in conformity with the zoning resolution in effect in the Township at the time that the use or structure was established. No nonconforming building, structure, or use shall be moved, extended, enlarged, reconstructed, or structurally altered, except as specifically provided in this Resolution.

##### **5.02.02 Construction Commenced**

Any property purchased or acquired in good faith for any nonconforming use prior to the adoption of this Resolution, upon which property the work of changing, remodeling or construction of such nonconforming use has been legally commenced at the time of adoption of this Resolution, may be used for the nonconforming use for which such changing, remodeling or construction was undertaken, provided that such work is completed within one (1) year from the date of adoption of this Resolution or amendment thereto making said use nonconforming and so long as such use was in conformity with the zoning resolution in effect in the Township at the time that the use or structure was established.

#### **Section 5.03 Discontinuance**

A nonconforming use that has been discontinued or abandoned shall not thereafter be returned to a nonconforming use. A nonconforming use shall be considered abandoned whenever any one of the following conditions exist:

- A. When the use has been voluntarily discontinued for a period of two (2) years.
- B. When the nonconforming use has been replaced by a conforming use.

#### **Section 5.04 Substitution**

The Board of Zoning Appeals may allow the nonconforming use of a building or structure to be changed to another nonconforming use of the same or of a more restricted classification, provided all other requirements are met. However, in any residential district, no change shall be authorized by the Board of Zoning Appeals to any use which is not a permitted or conditional use in any "R" District.

#### **Section 5.05 Extension**

No nonconforming use or structure shall be enlarged, extended, reconstructed, or structurally altered, except as follows:

- A. The Board of Zoning Appeals may permit, on a once-only basis, a building containing a nonconforming use to be enlarged to an extent not exceeding fifty percent (50%) of the ground floor area of the existing building or structure devoted to a nonconforming use at the time of enactment of this Resolution or at the time of its amendment making the use

nonconforming. The Board shall not authorize an extension which would result in a violation of provisions of this Resolution with respect to any adjoining premises, or which would occupy ground space required for meeting the yard or other requirements of this Resolution.

- B. No nonconforming building or structure shall be moved in whole or in part to any other location unless such building or structure and the yard and other open spaces provided are made to conform to all of the regulations of the district in which such building or structure is to be located.
- C. Any residential structure which is nonconforming due to the fact of its being in a non-residential zoning district may be enlarged, extended, reconstructed or structurally altered provided it meets the requirements of the adjacent or most proximate R-District.
- D. Any structure which is nonconforming due to its location or configuration on the lot, resulting in lot coverage or yards inconsistent with the requirements of the zoning district where it is located, may be enlarged, extended or structurally altered in a manner that decreases or maintains its existing degree of nonconformity, but in no case shall such structure be enlarged, extended or structurally altered in a manner that increases its degree of nonconformity.

### **Section 5.06 Damage and/or Destruction of a Nonconforming Building or Use**

When a building or structure, the use of which does not conform to the provisions of this Resolution, is damaged by storm, fire, explosion, act of God, or the public enemy, it may be restored or rebuilt and continued in such nonconforming use, provided that the restoration or rebuilding is commenced within six (6) months of the time of damage, that construction is completed within twenty-four (24) months, and that such restoration or rebuilding would not extend or expand the existing use beyond the parameters specified in Section 5.05.

### **Section 5.07 Maintenance and Repair**

Nothing in this Article shall be deemed to prevent normal maintenance and repair of a building or structure containing a nonconforming use. Structural alterations may be made to a building or structure containing a nonconforming use as follows:

- A. When required by law.
- B. To convert to a conforming use.
- C. To improve interior livability. However, no structural alterations shall be made which exceed the area or height requirements or which would extend into any yard required in the district in which such building is located.

### **Section 5.08 Nonconforming Lots of Record**

In any district where dwellings are permitted, one (1) single-family detached dwelling may be erected on any lot of official record on the effective date of this Resolution, even though such lot does not meet the development standards of the district in which it is located, provided such lot receives the approval of the Fairfield County Board of Health, and further provided that the owner of such lot does not own adjacent property and did not own such property at the time this Resolution became effective. For the purposes of this Section, property located across the roadway from the subject property shall not be deemed as adjacent.

If the owner(s) of such lot owns adjacent property, or owned such property at the time this Resolution became effective, then the owner(s) shall re-divide such property to provide for the lot area and width requirements of the district in which the lot is located. However, if the width of the lots resulting from such - would exceed the required lot width in the district by more than twenty percent (20%), such re-division may be made so as to provide one (1) more lot than would otherwise be permitted.

If development of a nonconforming lot occurs consistent with the provisions above, the structure shall be located on the lot in such a manner that the front, side and rear yards are as close as possible to the yards established in the district where the lot is located.

## **ARTICLE VI**

### **DISTRICT CHANGES AND AMENDMENTS**

#### **Section 6.01 Intent**

This Article describes the procedures to be followed for amendment of the Zoning Resolution. If and to the extent that the provisions of this Article are inconsistent with the provisions of Section 519.12 of the Ohio Revised Code, as may be subsequently amended, the provisions of the Ohio Revised Code shall govern.

#### **Section 6.02 Initiation of Zoning Amendments**

Amendments to this Resolution may be initiated in one of the following ways:

- A. By referral of a proposed amendment to the Township Zoning Commission by Board of Township Trustees.
- B. By the adoption of a motion by the Township Zoning Commission submitting the proposed amendment to the Board of Township Trustees.
- C. By the filing of an application by at least one (1) owner or lessee of property, or his/her designated agent, within the area proposed or affected by the said amendment.

#### **Section 6.03 Contents of Application**

An application for amendment shall be submitted by the applicant to the Zoning Inspector and shall contain, at a minimum, the following information:

- A. Name, address, and phone number of the applicant.
- B. Proposed amendment to the text or legal description of the property affected.
- C. Present use and district.
- D. Proposed use and district.
- E. A map drawn to scale showing property lines, streets, existing and proposed zoning, and such other items as the Zoning Inspector may require.
- F. A list of all property owners contiguous to, directly across the street from, or within two hundred (200) feet of the subject parcel(s) proposed to be rezoned and their address as appearing on the Fairfield County Auditor's current tax list. The requirement for addresses may be waived when more than ten (10) parcels are proposed to be rezoned.
- G. A statement as to how the proposed amendment will impact adjacent and proximate properties.
- H. Any other information as may be requested by the Zoning Inspector to determine conformance with, and provide for enforcement of this Zoning Resolution.
- I. A fee as established by the Board of Township Trustees.

Upon receipt of the application, the Zoning Inspector shall review it for completeness. If the above requirements are met, the Zoning Inspector shall transmit the application to the Zoning Commission. The date of such transmittal shall be considered the date of filing. If the application is incomplete, the Zoning Inspector shall return it to the applicant with a listing of deficiencies.

#### **Section 6.04 Submission to Regional Planning Commission**

Within five (5) days after the adoption of a motion by the Commission, transmittal of a resolution by the Board of Township Trustees, or the filing of an application pursuant to Section 6.03 above, the Zoning Commission shall transmit a copy of such motion, resolution or application, together with the text and map pertaining to the case in question, to the Fairfield County

Regional Planning Commission. The Fairfield County Regional Planning Commission may recommend the approval or denial of the proposed amendment, or some modification thereof, and shall submit such recommendation to the Township Zoning Commission. Such recommendation shall be considered at the public hearing held by the Zoning Commission, pursuant to Section 6.05 below.

## **Section 6.05 Public Hearing by Zoning Commission**

### **6.05.01 Date of Public Hearing**

The Zoning Commission shall schedule a public hearing after adoption of their motion, transmittal of a resolution from the Board of Township Trustees, or the filing of an application pursuant to Section 6.03 above. Said hearing shall be held not less than twenty (20) nor more than forty (40) days from the date of adoption of such motion, transmittal of such resolution, or filing of such application.

### **6.05.02 Notice of Public Hearing in Newspaper**

Before holding the public hearing as required, notice of such hearing shall be given by the Township Zoning Commission in at least one (1) newspaper of general circulation in the Township at least ten (10) days before the date of such hearing. The notice shall set forth the following information:

- a. The time and place of the public hearing.
- b. A statement that the Berne Township Rural Zoning Commission is conducting the hearing.
- c. A statement indicating that the proposed action is an amendment to the zoning resolution.
- d. A list of the addresses and owners of all properties to be rezoned or redistricted as they appear on the application, if applicable.
- e. The present and proposed zoning classification of the property to be rezoned or redistricted, if applicable.
- f. The time and place where the application will be available for public examination for a period of at least ten (10) days prior to the hearing,
- g. The name of the person responsible for giving notice of the public hearing.
- h. Any other information requested by the zoning commission.
- i. A statement that after the conclusion of such hearing, the matter will be referred to the Board of Township Trustees for further determination.

### **6.05.03 Notice to Property Owners**

If the proposed amendment intends to rezone or redistrict ten (10) or less parcels of land, as listed on the tax duplicate, written notice of such hearing shall be mailed by the Zoning Commission, by first class mail, at least ten (10) days before the date of the hearing, to all owners of property within, contiguous to and directly across the thoroughfare from such area proposed to be rezoned or redistricted. Such notices shall be mailed to the addresses of the owners appearing on the Fairfield County Auditor's current tax list, as provided by the applicant in Section 6.03 (F) above. The failure to deliver such notices shall not invalidate any such amendment. The notices shall contain the same information as required of notices published in newspapers as specified in Section 6.05.02 above.

## **Section 6.06 Recommendation by Zoning Commission**

Within thirty (30) days after the hearing required in Section 6.05 above, the Zoning Commission shall recommend to the Board of Township Trustees that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be denied.

## **Section 6.07 Public Hearing by the Board of Township Trustees**

Within thirty (30) days from receipt of the recommendation of the Zoning Commission, the Board of Township Trustees shall hold a public hearing. Notice by newspaper publication of such hearing shall be as specified in Section 6.05.02 above.

### **Section 6.08 Action by the Board of Township Trustees**

Within twenty (20) days after the public hearing required in Section 6.07 above, the Board of Township Trustees shall either adopt or deny the recommendation of the Zoning Commission, or it may adopt some modification thereof. In the event the Board of Township Trustees denies or modifies the recommendation of the Zoning Commission, the unanimous vote of all three (3) members of the Board of Township Trustees is required.

### **Section 6.09 Criteria**

In reviewing the proposed amendment and arriving at its decision, the Board of Township Trustees shall consider the following factors:

- A. Compatibility of the proposed amendment with the zoning and use of adjacent land, and with any land use or comprehensive plans adopted by the Township.
- B. The effect of the adoption of the proposed amendment on motor vehicle access, traffic flow, storm drainage and/or public infrastructure in the area.
- C. The effect of the adoption of the proposed amendment upon the public health, safety and general welfare of the adjacent properties and other residents of the Township.

