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## ARTICLE I

### APPLICATION OF ZONING ORDINANCE

#### Sec. 17-1. Title

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the City of Berlin, New Hampshire."

#### Sec. 17-2. Purpose and Authority

This Ordinance, adopted in accordance with authority conferred by New Hampshire RSA 674:16 and 674:17 as amended for the purpose of promoting the health, safety, and the general welfare of the community in accordance with the comprehensive plan for the future development of the City. This Ordinance is designed to encourage the most appropriate use of land throughout the municipality; to promote traffic safety; to provide safety from fire, panic and other dangers; to provide adequate light and air; to facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care and other public facilities; to prevent the overcrowding of land; to avoid undue concentration of population; to assure proper use of natural resources.

#### Sec. 17-3. Origins and Effective Date

This Ordinance repeals and replaces the zoning ordinance currently in effect in the City of Berlin, which was adopted on February 17, 1964, and amended several times. This Ordinance is effective upon passage.

(Date of Passage November 1, 1999) (July 20, 2009)

#### Sec. 17-4. Applicability

No building, structure, or land shall hereafter be used or occupied, and no building or structure, or part thereof, shall hereafter be erected, constructed, moved or substantially altered unless in conformity with all regulations herein specified for the zone in which it is located.

This Ordinance shall not entirely apply to existing structures or uses that were legally conforming to a prior version of the Berlin Zoning Ordinance at the time the structure or use was established. In such cases, these structures or uses shall become legally nonconforming and may continue to exist except if abandoned or substantially altered, or if the structure or use is deemed a nuisance or harmful to the public health and welfare. See Article III, "Nonconforming Uses, Structures and Lots".

No existing structure or use which was in violation of any provision of a previously existing version of the Berlin Zoning Ordinance shall, by virtue of the adoption of this Ordinance,

become legally nonconforming. In other words, if it was illegal before, it is still illegal, unless the passage of this Ordinance makes it a legal, conforming structure or use.

Sec. 17-5. Separability

The invalidity of any section or provision of this Ordinance shall not affect the validity of this Ordinance as a whole, or of any other section or provision of this Ordinance.

Sec. 17-6. Rule of Precedence

Wherever the provisions of any other ordinance or duly promulgated rules or regulations impose stricter standards than are required by this Ordinance, such provisions or rules shall govern.

Sec. 17-7. Amendments

By citizen petition, recommendation of the Planning Board, or on their own motion, the City Council may present ordinances for consideration by the City Council to amend, supplement, or repeal the regulations and provisions of this Ordinance.

The City Council shall refer proposed amendments, supplements, or repeals of the regulations and provisions of this Ordinance to the Planning Board for their recommendation. After receiving recommendation from the Planning Board, the City Council shall fix the time and place of a public hearing on the proposed amendment or amendments and cause notice to be given in accordance with RSA 675:2 II, as amended.

Secs. 17-8 --- 17-19 Reserved.

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## ARTICLE II

### GENERAL PROVISIONS

#### Sec. 17-20. Front, Side or Rear Yard Use

No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building except as allowed in Section 17-160.

#### Sec. 17-21. Lot Density

There shall be no more than one primary building per approved building lot unless otherwise designated in this Ordinance.

#### Sec. 17-22. Minimum Lot Size Where On-Site Sewage Disposal Systems and On-Site Water Systems are Used

In any residential, business or industrial zoning district, where city sewer or city water are not available the minimum lot area required for any structure or primary building shall be one acre; and for lots where both city sewer and city water are not available the minimum lot area for any structure or primary building shall be two acres. The Zoning Officer may require a larger lot size than that specified above where soil and drainage conditions so warrant.

#### Sec. 17-23. Permitted Uses

Any use designated as a "permitted use" in a particular zoning district under provisions of this Ordinance is a use that may be commenced, enlarged or altered, provided that the applicable provisions of this Ordinance are met and all other necessary permits required under the laws of the City of Berlin and the State of NH are obtained. The taking off and landing of aircraft is not permitted except where specifically listed as a permitted use.