### **Section 6.10 Effective Date and Referendum**

Such amendment adopted by the Board of Township Trustees shall become effective thirty (30) days after the date of adoption, unless within that thirty (30) days there is presented to the Board of Township Trustees a petition, signed by a number of qualified voters residing in the unincorporated area of the Township or part thereof included in the zoning plan, equal to eight percent (8%) of the total vote cast for all candidates for Governor in such area at the most recent election in which a Governor was elected, requesting the Board of Township Trustees to submit the proposed amendment to the electors of such area, for approval or rejection, at the next primary or general election.

No amendment, for which such referendum vote has been requested, shall be put into effect unless a majority of the votes cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the voters have approved the amendment, it shall take effect immediately.

## **ARTICLE VII**

### **APPEALS**

#### **Section 7.01 Appeals**

Any official action of the Zoning Inspector may be appealed by any person aggrieved, or by any officer of the Township affected by the decision of the Zoning Inspector. The procedures to be followed shall be as specified in Sections 519.14 through 519.15 of the Ohio Revised Code, as may be amended.

#### **Section 7.02 Notice of Appeal**

A notice of appeal shall be filed with the Clerk of the Township by any person aggrieved including a tenant, or by a governmental officer, department, board, or bureau. Such appeal shall be filed with the Clerk within twenty (20) days after the date of the decision, and shall be in writing, signed by the appellant, specifying the grounds of the appeal. A copy of the action by the Zoning Inspector shall be attached to the notice of appeal. Within five (5) days from the date of receipt of such appeal, the Clerk of the Township shall transmit said notice to the Board of Zoning Appeals.

#### **Section 7.03 Public Hearing by the Board of Zoning Appeals**

The Board of Zoning Appeals shall hold a public hearing within a reasonable time after receipt by the township Clerk of the notice of appeal. Notice of such hearing shall be given by publication in one (1) or more newspapers of general circulation in Fairfield County at least ten (10) days before the date of the hearing; and also by notification in writing to the appellant(s) and all property owners contiguous to, directly across the street from, or within 200 feet of the subject parcel(s), at least ten days prior to the date of the hearing. The notice shall set forth the time and place of the hearing and the nature of the appeal.

#### **Section 7.04 Action by the Board of Zoning Appeals**

The Board of Zoning Appeals shall decide the appeal within a reasonable time after the hearing.



## ARTICLE VIII

### VARIANCES

#### Section 8.01 Powers of the Board of Zoning Appeals

The Board of Zoning Appeals shall have the power to authorize, in specific cases, such variances from the provisions of this Resolution as will not be contrary to the public interest. Such variances shall be granted only in cases of special conditions, involving physical conditions of the land, whereby strict application of such provisions or requirements would result in *practical difficulty* and *unnecessary hardship* that would deprive the owner of the reasonable use of the land and buildings involved. The Board shall grant no variance from strict application of any provision of this Resolution unless it finds that all the following facts and conditions exist:

- A. That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions specific to the land or building for which the variance is sought, and such conditions do not apply generally to land or buildings in the neighborhood or district in which the property is located.
- B. That, because of such physical conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Resolution and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. That such hardship has not been created by the applicant or any person having present or prior interest in the property.
- D. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Under no circumstance shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this Resolution in the district involved, or any use expressly or by implication prohibited by the terms of this Resolution in said district.

#### Section 8.02 Application for Variance

Any owner, or his/her agent, may file an application to obtain a variance or appeal from the decision of the Zoning Inspector. An application for a variance shall be filed in triplicate with the Zoning Inspector. The Zoning Inspector shall forward such application to the Secretary of the Board of Zoning Appeals, within five (5) days from receipt of the completed application.

The application for a variance or an appeal shall contain the following information:

- A. Name, address, and phone number of the applicant.
- B. Legal description of property as recorded in Fairfield County Recorder's office.
- C. A map or drawing to approximate scale, showing the dimensions of the lot and any existing or proposed building, including the lots or tracts referenced in Section 8.02 D below.
- D. A list of all property owners contiguous to, directly across the street from, or within two hundred (200) feet of the subject parcel(s), as appearing on the Fairfield County Auditor's current tax list. The applicant shall also provide the addresses of all property within the above referenced boundaries, if available.
- E. Each application for a variance or appeal shall refer to the specific provisions of this Resolution, which apply.
- F. A narrative statement explaining the following:
  1. The use for which variance or appeal is sought.
  2. Details of the variance or appeal that is applied for and the grounds on which it is claimed that the variance or appeal should be granted, as the case may be.
  3. The specific reasons why the variance is justified, according to Section 8.01 A-D above.

### **Section 8.03 Public Hearing by the Board of Zoning Appeals**

The Board of Zoning Appeals shall hold a public hearing within reasonable time after receipt by the Secretary of an application for a variance. Notice of such hearing shall be given in one (1) or more newspapers of general circulation in the Township at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed variance.

### **Section 8.04 Action by Board of Zoning Appeals**

Within thirty (30) days after the public, hearing pursuant to Section 8.03, the Board of Zoning Appeals shall approve, disapprove, or approve with supplementary conditions the request for variance. In granting any variance, the Board of Zoning Appeals may prescribe appropriate and reasonable conditions. Violation of the conditions and/or safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Resolution under Section 4.10 of this Resolution.

If the application is approved, or approved with conditions, the Board of Zoning Appeals shall make a finding that the reasons set forth in the application justify the granting of the variance and will permit a reasonable use of the land, building or structure. The Board of Zoning Appeals shall transmit a written copy of its decision and findings to the Zoning Inspector, who shall forward such copy to the applicant. If the request for appeal or variance is denied, the applicant may seek relief through the Court of Common Pleas.

### **Section 8.05 Expiration and Revocation of Zoning Certificate Issued Under a Variance**

The approval of the zoning certificate issued on a lot subject to variance procedures above, shall become null and void if such use is not carried out within one (1) year after date of approval. The Board may revoke the zoning certificate upon written evidence by any resident or official of the Township of violation of the Zoning Resolution and/or written terms and conditions upon which approval was based.

## **ARTICLE IX**

### **CONDITIONAL USES**

#### **Section 9.01 Authority and Purpose**

Under some unusual circumstances, a use of property which typically affects an area more intensely than those uses permitted in the zoning district in which it is located may nonetheless be desirable and compatible with permitted uses, if that use is properly controlled and regulated. Such uses shall be listed as "conditional uses" within the respective zoning districts.

The Board of Zoning Appeals may grant conditional approval for use of the land, buildings, or other structures and may allow such a use to be established where unusual circumstances exist and where the conditional use will be consistent with the general purpose and intent of this Zoning Resolution.

#### **Section 9.02 Application for Conditional Use**

Any person owning or having an interest in property may file an application to use such property for one of the conditional uses provided for by this Resolution in the zoning district in which the property is situated. An application for a conditional use shall be filed with the Zoning Inspector, who shall forward within five (5) days a copy to the Secretary of the Board of Zoning Appeals. At a minimum the application shall contain the following information:

- A. Name, address, and phone number of applicant.
- B. Legal description of the property as recorded in the Fairfield County Recorder's office.
- C. Present zoning district.
- D. Description of proposed conditional use.
- E. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading area, traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards, the lots or tracts referenced in Section 9.02 G below, and such other information as the Board may require to determine if the proposed conditional use meets the intent and requirements of this Resolution.
- F. A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, glare, odor, light, fumes and vibration on adjoining property; and a discussion of the general compatibility with adjacent and other properties in the district.
- G. The names and addresses of all property owners within 200 feet, contiguous to, and directly across the street from the property, as appearing on the Fairfield County Auditor's current tax list. The applicant shall also provide the addresses of all property within the above referenced boundaries, if available.
- H. Such other information regarding the property, proposed use, or surrounding area as may be pertinent to the deliberations of the Board.

#### **Section 9.03 General Standards for Conditional Uses**

The Board of Zoning Appeals shall not approve a conditional use unless it shall, in each specific case, make specific findings of fact directly based on the particular evidence presented to it, that support conclusions that such use at the proposed location shall meet all of the following requirements:

- A. Will be consistent with the general objectives, or with any specific objective or purpose, of this Zoning Resolution.
- B. Will be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area

- C. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools.
- D. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
- E. Will have vehicular approaches to the property that shall be so designated as not to create interference with traffic on surrounding public streets or roads.

#### **Section 9.04 Supplementary Conditions**

In granting any conditional use, the Board may prescribe appropriate conditions and safeguards in conformance with this Resolution.

#### **Section 9.05 Public Hearing by the Board of Zoning Appeals**

The Board shall hold a public hearing within reasonable time from the receipt of the application specified in Section 9.02. The requirements for public notice and notification of parties of interest shall be the same as for a variance, as specified in Section 8.03 of this Resolution.

#### **Section 9.06 Action by the Board of Zoning Appeals**

Within thirty (30) days after the public hearing pursuant to Section 9.05, the Board shall either approve, approve with supplementary conditions as specified in Section 9.04, or disapprove the application as presented. If the application is approved with supplementary conditions, the Board shall direct the Zoning Inspector to issue a zoning certificate listing the specific conditions listed by the Board for approval. If the application is disapproved, the applicant may seek relief through the Court of Common Pleas.

#### **Section 9.07 Expiration and Revocation of Zoning Certificate Issued Under Conditional Use Provisions.**

The approval of the zoning certificate issued in accordance with Section 9.06 shall become null and void if such use is not carried out within one (1) year after date of approval. The Board may revoke the zoning certificate upon written evidence by any resident or official of the Township of violation of the Zoning Resolution and/or written terms and conditions upon which approval was based.

**ARTICLE X**

**(RESERVED FOR FUTURE USE)**

# **PART THREE**

## ***ZONING DISTRICTS***

## **ARTICLE XI**

### **STANDARD ZONING DISTRICT REGULATIONS**

#### **Section 11.01 Regulations for the Use and Development of Land or Structures**

Regulations pertaining to the use of land and/or structures and the physical development thereof within each of the zoning districts as established in Article XII, are hereby established and adopted.

#### **Section 11.02 Rules of Application**

##### **11.02.01 Identification of Uses**

Listed uses are to be defined by their customary name or identification, except as specifically defined or limited in this Resolution.

##### **11.02.02 Permitted Uses**

Only a use designated as permitted shall be allowed as a matter of right in any zoning district and any use not so designated shall be prohibited unless:

- A. A permitted use may be added to a zoning district by formal amendment, in conformance with Article IV of this Resolution.
- B. An unlisted use may be determined by the Board of Zoning Appeals to be a similar use, in accordance with Section 11.02.05 of this Article.

##### **11.02.03 Accessory Uses**

An accessory use or structure is a subordinate use or structure clearly incidental and secondary to the principal permitted building or use, and located on the same lot with such principal building or use.

##### **11.02.04 Conditional Uses**

A use designated as a conditional use shall be allowed in the zoning district where the designation occurs, when such use, its location, extent and method of development will not substantially alter the character of the vicinity or unduly interfere with or adversely impact the use of adjacent lots.

To this end, the Board of Zoning Appeals shall, in addition to the development standards for the specific district, set forth additional requirements as will render the conditional use compatible with existing and future use of adjacent lots in the vicinity, in accordance with Article IX of this Resolution.

##### **11.02.05 Similar Uses**

Determination as to whether a use is similar to uses permitted by right shall be considered as an expansion of use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall thereafter be considered as a permitted use in that district.

Applications for zoning permits for uses not specifically listed in the permitted building or use classifications of the zoning district, which the applicant feels qualify as a similar use under the provisions of this Section, shall be submitted to the Board of Zoning Appeals.

Within thirty (30) days after such submittal, the Board of Zoning Appeals shall determine whether the requested use is similar to those uses permitted in the specific district. In order to find that a use is similar, the Board shall find that all of the following conditions exist:

- A. Such use is not listed as a permitted or conditional use in another zoning district.
- B. Such use conforms to basic characteristics of the classification to which it is to be added and is more appropriate to it than to any other classification.

- C. Such use creates no danger to health and safety, creates no offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences, and does not create traffic congestion to an extent greater than normally resulting from uses listed in the classification to which it is to added.

#### 11.02.06 Development Standards

Development standards set forth shall be the minimum allowed for uses permitted in that district. If development standards are in conflict with requirements of any other lawfully adopted rule, regulation, or law, the most restrictive standard shall govern.

#### 11.02.07 Development Plan

For particular uses in specific districts, a *Development Plan* will be cited as required. In such cases, unless otherwise indicated, the applicant shall submit the Development Plan at the time of the application for a zoning certificate. The Development Plan shall contain a site plan for the property, drawn to scale, showing all property lines and building outlines, access drives, parking areas, and other notable physical features. The Development Plan shall also show the size, design, materials and location of all signage proposed for the development. The Development Plan shall contain a narrative description of the proposed use and how such use will impact adjacent property

The Zoning Inspector shall review the Development Plan and a recommendation shall be made to the Zoning Commission. The Zoning Commission must approve the Development Plan as a condition for the issuance of a zoning certificate. In approving a Development Plan, the Zoning Commission shall find that the following criteria have been met:

- A. The proposed building or use shall have sufficient yard space to provide for adequate parking and buffering of adjacent residential areas in accordance with this Article.
- B. The Development Plan for the proposed use has incorporated measures to lessen and/or alleviate adverse impacts on adjacent residential areas and to protect the residential character of such areas.
- C. The location, design and operation of the proposed use shall not impose undue adverse impacts on surrounding residential neighborhoods.



## **ARTICLE XII**

### **ZONING DISTRICTS AND ZONING DISTRICT MAP**

#### **Section 12.01 Zoning Districts Established**

The following zoning districts are hereby established for Berne Township:

- (RR) Rural Residential District*
- (LRR) Limited Rural Residential District*
- (MH-R) Manufactured Home Residential District*
- (GB) General Business District*
- (PRB) Planned Rural Business District*
- (SU) Special Use District*
- (FP) Flood Plain Overlay District*

#### **Section 12.02 Official Zoning Map**

The districts established in Section 12.01 of this Resolution are shown on the Official Zoning Map, which together with all notations, references, data, district boundaries and other explanatory information, is hereby adopted as a part of this Resolution. The Official Zoning Map shall be identified by the signatures of the Board of Township Trustees and the Clerk-Treasurer of the Township and shall be on file in the Township offices

#### **Section 12.03 Interpretation of Zoning District Boundaries**

Except where referenced and noted on the Official Zoning Map by a designated line and/or dimensions, the district boundary lines are intended to follow property lines, lot lines, centerlines of streets, alleys, streams and/or railroads as they existed at the time of passage of this Resolution. The Zoning Inspector shall interpret the boundary lines from the Zoning Map. When and if the Zoning Inspector's interpretation of such boundary line is disputed, the final interpretation authority shall rest with the Board of Zoning Appeals.

## **ARTICLE XIII**

### **(RR) RURAL RESIDENTIAL DISTRICT**

#### **Section 13.01 Purpose**

This district is established to provide areas for large lot single family residential development reflecting very low density and a rural lifestyle. In addition, the standards of this district promote the continuance of agriculture and farm-based uses within the Township. Such development is typically not served by public water or sewer systems.

#### **Section 13.02 Agricultural Uses Defined**

"Agricultural use" means the use of land for agricultural purposes, including farming, dairying, pasturage, horticulture, floriculture, viticulture, and animal husbandry, poultry husbandry, and the selling or processing of produce, provided that the operation of any such accessory use shall be secondary and incidental to the normal agricultural activities and provided further that the above uses shall not include the commercial feeding of garbage or offal to swine.

#### **Section 13.03 Permitted Uses**

- A. Agricultural uses, along with customary agricultural buildings and structures incidental to the carrying out of the principal agricultural activity.
- B. Single family dwellings--one per lot.
- C. Projects specifically designed for watershed protection, conservation of water or soils for flood control.

#### **Section 13.04 Accessory Uses**

- A. Accessory buildings or structures customarily associated with single-family residential use, including detached garages or carports, tool or garden sheds, playhouses, swimming pools, tennis courts and similar facilities for primary use by occupants of the principal use of the property on which the facility is located, subject to the requirements of Article XXVII of this Resolution.
- B. Home occupations, subject to the requirements of Section 27.02 of this Resolution.

#### **Section 13.05 Conditional Uses**

- A. Public parks and nature preserves.
- B. Individual manufactured homes on individual lots not in platted subdivisions, provided such homes are placed on a permanent foundation that adequately transfers horizontal and vertical loads of the structure to the undisturbed ground below the frost line.

#### **Section 13.06 Development Standards**

##### **13.06.01 Lot Area**

For each principal permitted use, the lot area shall be not less than two (2) acres, or such size as determined by the Fairfield County Health Department, whichever is larger.

##### **13.06.02 Minimum Lot Width**

All lots of five (5) acres or less shall have a depth: width ratio of not higher than 4:1 and shall have at least 150 feet of contiguous frontage on one public street or roadway.

All lots of 5.01 acres or more shall have frontage of at least 60 feet of contiguous frontage on one public street or roadway. Such lots, which have less than 150 feet of frontage, shall require a development plan pursuant to Section 11.02.07.

Any of the lots described in this section may have frontage on a private roadway in lieu of a public roadway, subject to a development plan pursuant to Section 11.02.07 and the following: The

Zoning Commission may require standards relating to such private roadway, including, but not limited to, roadway width, construction standards, and maintenance agreements. The potential traffic burden on such roadway shall be a factor in such determination.

**13.06.03 Minimum Front Yard Depth**

Eighty (80) feet from the centerline of any county or township road. Eighty (80) feet from the right of way of any federal or state highway.

**13.06.04 Minimum Side Yard Width**

Twenty-five (25) feet.

**13.06.05 Minimum Rear Yard Depth**

Eighty (80) feet.

**13.06.06 Minimum Building Area**

1,150 square feet of floor area shall be required for single-family dwellings.

**13.06.07 Maximum Building Height**

Thirty-five (35) feet.

## **ARTICLE XIV**

### **(LRR) LIMITED RURAL RESIDENTIAL DISTRICT**

#### **Section 14.01 Purpose**

The LRR District is established to provide areas for residential development at relatively low suburban densities and to accommodate housing types for various individual rural life styles. The objective is to provide for a diversity of housing opportunity and choice within Berne Township. The higher residential densities allowed in the LRR District mean that the district is to be used in areas served by public water and sewer.

#### **Section 14.02 Permitted Uses**

- A. Single-family detached dwellings.
- B. Public parks, playgrounds and play fields.

#### **Section 14.03 Accessory Uses**

- A. Accessory buildings or structures customarily associated with single-family residential use, including detached garages or carports, tool or garden sheds, playhouses swimming pools, tennis courts and similar facilities for primary use by occupants of the principal use of the property on which the facility is located, subject to the requirements of Article XXVII of this Resolution.
- B. Home occupations, subject to the regulations of Section 27.02 of this Resolution.

#### **Section 14.04 Conditional Uses**

- A. Multiple-family structures having two or more dwelling units, including senior housing, provided a Development Plan is submitted pursuant to Section 11.02.07 of the Resolution and at least 4,000 square feet of lot area is provided for each dwelling unit.
- B. Model homes in subdivisions to be used as sales offices by the builder/developer of the subdivision, provided such use shall terminate when zoning certificates have been issued for eighty percent (80%) of the lots in the subdivision.
- C. Cluster housing, provided that the overall density of the residential development, including open space, does not exceed that which would result if the project was constructed to the standards below, and subject to the submittal and approval of a Development Plan by the Board of Zoning Appeals.
- D. Nursery schools and day care centers.

#### **Section 14.05 Development Standards**

##### **14.05.01 Minimum Lot Area**

15,000 square feet.

##### **14.05.02 Minimum Lot Width**

All lots shall have a depth: width ratio of not higher than 4:1 and shall have at least ninety (90) feet frontage on a public street or a private roadway improved so as to meet or exceed the standards of the Fairfield County Engineer.

##### **14.05.03 Minimum Front Yard Depth**

100 feet from the centerline of any county or township road; 100 feet from the right-of-way of any federal or state highway.

##### **14.05.04 Minimum Side Yard Width**

Fifteen (15) feet.

**14.05.05 Minimum Rear Yard Depth**

Forty (40) feet.

**14.05.06 Minimum Building Area**

1,150 square feet of floor area shall be required for single-family dwellings

**14.05.07 Maximum Building Height**

Thirty-five (35) feet.

## **ARTICLE XV**

### **(MH-R) MANUFACTURED HOME RESIDENTIAL DISTRICT**

#### **Section 15.01 Purpose**

Berne Township recognizes that manufactured housing presents residential opportunities and options, especially related to cost, which are unavailable with conventional site-built housing. Nonetheless, such manufactured housing has unique development characteristics that require special treatment in regard to location, placement and land use compatibility.

The Manufactured Home Residential (MH-R) District is established to provide areas for manufactured homes so as to provide a desirable residential environment, protected from adverse neighboring influences, with adequate access for vehicular traffic and circulation. Manufactured home communities shall be developed and located so as not to promote excessive vehicular traffic on streets in adjoining neighborhoods, and shall provide overall desirability equivalent to that for other forms of residential development.

#### **Section 15.02 Definitions**

For the purposes of this Article, the following terms shall be defined as specified herein:

- A. "Manufactured Housing" shall mean a building unit or assembly of closed construction fabricated in an off-site facility, that conforms with the federal construction and safety standards established by the Secretary of Housing and Urban Development pursuant to the "Manufactured Housing Construction and Safety Standards Act of 1974", and that has a label or tag permanently affixed to it certifying compliance with all applicable federal construction and safety standards.
- B. "Manufactured Home Community" shall mean a development constructed primarily for manufactured homes, with continuing local ownership and management and with special facilities for common use by occupants, including such items as common recreational buildings and/or common open space.
- C. "Modular Home" means a non-site-built home that is certified as meeting the requirements of the State of Ohio Building Code for *modular housing*. For the purposes of this Resolution, once certified by the State of Ohio, modular homes shall be subject to the same standards as site-built homes
- D. "Mobile Home" shall mean a transportable, non-site-built dwelling unit designed to be used as a year-round residential dwelling and built prior to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Because mobile homes, as herein defined, were not constructed to accepted standards, such mobile homes shall not be considered as a permitted or conditional use in the MH-R, or any other zoning district.