#### Sec. 17-24. Uses by Special Exception

1. The Board of Adjustment shall have the power to approve uses permitted by special exception, when specified by this Ordinance and subject to appropriate conditions and safeguards as stated below. All special exceptions shall be made in harmony with the general purpose and intent of this Ordinance, and shall be in accordance with the general or specific rules contained in this Ordinance. A special exception will be allowed if the following conditions are met:
  - a. the specific site is an appropriate location for such a use;



- b. property values in the district will not be reduced by such a use;
  - c. no nuisance or unreasonable hazard shall result;
  - d. no adverse traffic impact will result from such a use;
  - e. adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer, and parking;
  - f. no material adverse impact on the view, light and air of any abutter will result; and (Ord. 8/20/2012)
  - g. such a use would not be detrimental to the public health, safety, and general welfare.
2. In approving a Special exception, the Board of Adjustment may impose such additional conditions as it finds reasonably necessary to safeguard the neighborhood or otherwise serve the purposes of this Ordinance. Such conditions may include the following:
- a. increased lot area exceeding the minimum lot area required in a particular zone;
  - b. increased front, side or rear yards set backs;
  - c. height limitations;
  - d. parking requirements specific to use and location;
  - e. appropriate screening, buffers or planting strips, fences or walls;
  - f. modification of the exterior appearance of the structure;
  - g. limitation upon the size of any buildings, number of occupants, method and time of operation, or extent of facilities;
  - h. relocation of the driveway or change in driveway configuration; and
  - i. other conditions attached to specific uses permitted by special exception under the provisions of this Ordinance.

3. The following provisions apply to Special Exceptions sought for any Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NHRSA 162-H:2 (referred to herein as "Energy Projects"):

Whereas the State of New Hampshire recognizes the need and value of Energy Projects, the City of Berlin has determined that changes have occurred in the community that lead to the requirement for further consideration when reviewing and considering approval of any Energy Project. With the decline of pulp manufacturing/ heavy industry nationally and the closure and cessation of pulp manufacturing in Berlin, the community realizes that there will be projects proposed to utilize the wood, wind and water supply within the City. The citizens of Berlin through public hearings related to the Master Plan update in early 2008 have indicated a desire to properly locate energy related facilities within the community but ideally outside of the downtown area. The City wishes to encourage the development of properly located Energy Projects and has developed the enclosed provisions to ensure the responsible evaluation of these Energy Projects. The following list of criteria will be reviewed in addition to Section 17-24 1 and 2 for all proposed Energy Projects within the only possible zones in which such activity could be properly allowed – the Industrial/Business Zone and the Rural Residential Zone as stated in Section

a. All Energy Projects must meet the performance standards as stated in Article XVIII Section 17-191—17-200

b. Each Applicant for a Special Exception for an Energy Project shall provide a report or study for evaluation and review by an appropriate qualified peer reviewer that indicates in reasonable detail the primary fuel source to be used and that there is adequate long range supply available for the project. The Applicant's report shall also indicate in reasonable detail the methodology and routing for transporting any off-site fuel supply to the site. The Zoning Board shall select the peer reviewer(s) whose duty it will be to advise the Zoning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inadequacy of and questionable transportation methodology and/or routing of such long term fuel supply shall be grounds for denial of the Special Exception.

c. All Energy Projects shall be sited to maximize use of existing transmission lines and minimize the creation of new transmission lines. If new lines are required, the Applicant shall provide to the Zoning Board a report from a qualified engineer stating the necessity of an upgrade to the transmission lines and the propriety of the amount and location of those new transmission lines. The Zoning Board shall select the peer reviewer(s) of that report, whose duty it will be advise the Zoning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inappropriateness of the amount and location of those new transmission lines shall be grounds for denial of the Special Exception.

d. Further information may be required by the Planning Board during Site Plan Review.

e. The Zoning Board shall consider the physical appropriateness of the Energy Project in relation to the surrounding area it will be located in. Several aspects should be considered when reviewing the appropriateness of the location including but not limited to scale, height, materials being used for construction, level of activity on the site both during construction and during operation, impact on existing and potential future uses of adjoining and area properties, and any other factors which may negatively impact the appropriate development of the area in compliance with the current and future Master Planning process for the City as a whole. The inappropriateness of such siting shall be grounds for denial of the Special Exception.

f. All Energy Projects must obtain a special exception from the City of Berlin before final approval by any State agency regardless of size.

g. All Energy Projects must also comply with all other City, State and Federal regulations, rules, ordinances and laws. (Ord. of 6/16/08)

Sec. 17-25. Dimensional Special Exceptions

Where specified in this Ordinance, special exceptions for lot size, frontage, setbacks, and height may be granted by the Board of Adjustment provided that the use of the structure is a permitted use, the requirements of Section 17-24 are satisfied, and any other requirements specified in this Ordinance are met.