#### **Section 15.03 Permitted Uses**

- A. Manufactured homes.
- B. Public or private parks or playgrounds.

#### **Section 15.04 Accessory Uses**

Uses and structures incidental and accessory to specified permitted uses to include common areas, community/recreational facilities and offices for rental and management of units therein.

#### **Section 15.05 Conditional Use**

One-family detached dwellings, provided the lot complies with the development standards of the RR District.

## **Section 15.06 Development Standards**

The following standards for the arrangement and development of manufactured home subdivisions and/or communities in the MH-R District.

### **15.06.01 Development Plan**

A Development Plan, prepared pursuant to the requirements of Section 11.02.07 of this Resolution, shall be provided. Such plan shall be approved by the Zoning Commission prior to the granting of any zoning certificate.

### **15.06.02 Water and Sewer**

Any manufactured home subdivision or community shall be provided with a water and sanitary sewer distribution system, serving each individual home lot, which is connected to a municipal water and sanitary sewage system. The design and construction of such distribution systems shall be approved by the Ohio Environmental Protection Agency.

### **15.06.03 Minimum Lot Area**

- A. The minimum lot area for a manufactured home community shall be ten (10) acres. Individual manufactured home lots within such communities shall be not less than 4,000 square feet. The maximum gross density shall not exceed six (6) dwelling units per acre.
- B. For any other permitted use, the minimum lot area shall not be less than 10,000 square feet.

### **15.06.04 Minimum Lot Width**

- A. The minimum lot width for any manufactured home community shall be not less than 300 feet. Frontage shall be provided on a publicly dedicated and improved street. The minimum lot width for any individual lot within such a community shall be not less than thirty (30) feet.
- B. For any other permitted use, the minimum lot width shall be eighty (80) feet.

### **15.06.05 Minimum Front Yard**

- A. The minimum front yard depth for any manufactured home community shall be not less than thirty-five (35) feet.
- B. For any other permitted use, the minimum front yard depth shall be twenty-five (25) feet.

### **15.06.06 Minimum Side Yard Width**

- A. The minimum side yard width for any manufactured home community shall be not less than fifty (50) feet. The minimum side yard width for any individual lot within a manufactured home community shall be not less than ten (10) feet.
- B. For any other permitted use, the minimum side yard width shall be not less than ten (10) feet.

### **15.06.07 Minimum Rear Yard Depth**

- A. The minimum rear yard depth for any manufactured home community shall be not less than fifty (50) feet. The minimum rear yard depth for any individual lot within a manufactured home community shall be not less than ten (10) feet.
- B. For any other permitted use, the minimum rear yard depth shall be not less than forty (40) feet.

### **15.06.08 Minimum Lot Coverage**

Detached dwelling units and their accessory buildings shall not occupy more than forty-five percent (45%) of the lot area of any individual lot within a manufactured home subdivision or community.

### **15.06.09 Required Open Space and Recreational Areas**

At least twenty percent (20%) of the gross land area for any manufactured home community shall be reserved for common recreational areas and facilities, such as playgrounds, swimming pools,

pedestrian paths, and similar facilities. Such recreational and open space facilities shall not be a part of streets and/or parking areas, and shall be closed to motorized traffic, except for service and emergency vehicles. Such areas shall be landscaped, improved and maintained by the owner of the development for the intended uses.

#### 15.06.10 Off-Street Parking

For permitted and conditional uses, parking spaces shall be provided for two (2) vehicles for each dwelling unit. In manufactured home communities, such parking spaces may be located on the same lot, or in specially provided common areas located not more than 400 feet from the dwelling which they serve, or some combination thereof. Required parking spaces shall not be allowed on public or private streets within and on the perimeter of the community.

#### 15.06.11 Access

All manufactured home communities shall have direct access to a street or road designated of not less than a collector status on the Fairfield County Thoroughfare Plan. Principal vehicular access points shall be designed to encourage smooth traffic flow. Merging and turnout lanes and/or traffic dividers shall be required where existing or anticipated traffic volumes indicate need. Minor streets shall not be connected with streets outside the district in such a way so as to encourage the use of those streets by substantial amounts of through traffic. No individual lot within the community shall have direct vehicular access to a street bordering the development.

#### 15.06.12 Streets and Street Layout

All streets providing access to the individual lots in a manufactured home community shall be dimensioned and improved in accordance with the standards and requirements of the Fairfield County Subdivision Regulations. The proposed layout of such streets shall be approved by the Zoning Commission.. All costs associated with such approval shall be paid by the applicant .

#### 15.06.13 Storm Drainage

All areas within a manufactured home community shall be graded and drained so as to minimize standing water and surface runoff. Open drainage ditches shall be prohibited. The proposed methods to address standing water and excessive surface runoff shall be submitted by the applicant and approved by the Fairfield County Engineer or his designated agent. The applicant shall pay all costs associated with such approvals.



**ARTICLE XVI**

***(RESERVED FOR FUTURE USE)***

## **ARTICLE XVII**

### **(GB) GENERAL BUSINESS DISTRICT**

#### **Section 17.01 Purpose**

It is recognized that rural based business activity is unique, and may possess characteristics typically associated with both commercial and industrial land uses. The GB District is established in Berne Township to reflect this diversity in areas that have suitable access to federal and state highways, while controlling the adverse impacts of such development on adjacent areas.

Permitted uses within the General Business District must operate in accordance with the following standards:

- A. primarily within enclosed structures.
- B. with minimal adverse environmental or economic impact on adjacent properties.
- C. free from noise, odor, dust, smoke, light, glare or vibration at levels in excess of the average level on adjacent streets and properties.

#### **Section 17.02 Permitted Uses**

Permitted uses within the General Business District shall operate 1) primarily within enclosed structures; 2) be free of noise, odor, dust, smoke, light, glare, or vibration in excess of the average level on adjacent streets and properties.

- A. Administrative and business offices including real estate, insurance sales and associated services and/or brokers or dealers in securities.
- B. Professional offices engaged in providing services to the general public, including professional, medical, legal, engineering/consulting, accounting or bookkeeping services.
- C. Organizations and associations organized on a profit or non-profit basis for promotion of membership interests, including business, professional, civic, social and fraternal organizations and/or charitable organizations.
- D. Retail stores engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of those goods; provided storage and display of merchandise shall be primarily within the principal structure, and not including drive-through facilities.
- E. Personal services, involving the care of the person and his/her personal effects, including consumer services generally involving the care and maintenance of tangible personal consumption.
- F. Light manufacturing, compounding, processing, assembling, packaging, or treatment of goods, materials, and products, consistent with the purpose of the GB District.
- G. Warehousing, distribution and related uses, including truck and transfer terminals.
- H. Nursery schools and day care facilities.
- I. Commercial recreational facilities within an enclosed building, such as skating rinks, bowling alleys and physical fitness centers.
- J. Outdoor advertising, subject to the requirements of Section 29.07 of this Resolution.
- K. Similar uses, as determined by the Board of Zoning Appeals, in accordance with the provisions by Section 11.02.05 of this Resolution.

#### **Section 17.03 Conditional Uses**

- A. Institutions for human medical care, including hospitals, clinics, sanitariums and homes for the elderly, provided that any building or parking/service area be located not less than 200 feet from any adjacent property.

- B. Carry out food and beverage establishments with drive-through facilities, provided a plan for traffic circulation and parking, submitted by the applicant is approved by the Board of Zoning Appeals.
- C. Establishments selling gasoline, kerosene and/or diesel fuel, provided that all buildings and parking/service areas are located not less than 200 feet from any adjacent property and that a plan for traffic circulation and parking, submitted by the applicant, is approved by the Board of Zoning Appeals.
- D. Retail establishments such as lumber yards and/or garden centers in \_\_\_\_\_ which a significant portion of the inventory is displayed or stored outdoors.
- E. Motor vehicle sales and service establishments, provided that all buildings and parking/service areas are located not less than 200 feet from any adjacent property, any inoperable, unlicensed or unused vehicle shall not be stored outside the principal building for a period of time exceeding twenty-four (24) hours.
- F. Motor vehicle storage and salvage yards, provided those uses meet applicable State requirements related to fencing and other standards.
- G. Contractor equipment and storage yards, provided adequate fencing and screening devices are installed.
- H. Facilities for the storage of personal or corporate property, offered on a rental basis.
- I. Billboards, provided such signs are located along a federal highway and subject to the provisions of Section 29.07 of this Resolution.
- J. Other uses of a commercial or industrial nature not otherwise provided for in this Resolution.

## **Section 17.04 Development Standards**

### **17.04.01 Landscape Buffers**

Where necessary, a buffer consisting of earthen mounds and/or evergreen trees and shrubs shall provide adequate visual separation from nearby residential properties. Such buffers shall be shown on each application for a zoning certificate in the General Business District.”

### **17.04.02 Minimum Lot Area**

No minimum lot area is required; however, lot area shall be adequate to provide for the required parking and yard areas, and be approved by the Fairfield County Health Department or Ohio Environmental Protection Agency.

### **17.04.03 Minimum Lot Width**

Continuous frontage on a publicly dedicated and improved federal, state or county highway is required. Such lot width shall be adequate to accommodate all required parking areas, yards and vehicle circulation lanes, but in no case shall be less than 150 feet

### **17.04.04 Minimum Front Yard Depth**

- A. Buildings 110 feet from the centerline of any county or township road; 100 feet from the right-of-way of any federal or state highway.

- B. Signs and Parking Areas

Signs and/or parking areas may be located within the front yard, but in no case shall be located less than fifty (50) feet from the right-of-way of any state or federal highway, or eighty (80) feet from the center line of and county or township road.

### **17.04.05 Minimum Side Yard**

When abutting a non-residential zoning district, twenty (20) feet for structures, ten (10) feet for paved areas. When abutting a residential zoning district, fifty (50) feet for structures, thirty-five (35) feet for paved areas, subject to the requirements of Section 17.04.03 above.

#### 17.04.06 Minimum Rear Yard

When abutting a non-residential zoning district, thirty (30) feet for structures, ten (10) feet for paved areas: When abutting a residential zoning district, fifty (50) feet for structures, thirty-five (35) feet for paved areas, subject to the requirements of Section 17.04.03 above.

#### 17.04.07 Parking and Loading

Parking and loading spaces shall be provided as required in this Resolution. In addition, parking spaces shall be designed to allow a minimum of five (5) feet between any structure and any parked vehicle.

#### 17.04.08 Trash and Garbage Control

All trash and garbage shall be stored in container systems that are located and enclosed so as to effectively screen them from view.

#### 17.04.09 Lighting

Lighting shall be arranged so as not to shine directly on adjacent properties.