Sec. 17-26. Accessory Uses and Buildings

1. The total square footage of all residential accessory buildings shall not exceed 1,200 square feet in the Residential Single-Family (RS), Residential Two-Family (RT), and Residential General (RG) zones. *As a permitted use a single residential accessory building in these zones can be built up to 800 square feet. Any residential accessory building in these zones that need a total square footage in excess of 800 square feet may be permitted by special exception to have up to 1,200 square feet provided that the provisions of Article II, Section 17-24 are met. The setbacks and building height requirements still need to be met accordingly.* (Amended 11-6-00) (Ord. 8-20-12)
2. An residential accessory building shall not exceed the building height of the primary structure. The total square footage of all residential accessory buildings shall not exceed the total square footage of the primary structure. (Amended 11-6-00) (Ord. 8-20-12)
3. It shall be unlawful to establish any accessory use or building in the absence of an associated, permitted primary use or building on the same lot.
4. Residential accessory buildings are not permitted in a front yard (8-20-12)
5. Nonresidential accessory buildings and structures may be permitted a special exception from the Zoning Board of Adjustment in accordance of provisions of Article II General Provisions, Section 17-24 Uses by Special Exception in the Residential Single-Family (RS), Residential Two-Family (RT) and Residential General (RG) zones. (Ord. 8-20-12)

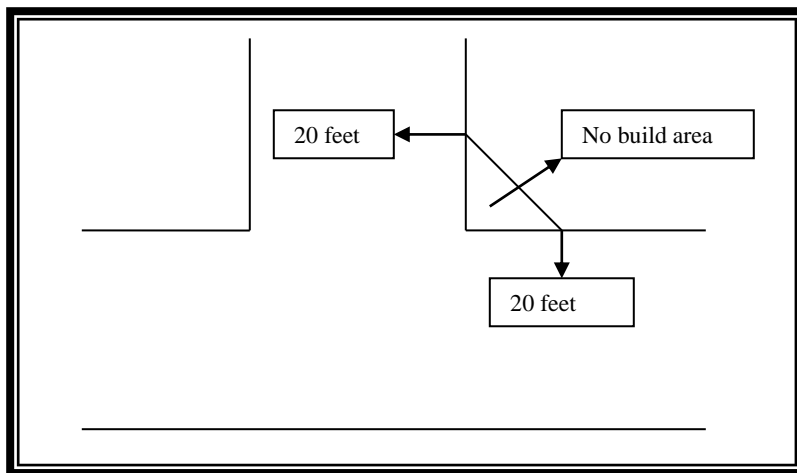
Section 17-27. Driveways

Driveways shall be a minimum of twenty-five feet (25') in length and conform to the "City of Berlin Driveway and Access Regulations".

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*Sec 17-28. Corner Clearance*

*In a residential zone, between the lines of intersecting street and a line joining points on such lines twenty (20) feet distant from their point of the intersection, or in the case of a rounded street corner, the point of intersection of their tangents, no building or structure may be erected and no vegetation may be maintained above a height of three (3) feet above the plane through their curb grades. The purpose of this provision is to enhance visibility at intersections for pedestrian and vehicular traffic and to ensure public safety at intersections. An illustration follows this provision to further clarify its purpose. (Added by Amendment 11-6-00)*



Secs. 17-29---17-30. Reserved

## ARTICLE III

### NONCONFORMING USES, STRUCTURES, and LOTS

#### Sec 17-31. Purpose and Intent

1. Purpose: The purpose of this article is to encourage the discontinuance of nonconforming uses or the change of nonconforming uses to conforming or more conforming uses, and to allow and regulate lawfully existing uses, structures and lots not in conformance with the applicable regulations of the Zoning Ordinance. This article establishes provisions for three classes of nonconformity relating to:

- a. Lots: the size, area, dimensions or frontage of a lot. (Ord. 9-20-10)
- b. Uses: the land use(s) or type of development occurring on the lot.
- c. Structures: the location, dimension and lot coverage of structures built upon the lot.

2. Multiple nonconformities: A single property may exhibit one or more types of nonconformity. It is the intent of this article that each type of nonconformity be treated distinctly, even where one or more nonconformities occur together on a given property.

3. Change in ownership or management. Nothing herein contained shall be construed as prohibiting change in tenancy, ownership, or management of a nonconforming lot, use, or structure, provided that such change is otherwise lawful.