**ARTICLE XVIII**

***(RESERVED FOR FUTURE USE)***

## **ARTICLE XIX**

### **(PRB) PLANNED RURAL BUSINESS DISTRICT**

#### **Section 19.01 Purpose**

The Planned Rural Business District is established to provide for a limited business activity in locations where commercial activity as permitted in the GB District would be inappropriate. Generally, the district will allow a higher level of activity than would typically be permitted as a home occupation. The district permits the property owner to design a business environment that may meet his/her general objectives, while providing a suitable level of protection for present and future owners of adjacent property. The future enjoyment of nearby residential properties should be a primary consideration.

#### **Section 19.02 Permitted Uses**

Land and buildings within the Planned Rural Business District shall be used only for the specific use or uses identified by the applicant for zoning plan amendment. The applicant shall demonstrate that the proposed use or uses are appropriate to and compatible with the neighborhood where the proposed activity is to occur, and shall identify the methods to be utilized to achieve compliance with the performance standards in Section 19.04 below. All permitted uses shall be approved by the Board of Township Trustees as part of the Development Plan that is required for zoning the site into the Planned Rural Business District. Said permitted uses shall run with the land as long as the PRB zoning, as approved, remains in effect. Any change of use shall require a zoning amendment and any other changes to the development plan shall require a variance.

#### **Section 19.03 Procedures**

The procedures to be followed in placing land in the (PRB) Planned Rural Business District shall comply with those specified in Article VI of this Resolution, with the following additions:

##### **19.03.01 Application**

The owner or owners of a tract of land of any size may request that the Official Zoning Map be amended to include such lands as a Planned Rural Business District. The applicant is encouraged to meet with the Zoning Commission prior to submittal of the application to become familiar with the requirements for this district.

##### **19.03.02 Development Plan**

In addition to the material required for amendment as specified in Section 6.03 of this Resolution, the applicant shall also submit not less than five (5) copies of a Development Plan which shall contain, in text and map form, the following information:

- A. A survey map of the boundaries of the area requested for zoning map amendment.
- B. A site plan showing the specific location of all existing and proposed buildings, setbacks and yards, existing and proposed vegetation and landscaping, and other prominent physical features.
- C. Specific uses to be permitted within the proposed development, specified according to area or specific building location. An explanation of how these uses shall be designed, or activities carried out, so as to create desired compatibility with adjacent land uses.
- D. Existing roads and drives, anticipated traffic impacts and methods to be employed to address adverse impacts.
- E. A list of the specific restrictions proposed by the applicant for the zoning map amendment, which are designed to fulfill the concept, proposed and ensure compatibility of the project

with the surrounding area. Such restrictions shall become part of the conditions on which any approval is given.

- F. A statement that, if approved as a PRB District, the owner shall comply with all of the standards and requirements as specified in the Development Plan.

#### 19.03.03 Criteria for Approval

In acting on the proposed application pursuant to Sections 6.06 and 6.08 of this Resolution, the Zoning Commission and the Board of Township Trustees shall consider the following factors:

- A. The proposed development is consistent with the intent and purpose of this Resolution and this specific Article.
- B. Suitable measures and restrictions are proposed so as to promote compatibility with adjacent and nearby properties.
- C. The proposed development advances the general welfare of the Township and the immediate vicinity.

#### 19.03.04 Effect of Approval

The Development Plan as approved by the Board of Trustees shall constitute an amendment to the Resolution as it applies to the specific land in question. Such approval shall be contingent on the development being completed, as shown on the Development Plan, within three (3) years from date of approval.

### Section 19.04 Performance Standards

No land or structure in the PRB District shall be used or occupied in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable impact on any land which is located in any other zoning district. Such impacts shall include those related to noise, vibration, odor, dust, heat, exterior light and glare, or storm runoff. Statements in writing that such uses comply or will comply with such standards may be required by the Zoning Commission at the time of the application for zoning into the PRB District. The subsequent violation of the standards, as determined, by the Board of Zoning Appeals, shall be considered grounds for rescission of the PRB zoning classification.

The open storage and display of material and equipment incidental to permitted uses shall be permitted, provided the area used for open storage shall be effectively screened from all adjoining properties in any residential district by means of walls, fences, earthen mounds and/or plantings. Walls or fences shall be a minimum of six (6) feet in height without advertising thereon. In lieu of such wall or fence, a strip of land not less than ten (10) feet in width, planted and maintained with an evergreen hedge or dense planting of evergreen shrubs not less than four (4) feet in height at the time of planting may be substituted.

## ARTICLE XX

### (SU) SPECIAL USE DISTRICT

#### Section 20.01 Purpose

The SU District is established to provide for suitable locations for particular uses which, by their nature, are likely to have significant and/or unique impacts on adjacent and nearby property. The procedures specified for the SU District are intended to promote the compatibility of the use with adjoining residential uses and to ensure that the location of such facilities will provide for adequate and efficient access and service provision.

#### Section 20.02 Permitted Uses

Buildings and land within the SU District shall be utilized only for uses set forth in the following schedule:

##### PRIMARY BUILDINGS AND USES

1. Community buildings, fire stations, libraries, museums, and similar places for public assembly.
2. Primary or secondary public, private, private parochial schools.
3. Churches and places of public worship.
4. Cemeteries, including mausoleums,
5. Commercial facilities such as stadiums, amphitheaters, racetracks or similar facilities for conducting sporting events, concerts, and similar outdoor events.
6. Commercial recreational areas such as golf courses, gun clubs, sportsmen's clubs, summer camps and similar uses.
7. Licensed airstrips for the takeoff and landing of private aircraft
8. Sanitary landfills and similar facilities or processing waste materials.
9. Commercial quarrying or mining operations

##### ACCESSORY USES

- Signage, parking areas.
- Parking areas, signs, playfields / playgrounds, stadiums.
- Signage and parking areas.
- Signage.
- Parking areas, administrative and maintenance structures.
- Parking areas, maintenance structures.
- Signage and customary accessory structures.
- Signage and customary accessory structures
- Signage and customary accessory structures

In addition, property zoned into the SU District may be used for single-family dwellings, subject to the standards of the RR District.

#### Section 20.03 Development Plan Required

In addition to the material required for the application for a zoning amendment, as specified in Article VI of this Resolution, a Development Plan shall be submitted for land proposed to be zoned into the SU District. Such Development Plan shall include a site plan for the proposed public facility, calculations of the proposed traffic by daily and peak hour components, an analysis of facility's impact on any adjacent residential area and explanation of the methods



proposed by the applicant to alleviate or minimize these impacts, as well as any other information deemed necessary to determine compliance with this Resolution.

The Development Plan shall be reviewed by the Zoning Commission and considered in making its recommendations to the Township Trustees. The Zoning Commission shall display the Development Plan at any public hearing held pursuant to Article VI of this Ordinance. Criteria for reviewing a Development Plan for a proposed SU zoning are as follows:

- A. The proposed building or use shall have sufficient yard space to provide for adequate parking and screening of adjacent residential areas in accordance with this Article.
- B. The location, design and operation of the specific use shall not impose undue adverse impacts on surrounding residential neighborhoods.
- C. The Development Plan for the proposed facility incorporates measures to lessen and/or alleviate any adverse impacts on adjacent areas and to protect the residential character of such areas.

#### **Section 20.04 Development Standards**

A. Lot and Area Requirements

The area or parcel of land for a special use shall not be less than that required to provide space adequate for off-street parking areas, yards and open spaces sufficient to maintain the character of the neighborhood. The size of the parcel of land occupied by the proposed use, and all setbacks, shall be shown on the Development Plan required in Section 20.03.

B. Front Yard

The front yard setback shall be not less than the largest required front yard setback for any adjacent zoning district.

C. Side and Rear Yards

Where any special use abuts a district where residences are a permitted use, a side and a rear yard of not less than fifty (50) feet shall be maintained. In addition, a landscaped buffer shall be installed in such yard. The Zoning Commission shall determine the minimum dimension of yards abutting other districts.

#### **Section 20.05 Performance Standards**

No land or structure in the SU District shall be used or occupied in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable impact on any land which is located in any other zoning district. Such impacts shall include those related to noise, vibration, odor, dust, heat, exterior light and glare, or storm runoff. Statements in writing that such uses comply or will comply with such uses may be required by the Zoning Commission from the applicant.

#### **Section 20.06 Action by Board Township Trustees**

In approving the redistricting of land into the SU District, the Board of Township Trustees may specify appropriate conditions and safeguards.

#### **Section 20.07 Compliance with Development Plan**

The construction of all buildings and the development of the site within the SU District shall be in conformity and compliance with the approved Development Plan.

## **ARTICLE XXI**

### **(FP) FLOOD PLAIN OVERLAY DISTRICT**

#### **Section 21.01 Purpose**

It is the intent of the Flood Plain Overlay District (FP) to control the use of floodplains, to limit purposes that could be detrimental to health and welfare for citizens of Berne Township and Fairfield County. The FP District is an overlay-zoning district. This means that the underlying district standards and requirements shall apply in addition to the Flood Plain Overlay District (FP) regulations and requirements.

#### **Section 21.02 Lands Subject to Flooding**

For the purpose of this Resolution, "flood plains" are defined as those lands subject to inundation by the 100-year flood. Such areas shall be as identified by the Federal Emergency Management Agency (FEMA) pursuant to flood insurance rate maps cited and dated below, including any subsequent amendments or revisions thereto.

<b>COMMUNITY PANEL NUMBER</b>	<b>EFFECTIVE DATE</b>
390158 0115 D	April 17, 1989
390158 0120 D	April 17, 1989
390158 0200 D	April 17, 1989
390158 0185 D	April 17, 1989

#### **Section 21.03 Development Standards**

The standards, requirements and administrative procedures for development of land within the FP District shall be as stated in the ***Flood Damage Prevention Regulations*** originally adopted by the Fairfield County Commissioners, as Resolutions # 89-330d and #95-09.07b on March 30, 1989 and September 7, 1995, as may be subsequently amended.

**ARTICLE XXII - XXV**

***(RESERVED FOR FUTURE USE)***

# **PART FOUR**

## ***SPECIAL ZONING REQUIREMENTS***

## **ARTICLE XXVI**

### **GENERAL DEVELOPMENT REQUIREMENTS**

#### **Section 26.01 Lot Width**

A. Frontage Required

No new structure or use shall commence unless such the lot fronts on a public road or other legally recorded right-of-way. If development is to occur on other than a public road, it must meet the following requirements:

Submission to and approval of a development plan by the Berne Township Zoning Commission pursuant to Section 11.02.07 and the following: The Zoning Commission may require standards relating to such private roadway, including, but not limited to, roadway width, construction standards, and maintenance agreements. The potential traffic burden on such roadway shall be a factor in such determination.

B. Lot Width

Lot width shall be measured along the front lot line that abuts such thoroughfare as designated in Section 26.01A above. If the lot abuts a roadway that curves at the point of tangency, lot width shall be measured at the front yard setback line.

#### **Section 26.02 Yards and Setbacks**

A. Front Yard Measurements

Front yard depth shall be measured from the centerline of the road adjacent to the building line, unless otherwise indicated in this Resolution.