#### Sec 17-32. Determination of Nonconformity

1. Evidence of a nonconforming use. In reviewing an application for a building permit or other application for land use change or structural alteration involving a nonconforming use, building or lot, the Code Enforcement Officer or his or her designee shall make a determination as to the existence of one or more nonconformities. In so doing, the Code Enforcement Officer or his or her designee may require the property owner, or his agent, to produce acceptable evidence attesting to said legal nonconforming status. Such evidence shall include, but is not restricted to such documents as rent receipts, affidavits, documentation of utility services, deeds, surveys, or other information as may be deemed to be necessary by the Code Enforcement Officer or his or her designee in a particular case. (Ord. 9-20-10)

2. Status of uses authorized by special exception. Any use in lawful existence at the time of passage or amendment of this Zoning Ordinance which would thereafter require and obtain a special exception under its terms shall without further action be deemed a conforming use. Any enlargement or replacement of such use, in buildings, or on land, shall require a special exception as though it were a new use.

3. Nonconforming use status limited to permanent lawful uses. The casual, temporary, or illegal use of land or structures, or land or structures in combination, shall not be sufficient

to establish the existence of a Nonconforming use or to create rights in the continuance of such use.

4. Nonconformity created through public taking. Where the dimensional nonconformity of a structure or a lot is created by government acquisition of property such structure or a lot shall not be regarded as a Nonconforming use, and may be continued, structurally altered, reconstructed, repaired or enlarged so long as it remains an otherwise lawful use; provided, that any structural change, repair, addition, alteration or reconstruction, shall not increase, extend, enlarge or affect the dimensions which are deficient.

#### 17-33. Nonconforming lots of record

1. Evidence of Nonconforming lot. A nonconforming lot shall be deemed to exist where the Code Enforcement Officer or his or her designee finds, based on evidence submitted by the property owner, that all of the following conditions are true:

- a. The lot was created prior to the effective date of the City's original Zoning Ordinance February 17, 1964 or prior to the relevant amendments affecting the conformity of the lot, and no further division has occurred since that date.
- b. The lot met the minimum size, frontage and area standards which were in effect when the lot was created.
- c. The lot does not conform to present size, frontage, dimension, or area standards for the zoning district, and the present owner does not own, and has no contract, option or other enforceable legal right to acquire any adjoining property to the extent necessary to make the lot conforming to present standards, or is prevented by law from doing so. (Ord. 9-20-10)

2. Date lot was created. The date of creation of a lot shall be considered established by its most recent change in configuration by parcel area reduction, consolidation, and land division.

3. Actions by land use boards may not create nonconformity. Nonconforming lots shall not be created through the grant of a variance, special exception, conditional use or other development permit, except to the extent authorized by the Planning Board, which may authorize the creation of a nonconforming lot when special circumstances that benefit the public are found to exist.

4. Lots without Adequate Size, Dimension, Area and/or Frontage. A lot which fails to conform to size area, and/or dimensional requirements (including frontage) which are in effect under ordinances or regulations at the time of application shall not by reason of those defect(s) be denied any land development permit otherwise available under current ordinances. Nonconforming lots of record may be developed for any use allowed in the applicable zoning district under the following conditions:

- a. Substandard lot size. When a Nonconforming lot can be used in conformity with all applicable regulations except for minimum lot size, dimension, area and/or

frontage, then the lot may be used for a permitted use, subject to all other standards which apply to that use under the Zoning Ordinance. However, the following uses, Manufactured Housing Parks, Manufactured Housing Subdivisions, and the Planned Development Option all require a lot size greater than the established minimum lot size for these particular uses in their respective zones and are not permitted on a nonconforming lot. (Ord. 9-20-10)

- b. Inadequate dimensions to meet setback requirements. When the proposed use of a nonconforming lot is one that would be conforming in all respects, except that the applicable setback requirements cannot reasonably be complied with, then the Zoning Board of Adjustment may issue a special exception for deviation from setback requirements if it finds that:
  - a. The property cannot reasonably be developed for the proposed use without the setback deviation.
  - b. These deviations are necessitated by the size and shape of the nonconforming lot and not for convenience of the owner or financial advantage.
  - c. The property can be developed as proposed without causing a significantly greater adverse impact than the adverse impact such development on a conforming lot would have on surrounding properties or the public health or safety.