B. Corner Lots

Structures built on a lot fronting on two (2) different roads shall require the front yard setback from both roads.

C. Side Yard Measurements

Side yard width shall be measured from the nearest side lot line to the building line.

D. Rear Yard Measurements

Rear yard depth shall be measured from the rear lot line to the building line. Where the lot abuts a service street or alley, the rear yard depth shall be measured from the right-of-way line of the service, street or alley.

#### **Section 26.03 Open Porches and Architectural Features**

All portions of a structure, including open, uncovered porches or terraces, cornices, canopies, eaves, pilasters, sills and other similar architectural features shall be located behind the yard setback lines for the district involved.

#### **Section 26.04 Erosion Control**

The use or development of a lot shall not create significant erosion onto other properties or onto the surface of a public or private road. Where such erosion is likely, the person or board approving a zoning certificate, variance, conditional use, development plan, or site plan may require preventative measures.

#### **Section 26.05 Height**

Height regulations specified in the various zoning districts shall not apply to chimneys, tanks, cupolas, domes, spires, private radio or television antennae or similar structures attached to a primary structure.

**Section 26.05 Storm Runoff**

Structures and physical changes to a site shall be designed and constructed so as to not cause a significant increase in storm water runoff onto adjacent properties.

## **ARTICLE XXVII**

### **ACCESSORY USES AND STRUCTURES**

#### **Section 27.01 Regulation of Agriculture on Specific Lots**

Section 519.21(B) of the Ohio Revised Code allows a township zoning resolution, or an amendment thereof, to regulate agricultural use within any platted subdivision approved under Section 711.05, 711.09, or 711.10 of the Ohio Revised Code, or any area consisting of fifteen (15) or more lots approved under Section 711.131 (711.13.1) of the Ohio Revised Code, that are contiguous to one another and adjacent to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same public road.

- A. Pursuant to Section 519.21(B) of the Ohio Revised Code, animal and/or poultry husbandry, including the raising, boarding, housing, or grazing of horses, cattle, sheep, goats, swine, poultry or similar animals shall not be permitted on lots meeting the standards of ORC 519.21(B) above, and which are also one (1) acre or less in size. The processing of any such animals or their products shall also not be permitted.
- B. Animal and/or poultry husbandry shall not be permitted on lots greater than one (1) acre but not greater than five (5) acres if such lots meet the standards of ORC 519.21(B) above, and if at least thirty-five percent (35%) of the lots in the subdivision are developed with at least one (1) building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes pursuant to Section 4503.06 of the Ohio Revised Code. After thirty-five percent (35%) of the lots are so developed, any existing animal and/or poultry husbandry operation shall be considered a nonconforming use pursuant to Article V of this Resolution.

#### **Section 27.02 Home Occupations**

"Home occupation" means an activity, profession, occupation, service, craft, or revenue-producing hobby that is clearly incidental and subordinate to the use of the premises as a dwelling, and is conducted entirely within building or buildings on the premises without any significant adverse impact upon surrounding properties. Home occupations shall be regulated as accessory uses in the various residential districts. A home occupation shall comply with the following standards:

- A. The use shall be clearly incidental and secondary to residential use of the dwelling and not more than twenty percent (20%) of the floor area of the principal dwelling unit structure is devoted to the home occupation. The size of any accessory building used totally or in part for a home occupation shall meet the requirements for accessory structures in Section 27.03 below.
- B. The home occupation shall primarily occur entirely within the confines of the dwelling unit and/or accessory structure. No exterior activity, or storage of materials or equipment, shall be permitted.
- C. The home occupation shall not generate greater traffic volume than is normal for a residential neighborhood.
- D. External indication of such home occupation shall be limited to one non-illuminated sign not more than four (4) square feet.
- E. Not more than one (1) person, other than immediate family residing at the premises, shall be employed in such occupation.
- F. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to normal senses off the lot.

### **Section 27.03 Accessory Structures**

#### **A. Location**

A detached accessory use or structure shall be located to the side or rear of the principal dwelling not closer to any side or rear lot line than the following:

1. Twenty-five (25) feet in the RR District.
2. Ten (10) feet in the LR District and for manufactured home subdivisions in the MHR District.

Exception: In the Rural Residential district on parcels of at least ten (10) acres, accessory structures may be located in the front yard, so long as they are at least three hundred (300) feet from the right-of-way of any public or private roadway and twenty-five (25) feet from any property line.

#### **B. Permitted Area and Height**

The total area of all accessory uses or structures shall not exceed two percent (2%) of the area of the lot on which the structure or use is located. These area requirements shall not apply to lakes, ponds, swimming pools and tennis courts. An accessory structure shall not exceed twenty (20) feet in height.

### **Section 27.04 Lakes and Ponds**

Lakes and ponds shall be considered as an accessory use where so indicated in the district regulations. Lakes and/or ponds over 1,000 square feet in surface area or exceeding three (3) feet in depth at any point shall meet the following requirements:

- A. The applicant shall provide a site plan for the property, indicating the location of the lake and/or pond, as well as the location of inlets, outlets, subsurface drainage, septic lines, and/or primary or secondary leach field site(s).
- B. The lake and/or pond shall be located not less than sixty (60) feet from any property line, leach field, and/or subsurface tile drainage passing through the property.
- C. The applicant shall demonstrate that the lake or pond meets the standards and specifications of the Natural Resources Conservation Service (NCRS) of the U.S. Department of Agriculture (USDA). These standards and specifications are available through the Fairfield County Soil and Water Conservation District .

### **Section 27.06 Telecommunications Towers**

Telecommunications towers, as defined in Article II of this Resolution, may be allowed as a conditional use in the RR, LRR and R-MH Districts. The process to be used in processing an application for such a tower shall be as specified in Section 519.211 of the Ohio Revised Code and Article IX of this Resolution. Telecommunications towers shall be subject to the following conditions:

- A. The maximum height of the tower shall not exceed 150 feet.
- B. The tower and any stabilization structures or guide wires shall not be located less than twenty-five (25) feet from any side or rear property line.
- C. The tower shall be located not less than 300 feet from any existing residential dwelling or any public roadway.
- D. The minimum lot size for the site of the tower shall be two (2) acres.
- E. Security fencing at least six (6) feet in height and affixed with an operable lock shall be provided to prevent uncontrolled access to the tower site.
- F. A landscaping plan shall be submitted and approved by the Board of Zoning Appeals.
- G. The tower shall not be lighted except to assure safety or as required by the FAA.
- H. The applicant or tower provider shall demonstrate that the telecommunication tower must be located where it is proposed in order to service the applicant's service area, that other sites have been considered, and that location at the proposed site is technically necessary.



- I. The applicant shall provide a signed statement indicating that he/she agrees to allow for the potential co-location of other similar facilities on the tower, the removal of the tower within 180 days after the site's use is discontinued, and proof of notice has been provided as required in Section 519.211 of the Ohio Revised Code, as may be subsequently amended.

If a public telecommunications service provider desires to co-locate its facility either on an existing tower or utility structure, the location of such facility shall be addressed as a permitted use.

## **ARTICLE XXVIII**

### **OFF-STREET PARKING REQUIREMENTS**

#### **Section 28.01 Purpose**

The purpose of these requirements is to encourage the orderly development of parking and loading areas within Berne Township and to promote the safety of residents and visitors by insuring the efficient handling of vehicular traffic.

#### **Section 28.02 Provision for Parking Required**

In all zoning districts, at the time any building, structure or use is changed, established, erected, developed, or is enlarged or increased in capacity, there shall be provided off-street parking spaces in accordance with the provisions of this Article.

#### **Section 28.03 General Requirements**

A. Surfacing

All off-street parking areas within the GB and/or SU Districts shall be properly graded, drained, marked and surfaced so as to provide a hard, durable and dustless surface.

B. Lighting

Any lighting used to illuminate any off-street parking area shall be so arranged as to reflect light away from any adjoining premises in any zoning district where residences are a permitted use. In addition, such lighting shall be so arranged as not to interfere with traffic on any adjoining street or to be confused with any traffic control lighting.

C. Parking of Inoperable or Disabled Equipment or Vehicles.

The exterior parking or storage of inoperable or disabled pieces of equipment or vehicles for a period of time exceeding thirty (30) consecutive days, outside of an approved junk yard licensed and regulated pursuant to Sections 4737.05 through 4737.12 of the Ohio Revised Code, shall be prohibited.

The Township reserves the right to remove junk cars from private property consistent with the standards and procedures cited in ORC Section 4513.65.

D. Parking of Recreational Equipment

The storage of travel trailers, motor homes, pick-up campers, folding tent trailers, boats or boat trailers and similar recreational equipment in residential districts shall be subject to the following requirements:

1. Not more than two (2) pieces of such equipment, or vehicles, shall be permitted to be stored outside on a parcel containing a single family or two-family dwelling. For the purpose of this Section, a boat stored on a boat trailer shall be deemed one piece of recreational equipment.
2. Recreational equipment shall not be occupied or used for living, sleeping and/or housekeeping for a period of time exceeding two (2) weeks per calendar year.

#### **Section 28.04 Recommended Number of Off-Street Parking Spaces**

Parking spaces shall be provided according to the following Schedule that is hereby made a part of this Resolution. For uses not listed in the Schedule, the Board of Zoning Appeals shall make the determination of the number of recommended spaces.

## Schedule of Recommended Parking Space Use

<b>USE</b>	<b>NUMBER OF SPACES</b>
<b>A. Residential</b>	
1. Single or multiple- family residences	Two (2) per dwelling unit
2. Institutional housing, other residential uses	One (1) per three (3) occupants plus two (2) for each main work shift
<b>B. Commercial</b>	
1. Professional, administrative and business	One (1) for each 400 S.F. of gross floor area.
2. Food, department, general merchandise, hardware, drugs, or other retail sales	One (1) for each 200 S.F. of gross floor area
3. Eating or drinking establishments <i>without</i> drive-through facilities	One(1) for each 100 S.F. of gross floor area
4. Eating or drinking establishments <i>with</i> drive-through facilities.	One (1) for each 75 S.F. of gross floor area plus additional space in the drive-through lanes equal to twenty-five percent (25%) of the required number of parking spaces.
5. Personal services, including banks, savings and loans, and repair services <i>without</i> drive-through facilities.	One (1) for each 200 S.F. of gross floor area.
6. Personal services, including banks, savings and loans, and similar services <i>with</i> drive-through facilities	One (1) for each 200 S.F. of gross floor area. plus additional space in drive-through lanes equal to eighty percent (80%) of the required number of parking spaces.
7. Barber and beauty shops	Two (2) for each work station
8. Gasoline and service stations, automobile each service the	Two (2) for each service bay plus one (1) for pump, plus one (1) for each employee during main shift
9. Self-serve laundries	One(1) for each three(3) washers.
10. Medical and dental offices, human clinics	Four (4) for each doctor or dentist
11. Veterinary clinics, animal hospitals	Three (3) for each doctor.
12. Hotels, bed-and-breakfast establishments	One (1) for each sleeping room plus one (1) for each employee during the main shift
13. Funeral homes	One (1) for each 400 S.F. of gross floor area.
<b>C. Industrial</b>	
1. Any manufacturing, processing, packaging, warehousing, distribution or service industry	Two (2) for each three (3) employees during work shift having greatest number of employees, plus one (1) for each vehicle maintained on the premises.
<b>D. Institutional</b>	
1. Churches and places of public worship sanctuary	One (1) for each four (4) seats in main
2. Public or private elementary or secondary school	Four (4) for each classroom, or one (1) for each seat in main auditorium, whichever is greater.
3. Business, trade, or technical school, college or university	One (1) for each two (2) students and one (1) for each faculty member.
4. Nursery School/Day Care	One (1) for each fifteen (15) students
5. Libraries, museums, community centers and similar facilities	One for each 400 S.F. of gross floor area

- |  |   |
|--|---|
| 6. Civic, social and fraternal organizations<br>main | One (1) for each three (3) persons allowed in<br>meeting room at full capacity. |
|--|---|

**USE**

**NUMBER OF SPACES**

**(D. Institutional continued)**

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|----------------------------------|--|
| 7. Hospitals, nursing facilities | One (1) for each four (4) beds plus one (1) per<br>employee on main shift. |
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**E. Recreational**

- |  |   |
|--|---|
| 1. Baseball, softball, football, soccer or similar<br>organized sport playfield                    | Twenty (20) for each playfield, plus one for each<br>six (6) seats in stands.             |
| 2. Tennis, handball or racquetball courts  | Three (3) for each court  |
| 3. Bowling alleys<br>spaces as   | Four (4) per lane, plus necessary<br><br>required for auxiliary uses such as restaurants. |
| 4. Theatres, stadiums, sports arenas,<br>auditoriums or other assembly halls<br>other than schools | One (1) for each four (4) seats   |

## **ARTICLE XXIX**

### **SIGNS**

#### **Section 29.01 Purpose**

The purpose of these regulations is to encourage the proper development of signs and signage systems. The intent of these regulations is as follows:

- A. to control the size, location and design of signs so that the overall appearance of such signs will be aesthetically harmonious with their surroundings,
- B. to reduce sign clutter,
- C. to prevent signs from becoming a distraction or obstruction to the safe flow of pedestrian and vehicular traffic,
- D. to prevent signs from becoming a nuisance to adjacent properties or uses,
- E. to encourage the development of signage that promotes a healthful economic and business environment and thereby protect the general health, safety, and welfare of the citizens of Berne Township.

#### **Section 29.02 Definitions**

As used in this Article, the following words or phrases shall have the meanings herein:

- A. "Sign" means any device for visual communication which is designed, intended, or used to convey a message, advertise, inform or otherwise direct attention to a person, institution, organization, activity, business, place, object or product.
- B. Other Definitions
  1. "Billboard" means an off-premises sign that is more than two hundred (200) square feet in area.
  2. "Changeable copy sign" means a sign that, in whole or in part, provides for periodic changes in the material or message composing the sign. This definition includes both electronically and manually changeable signs.
  3. "Directional sign" means any off-premises sign that indicates the direction or specific location of an institution, organization or business, which does not include advertising or any information regarding product lines or services offered
  4. "Flashing sign" means a sign or graphic that in any manner, as a whole or in part, physically changes in light intensity or gives the appearance of such change
  5. "Freestanding sign" means a sign that is wholly independent of any building for support.
  6. "Moving sign" means any sign, all or any part of which physically moves or is animated so as to give the appearance of movement
  7. "Off-premises sign" means any sign that identifies or provides information related to a good, service or event that is not located on the property where such sign is located.
  8. "Permanent sign" means a sign intended to be erected or used, or in fact which is used for time period in excess of 90 days.
  9. "Portable sign" means a sign designed or constructed in such a manner that it can be moved or relocated without involving any structural or support changes and shall include signs that are constructed on a chassis intended for the mounting of wheels, thereby permitting the sign to be moved
  10. "Projecting sign" means a sign that extends outward perpendicular to the building face
  11. "Temporary sign" means a sign intended to be used, or in fact used, for a time period of 90 days or less.
  12. "Wall sign" means a sign attached to a building face, with the exposed face in a plane parallel to the plane of the wall. Wall signs include painted murals, messages, graphics

and other designs painted along with any letters or numerals mounted directly on buildings.

13. "Window sign" means a sign, graphic, poster, symbol or other identification that is physically affixed to or painted on the glass or other structural component of the window.

### **Section 29.03 Signs Excluded from Regulations**

The following signs are excluded from the regulations and requirements of this Article:

- A. Signs not exceeding one (1) square foot in area that are customarily associated with residential use and are not of a commercial nature, including address and/or name of occupants of the structure, signs on mailboxes or newspaper tubes, signs posted on property related to private parking, and signs warning against trespassing or danger from animals. Signs associated with home occupations shall not be excluded from these regulations.
- B. Signs erected by a governmental entity for a recognized public purpose and duly authorized by any law, statute or ordinance. Such signs include legal notices and traffic control or safety devices, provided such signs carry no supplementary advertising.
- C. Temporary signs not exceeding fifty (50) square feet in area erected on a site owned or controlled by a non-profit organization or group, including but not limited to sites used for sporting or similar community events.
- D. Signs located on the inside of a structure or building, that are not designed or located so as to be typically visible from outside the building.
- E. Signs which are in the nature of cornerstones, commemorative tables and historic designations, provided such signs are less than nine (9) square feet in size and not illuminated.
- F. Signs clearly in the nature of decorations customarily associated with a national, local or religious holiday. Such signs shall be of any illumination or animation provided that a safety and/or visibility hazard is not clearly created.
- G. Flags or insignias of any governmental entity when not displayed as an advertising device, or in connection with any commercial promotion, and provided that not more than four (4) such flags or banners are displayed at any one time.
- H. Signs identifying agricultural commodities or products used on the premises.

### **Section 29.04 Prohibited Signs**

Signs that are not specifically permitted in this Article shall be considered as prohibited. Without restricting or limiting the generality of the foregoing provisions, the following signs are specifically prohibited:

- A. Signs on motor vehicles or trailers that are parked in a manner and location so as to serve as a sign.
- B. Banners, streamers, pennants and similar air-activated moving signs displayed more than 90 days in a calendar year.
- C. Flashing or high intensity lights mounted on a sign.
- D. Signs which move or give the illusion of movement, except for tri-vision billboards.
- E. Any sign that obstructs any part of a doorway, exit or fire escape.
- F. Any sign that resembles or is intended to resemble a traffic control device, or is located in such a manner so as to obscure or impact the effectiveness of such traffic control device or signal.
- G. Any sign that extends into the right-of-way of any public street or highway.

## **Section 29.05 Sign Permits and Administration**

### **A. Permit Required**

No permanent or temporary sign, except as exempted in Sections 29.03 or 29.06 of this Ordinance shall hereafter be erected, constructed or maintained within Berne Township unless a permit for the same has been issued by the Zoning Inspector.

### **B. Contents of Application**

The owner of the property upon which the sign is proposed, or his agent shall make application for a permit to construct or erect a sign. The fee shall be established by separate Resolution. Each application for a sign permit shall be made on forms provided by the Zoning Inspector, and shall include the following information:

1. Name, address, and telephone number of the applicant.
2. Drawings to an appropriate scale, showing at a minimum:
  - a. The design and layout of the proposed sign, including the total area of the sign and the size, height, character, materials and color of letters, lines, and symbols. If more than one sign face is proposed, separate information on each face shall be provided
  - b. The exact location of the sign in relation to the building and property.
  - c. The method of illumination, if any.
3. Details and specifications for the construction, erection and attachment of the sign.
4. Name, address and telephone number of the sign contractor or company.
5. Other information as may be required by the Zoning Inspector to ensure compliance with the provisions of this Ordinance.

### **C. Action on Sign Permit**

The Zoning Inspector shall issue a sign permit upon submittal of a completed application and payment of applicable fees if he/she determines that the provisions of this Ordinance have been met. The fee for a sign permit shall be doubled if the construction or physical alteration for which the permit is sought was commenced prior to the application for the permit. If the application for a sign permit is denied, the applicant shall be given written notice of such denial, along with the reasons therefore.

### **D. Appeals**

Any decision made by the Zoning Inspector under the terms of this Article may be appealed to the Board of Zoning Appeals in the manner set forth in Article VI of this Resolution.

## **Section 29.06 Signs Which Do Not Require a Permit**

The following signs may be erected without a permit; such signs, however, shall be subject to all other provisions of this Article:

- A. Political signs or posters concerning candidates for elective office, public issues and similar matters to be decided by public election, to be displayed beginning no more than thirty (30) days prior to election and to be removed no later than one (1) week after such election, subject to penalty. Such signs shall not exceed twelve (12) square feet in area, shall not be illuminated, and shall not be located within a public right-of-way nor be affixed to any public utility pole or street tree. In addition such sign shall not be located in any manner so as to create a safety or visibility hazard. Signs that exceed the standards of this Section shall require a sign permit.
- B. Signs that indicate the sale, development, rental or lease of a particular structure or land area, provided such sign does not exceed sixteen (16) square feet in area. One such sign be allowed per street front. Such signs shall not be located in a public right-of-way.
- C. Temporary window signs which promote special business sales, promotions or occasions. No business shall display such signs for more than thirty (30) days per calendar year. The date when each sign is first displayed and the time period for which the sign will be displayed shall be legibly marked on the sign.

- D. Signs, which are less than twenty (20) square feet in size and mounted or attached flat or parallel onto a building face of an administrative, business or professional office building, which denote the name and address of an occupant in a building where more than one tenant is located and which has individual and separate entries.
- F. A sign which advertises the sale of personal property, such as a garage, yard, porch or moving sale sign provided such sign, is located on the sale premises for a time period not greater than three (3) consecutive days, and is not to be located in a public right-of-way nor affixed to any public utility pole or street tree. Such signs shall not be located in such a manner so as to create a safety or visibility hazard.
- G. Temporary construction signs which display the identification of the construction project, including identification of the contractors, architects and other construction principals. Such construction sign shall be limited to one (1) per construction site, shall not exceed sixteen (16) square feet in area and shall be removed upon the completion of construction or the commencement of occupancy, whichever event occurs first. Such signs shall not be located within the public right-of-way.
- H. Signs promoting community events and programs which last for a time period of fourteen (14) days or less and which are sponsored by nonprofit, public, educational, religious and charitable entities. Such signs shall be removed not later than three (3) days after the scheduled activity
- I. Signs determined by the Board of Zoning Appeals to be similar to those specified in A-H above

## **Section 29.07 General Requirements**

Temporary and/or permanent signs erected after the date of this Resolution shall comply with the following standards and requirements:

### **A. Outdoor Advertising**

Outdoor advertising and other signs promoting a product or service not located on the premises shall be considered a business use and shall be permitted in and subject to the development standards of the GB District, and the following:

1. All off-premises signs other than directional signs specified in Section 29.07 A(2) below, shall conform to all yard and setback requirements for the zoning district in which it is located.
2. Not more than two (2) off-premises directional signs shall be permitted, directing persons to a business located elsewhere. Each such directional sign shall not exceed four (4) square feet in area.
3. The height of an outdoor advertising sign shall not exceed fifteen (15) feet above natural grade and shall not exceed 200 square feet in area. Signs that exceed this standard shall be considered billboards and subject to the provisions of Section 29.07 B below.
4. All permitted outdoor advertising signs shall be licensed or permitted as may be required by other local, federal or state agencies.
5. Outdoor advertising signs shall be located not less than 200 feet from any adjacent residential zoning district.
6. No outdoor advertising shall be erected or maintained in trees, or constructed, drawn or painted directly onto rocks or other natural features.