5. Residential Use of Nonconforming Lots: In any district where single family dwellings are permitted, a single family residence is hereby permitted on any lot having at least fifty feet (50') of frontage on an existing, accepted, or approved City street, and having at least one hundred feet (100') in depth if such a lot was a nonconforming lot of record on the effective date of this Ordinance. All setback requirements and other provisions of this Ordinance must be met.

#### Sec 17-34. Nonconforming Structures

- 1. Repair and maintenance. Normal repairs, renovations and maintenance may be made to any nonconforming building or structure, except as provided for in this article.
- 2. Nothing in this article shall prevent the strengthening or restoring to safe condition any building or part thereof upon order by any official charged with protecting public safety.
- 3 Replacement.
  - a. Residential accessory structures. Any nonconforming residential accessory structure such as a garage, shed, deck or porch may be razed and replaced in its entirety, provided that it is replaced in the same location, and for the same purpose, with no expansion in the size of the structure whatsoever.

b. Casualty loss. Any nonconforming structure which is completely or significantly destroyed by fire, flood, wind, or other natural disaster may be replaced with a similar structure which has the same dimensions and meets the setbacks of the previously existing structure. A good faith effort must be made to replace the structure within one year of the date of the loss, as minimally exhibited by commencement of work pursuant to a valid building permit. Failure to make a good faith effort results in the loss of the right to replace the prior nonconforming structure or use. Any period of regulatory holding of the property by the State Fire Marshall or the City of Berlin Fire Chief does not count against the twelve months.

#### 4. Structural alterations.

- a. Reduction in nonconformity. Nonconforming structures may be partially replaced or replaced with a new structure which reduces the nonconformity of any dimensional requirements.
- b. Additions. Nonconforming structures which contain conforming uses may have additions made provided that the area of the addition meets the current dimensional requirements and the development of the lot does not result in nonconformity due to lot coverage requirements.

#### Sec 17-35 Nonconforming uses

1. Continuation of use: Where a nonconforming use, or where nonconforming characteristics of a use exist, such as signs, off-street parking and loading, lighting, landscaping or similar features, such nonconforming uses and characteristics of use may continue except as provided in this article.

2. Limits on expansion of a nonconforming use: A nonconforming use may be extended to unused parts of a lawfully existing building or structure existing as of the date of the original passage of the Zoning Ordinance, February 17, 1964. Any other expansion requires a special use permit. The Planning Board may grant a special use permit only after it makes a finding that the following standards have been met. The Board may impose any reasonable conditions to insure compliance.

- a. Documentation is submitted and the City has verified that all aspects of the existing use have been lawfully established and that there are no current land use violations on the site.
- b. The existing and proposed expansions of the use meet all applicable requirements of this article, to be applied as if the use were permitted.
- c. Special consideration has been made to promote the overall purpose of the district in which the nonconforming use exists and to design the use so that the appearance is one of a conforming use.

3. Replacement of nonconforming use authorized by special exception. A special exception may be issued for the replacement of a nonconforming use with another nonconforming



use subject to the standards below and to the conditions attached to such exception by the Zoning Board of Adjustment.

- a. There will not be an adverse impact on the surrounding neighborhood.
- b. The replacement will be equally or more conforming with the purposes of this article and the intent of the zoning district. In making these determinations, the Zoning Board of Adjustment must find that all of the following conditions will be met:
  1. The proposed replacement would not result in an increase in noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.
  2. The numbers and kinds of vehicular trips to the site will be comparable to or lower than those associated with the existing use.
  3. The replacement will not place increased demand on the amount and nature of outside storage or loading requirements, and there will be no net loss in the number of existing off-street parking spaces serving the existing use.
  4. The visual appearance of the site and structure will either remain unchanged or will be improved.
  5. The proposed hours of operation for the use will result in an equal or lesser impact on the neighborhood.
  6. Nonconforming characteristics of the existing use including signs, loading, lighting and landscaping, will be brought into conformance with the requirements of this article.
  7. The nonconforming use area of the lot will not be increased.
  8. The gross square foot floor area of the building housing the existing nonconforming use will not be expanded as a result of the replacement.
- c. The applicant surrenders all rights in the previously existing nonconforming use.

#### Sec 17-36. Abandonment; termination due to abandonment

The term "abandonment," as used herein, shall mean the voluntary discontinuance of a nonconforming use or the occupancy of a nonconforming structure for twelve consecutive months. If either occurs, then the nonconforming status shall be lost. Normal, seasonal cessation of a use or a temporary discontinuance for purposes of maintenance, rebuilding after damage or destruction or maintenance or improvements permitted under this article shall not be included in calculating the period of discontinuance. (Ord. 8-2-10)

Secs. 17-36—17-40. Reserved. [#Top of the Document](#)

## ARTICLE IV

### ESTABLISHMENT OF ZONING DISTRICTS

#### Sec. 17-41. Zoning Districts

For the purposes of this Ordinance, the City of Berlin is hereby divided into the following types of land use zones:

1. Rural Residential Zone (RR)
2. Residential Single-Family Zone (RS)
3. Residential Two-Family Zone (RT)
4. Residential General Zone (RG)
5. Downtown Zone (DT) (Ord. 5/5/2014)
- 5a. Jericho Gateway Zone (JG) - Ord. of 7/15/05
6. Business General Zone (BG)
7. Industrial/Business Zone (IB)
8. Natural Resource Overlay Zones
  - a. Wellhead Protection Overlay Zone
  - b. Wetlands Overlay Zone
  - c. Steep Slope Overlay Zone
  - d. FEMA Special Flood Hazard Area Overlay Zone (SFHA)

#### Sec. 17-42. Location of Zones

The location and boundaries of Berlin's zoning districts, numbered 1-7 above, are defined on the "Zoning Map of the City of Berlin, NH, November 1, 1999" which is hereby adopted as part of this Ordinance by reference.

The Wellhead Protection Overlay Zone, Wetlands Overlay Zone, and Steep Slope Overlay Zone (numbers 8a, 8b, and 8c above) are defined in Article XIV, Sections 17-150, 17-151, and 17-152 of this Ordinance.

The FEMA Special Flood Hazard Area Overlay zone (number 8d above) is defined as all lands defined as Special Flood Hazard Areas by the Federal Emergency Management Agency in its "Flood Insurance Study for the City of Berlin, NH" together with the associated Flood Insurance Rate Maps, and Flood Boundary and Floodway Maps of the City dated June 1982.

#### Sec 17-43. Copies of Zoning Map

The official Zoning Map of the City of Berlin, NH shall be kept in the office of the City Clerk. Copies shall be located at the Berlin Planning Department, Berlin Assessor's Office and Berlin Public Library.

#### Sec. 17-44. Interpretation of Zoning District Boundaries

Unless otherwise indicated on the zoning maps, the zoning district boundaries are the center lines of streets, the middle of the channel of waterways, the center lines of main tracks of railroads, or the centerline of a utility right-of-way. Where a boundary is shown parallel to the street, such boundary shall be interpreted as running parallel to the nearest street line (edge of right-of-way) and at such distance as indicated on the zoning map. Where zoning district boundaries approximate property lines, they shall be construed to coincide. Interpretation of the zoning maps shall be the responsibility and authority of the Zoning Officer.

Secs. 17-45 – 17-50. Reserved

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## ARTICLE V

### RURAL RESIDENTIAL ZONE (RR)

#### Sec. 17-51. Purpose

The intent of the Rural Residential (RR) zone is to maintain the integrity of rural-oriented activities within Berlin. This district is designed to encourage the maintenance of the general rural characteristics of forests and fields, scenic beauty, minimum density residential uses, recreational uses, limited compatible commercial uses, appropriate agricultural livestock production uses and forest harvesting. Uses in this zone rely primarily on the provision of on-site sewer and water.

#### Sec. 17- 52. Uses

##### Permitted Uses:

1. Single family dwelling
2. Manufactured home park and subdivision- provided the provisions in Article XII of this Ordinance are met
3. Home-based child care facility
4. Seasonal dwelling
5. General farm and forestry activities including, market gardening, greenhouse or nursery, excluding the keeping of farm animals
6. Farm stand
7. Home occupation
8. Accessory uses to the above

##### Uses Permitted by Special Exception:

1. Two family dwelling
2. Hotel, motel, inn, or bed and breakfast
3. Overnight campground
4. Antique shop- provided it meets the requirements of Section 17-57 of this Article
5. Golf course
6. Aviation use
7. Kennel
8. Veterinary hospital
9. Keeping of farm animals
10. Butchering, meat carving business
11. Governmental use
12. Cemetery
13. School
14. Hospital
15. Nursing home