### **B. Billboards**

Billboards as defined in Section 29.02 B, intended to be viewed from any public right of way shall be considered as a conditional use in the GB District. The intent of this section is to allow placement of billboards on parcels where other business development has already occurred.

Billboards are exempt from any limitation contained in this resolution which provides that no more than one permitted use shall exist on any one zoning lot.

A billboard together with one other permitted use may co-exist on any one zoning lot, whether or not the owner of such billboard is also the owner of all or some of such zoning lot,



provided that neither such billboard nor such other permitted use shall be constructed on such zoning lot until an application for the billboard structure itself has been submitted and approved by the Zoning Inspector in accordance with the provisions of Section 29.05 hereof. Changes in advertisements posted on approved billboard structures are not considered as changes in signs requiring the submission of approval of sign applications under Section 29.05 hereof.

The application for billboards shall include a site plan showing the exact location of the sign, and the location of any other signage within 1000 feet from the location of the proposed sign. This site plan shall be reviewed by the Board of Zoning Appeals following the procedures and standards cited in Article IX. In addition, the billboard shall comply with Section 29.07 A above and the following:

1. The maximum height of any billboard shall not exceed thirty-five (35) feet as measured from the ground level at the nearest point of the road right of way.
2. Billboards shall be set back from the roadway the minimum distance required for signage in the district involved.
3. The maximum area of any billboard shall not exceed 360 square feet.
4. No billboard shall be located within 1,000 feet of a residential zoning district or 1,000 feet from any other billboard.
5. Billboards may be back to back or 'V' type with only one face per side, except tri-vision, which are allowed.

C. On-Premises Signs

Free-standing, wall-mounted, window or projecting signs identifying and/or promoting uses or activities on the premises are permitted as part of the principal use in the GB, PRB and SU Districts. In the PRB and SU Districts, the location of such sign must be in strict compliance with the Development Plan submitted as part of the approval process.

1. No single sign shall have an area of more than fifty (50) square feet per side.
2. No single use or property shall maintain a total sign area for *all* signs of more than 200 square feet.
3. No on-premises sign shall be erected closer than twenty-five (25) feet to the road right-of-way.
4. No sign shall exceed twenty-five (25) feet in height, as measured from ground level.

D. Portable Signs

Portable signs, as defined in Section 29.02E, shall be permitted as temporary signs, so long as the gross sign area for the property, as specified in Section 29.07C.2. above, is not exceeded.

E. Permanent Subdivision Identification Signs

Permanent signs identifying a residential subdivision shall be limited to not more than two (2) signs located at the entrance to the subdivision.

F. General Requirements for all Signs

1. When a sign is proposed to be illuminated, such illumination shall be from a concealed or indirect light source and shall not flash, blink, fluctuate in intensity, travel, move or in any manner fail to provide constant illumination, and shall not create a hazard or visibility problem or interfere with or impair vehicular traffic. The level of illumination emitted from a sign shall not be of an intensity to constitute a demonstrable safety hazard to vehicular movement on any street. Illuminated signs shall be constructed and maintained so that the source of illumination is shielded or otherwise prevented from beaming directly onto adjacent properties or streets.
2. Moving signs and the animation of signs are prohibited.
3. All signs and parts thereof, including any electrical wiring, shall be erected, constructed, and maintained so as not to constitute a safety hazard.

4. No sign nor part of any of a sign be placed in, over, or extend onto any public right-of-way, nor shall any part of a sign be placed over, or extend above the roof of any structure.
5. No sign shall be located so as to hinder clear sight within fifty (50) feet in both directions at the intersection of any roadway with a federal or state highway.

### **Section 29.08 Measurement of Sign**

For the purposes of this Resolution, the measurement of sign area shall comply with the following standards:

- A. Sign area shall include the face of all the display area of the sign not including bracing, framing and structural supports of the sign, unless such support members are made part of the message or face of the design. Where a sign has two or more display faces, the area of *all* faces of the sign shall be included in determining the area of the sign.
- B. The area of the letters, numbers or emblems mounted on a building wall or wall extension shall be computed by enclosing such sign with the smallest single continuous perimeter consisting of rectangular or series of rectangles around the letters, number or emblems, and determining the area.

### **Section 29.09 Nonconforming Signs**

#### A. Abandonment

The continuance of an existing sign that does not meet the regulations and requirements of this Article shall be deemed a nonconforming sign, which shall terminate by abandonment when any of the following conditions exist:

1. When the sign is associated with an abandoned use.
2. When the sign remains after the termination of a business. A business has ceased operations if it is closed to the public for at least ninety (90) consecutive days. Seasonal businesses are exempt from this requirement.
3. When the sign is not maintained or does not conform to the following:
  - a) All signs, together with all supports, braces, guys and anchors shall be kept in a proper state of repair.
  - b) Every sign and the immediately surrounding premises shall be maintained by the owner, or his agent, in a clean sanitary and inoffensive condition, free from all obnoxious substances, rubbish and weeds.

Upon finding that the sign is abandoned, the right to maintain and use such sign shall terminate immediately. The removal of an abandoned sign shall be the responsibility of the owner of the property.

#### B. Relocation or Replacement

A nonconforming sign shall not be structurally relocated or replaced unless it is brought into compliance with the provisions of this Section.

#### C. Maintenance

A nonconforming sign shall be maintained or repaired in accordance with the following provisions:

1. The size and structural shape of the sign shall not be changed or altered. The copy may be changed provided that the change applies to the original use associated with the sign at the time the sign became nonconforming. The copy area shall not be enlarged.
2. In case damage occurs to the sign to the extent that more than 50 percent (50%) of the replacement value is lost, the sign shall be removed within sixty (60) days.

## ARTICLE XXX

### ADULT ENTERTAINMENT BUSINESSES

#### Section 30.01 Purpose

The purpose of this Article is to promote the public health, safety and welfare through the regulation of adult entertainment businesses. It is the intent of this Article to regulate businesses, as defined herein, in such a manner as to prevent the erosion of the character of the surrounding neighborhoods and to prohibit the establishment of such businesses within close proximity to schools, churches, residential areas, parks and playgrounds within Berne Township.

#### Section 30.02 Definitions

- A. "Adult Entertainment Facility" means any establishment that is involved in one or more of the following listed categories.
1. "Adult Book Store" means an establishment which utilizes fifteen percent (15%) or more of its retail selling area for the purpose of retail sale or rental, or for the purpose of display by coin or slug-operated, or motion picture machines, projectors, or other image-producing devices, or both, books, magazines, other periodicals, films, tapes and cassettes which are distinguished by their emphasis on "specified sexual activities" or "specified anatomical areas" as defined below.
  2. "Adult Motion Picture" means a facility for the display of motion pictures which is regularly used or utilizes fifteen percent (15%) or more its total viewing time for presenting material distinguished or characterized by an emphasis to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein.
  3. "Adult Entertainment Business" means any establishment involved in the sale or services of products characterized by the exposure or presentation of "specified anatomical areas" or physical contact of live male or females, and which is characterized by salacious conduct appealing to prurient interest for the observation or participation in by patrons. Services or products included within the scope of adult entertainment business are photography, dancing, reading, massage, and similar functions which utilize activities as specified above.
- B. "Specified Sexual Activities" means any of the following:
1. Human genitals in a state of sexual stimulation or arousal.
  2. Acts, real or simulated, or human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or sadomasochistic sexual abuse.
  3. Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.
- C. "Specified Anatomical Areas" mean any of the following:
1. Less than completely covered human genitals, pubic region, buttocks, and female breasts below a point immediately above the top of the areola.
  2. Human male genitals in a discernible turgid state.
- D. "Fine Art Gallery" means any display of artwork which is individually crafted and signed by the artist or which is limited in edition to 1,000 or less.
- E. "Sexually explicit nudity" means the sexually oriented and explicit showing of nudity, including, but not limited to, close-up views, poses, or depiction in such position or manner that present or expose such nudity to prominent, focal, or obvious viewing attention.
- F. "Visibly displayed" means the material is visible on any sign, viewing screen, marquee, newsstand, display rack, window, show case, display case, or other similar display area that is visible from any part of the general public or otherwise, or that is visible from any part of the premises where a juvenile is or may be allowed, permitted, or invited, as part of the general public or otherwise, or that is visible from a public street, sidewalk, park, alley,

residence, playground, school, or other place to which juveniles, as part of the general public or otherwise, has unrestrained and reasonable anticipated access and presence.

### **Section 30.03 Exceptions**

Nothing in this Article shall be construed to pertain to:

- A. The purchase, distribution, exhibition and/or loan of any work of art, book, magazine or other printed material or manuscript by an accredited museum, library, fine art gallery, school or museum of higher learning.
- B. The exhibition and/or performance of any play, drama tableau, or motion picture by any theater, museum, library, fine art gallery, school, or institution of higher learning either supported by public appropriation or which is an accredited institution supported by private funds.

### **Section 30.04 Location**

Adult Entertainment Facilities shall be considered a conditional use in the GB District, and shall be subject to the following conditions:

- A. No adult entertainment facility shall be established within 1,500 feet of any residence or district where residences are a permitted use.
- B. No adult entertainment facility shall be established within a radius of 1,500 feet of any school, library, or teaching facility, whether public or private, when such school, library, or teaching facility is attended by persons under 18 years of age.
- C. No adult entertainment facility shall be established within a radius of 1,500 feet of any park or recreational facility attended by persons under 18 years of age.
- D. No adult entertainment facility shall be established within a radius of 1,500 feet of any church, synagogue, or permanently established place of religious services attended by persons under 18 years of age.
- E. No adult entertainment facility shall be established within a radius of 1,500 feet of any other adult entertainment facility.
- F. No advertisements, displays or other promotional materials displaying specified sexual activities or specified anatomical areas shall be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways, or from other public or semi-public areas.
- G. All building openings, entries, windows, etc. for adult entertainment uses shall be located, covered, or serviced in such a manner as to prevent a view into the interior from any public or semi-public area, sidewalk or street.
- H. No screens, loudspeakers or sound equipment shall be used for adult motion picture theaters (enclosed or drive-in) that can be seen or discerned from public or semi-public area.