16. Sheltered care facility
17. Tower Structures including but not limited to, towers for transmission, communication, cellular telephones, and wind energy. (Ord. of 7/5/05)
18. Removal of fill, gravel, stone, or loam for commercial purposes provided an excavation permit is obtained from the Berlin Planning Board
19. Recreational facilities, public (Ord of 7/19/04)
20. Churches
21. Offices - in buildings less than 3000 square feet (Ord.12/20/04)
22. Accessory uses to the above

Sec. 17-53. Minimum Lot Size and Frontage

The following minimum requirements shall apply:

1. Lot Size: 2 acres
2. Frontage: 200 feet on an accepted, existing, or approved city street. (Ord.12/1/03)

Sec. 17-54. Setbacks

The following minimum setbacks for primary and accessory buildings shall apply:

1. Front Yard Setback: 25 feet
2. Rear Yard Setback: 25 feet
3. Side Yard Setback: 25 feet each side yard

Sec. 17-55. Building Height

The following requirements shall apply:

1. Primary Building Height: maximum of 35 feet or 2 ½ stories, whichever is less.
2. Accessory Building Height: maximum of 22 feet; building height may be increased by special exception up to 35 feet or no higher than the primary structure, whichever is less, according to the provisions of Article II, Section 17-24. (Ord. 10/20/03)

Sec. 17-56. Lot Coverage

The following requirements shall apply:

1. Lot coverage: maximum of 25% impermeable surface per lot.

Sec. 17-57. Requirements for Special Exceptions for Antique Shops

Special exceptions for antique shops may be granted provided that the shop meets the following criteria:

1. No more than six (6) items may be on display outside the building at any one time; and
2. Outdoor items on display must be brought inside when the store is closed.

Secs 17-58—17-60 Reserved.

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## ARTICLE Va.

### JERICHO GATEWAY ZONE

#### Section 17-51.a. Purpose

The purpose of the Jericho Gateway Zone is to provide an area in the City that focuses on the recreational opportunities of the City of Berlin and natural environment that offers many opportunities. The zone will focus on recreation, residential and compatible retail opportunities that will make this area a destination. The users of this zone will be local, state, and federal, making this a unique area where all three entities focus on the outdoor environment and the uses associated with it. An important component of this zone will be integrating residential with retail and recreational uses in close proximity to one another.

#### Section 17-52.a. Uses

##### Permitted Uses:

1. Single family dwelling
2. Townhouses & condominiums
3. Seasonal dwelling
4. General farm and forestry activities including, market gardening, greenhouse or nursery, excluding the keeping of farm animals
5. Farm stand
6. Home occupation
7. Group child care center – Class A and B
8. Retail establishment such as a grocery, drug, merchandise, furniture, apparel, specialty goods, tobacco, book, gift and flower store
9. Customer or personal services including barber and beauty shops, repair shop for shoes, household and office appliances and similar services with a retail component
10. Office
11. Restaurant
12. Recreation facility, commercial-indoor and outdoor
13. Community center
14. Historic site open to the public
15. Governmental use
16. Drive-thru service
17. Hotel, motel, inn, or bed & breakfast
18. Overnight Campground
19. Antique shop
20. Accessory uses to the above

##### Uses permitted by Special Exception:

1. Golf related activities including but not limited to golf courses, driving ranges, and mini-golf courses
2. Aviation use (heliport only)
3. Kennel
4. School
5. Tower Structures including but not limited to, towers for transmission, communication, cellular telephones, and wind energy
6. Club – membership
7. Automobile service station
8. Warehouse/Self Storage units (review)
9. Public Transportation facility
10. Off Highway Recreational Vehicle sales & repair facilities
11. Truck Stop
12. Bank or Credit Union
13. Parking facility, commercial parking lot or parking garage
14. Caretaker facilities
15. Light industrial use may be permitted in this zone by special exception by the Board of Adjustment, providing the following minimum requirements are met:
  - a. such light industrial establishments shall not employ more than 20 people per shift with a maximum of two eight-hour shifts daily;
  - b. maximum total building coverage shall be 50% of the lot;
  - c. maximum total lot coverage of all impervious surfaces shall be 75%;
  - d. all activities are carried on within the principal building; and
  - e. any other conditions which the Board deems reasonable and necessary according to the provisions of Article II, Section 17-24 of this Ordinance.
16. Accessory uses to above

Section 17-53.a. Minimum Lot Size and Frontage

The following requirements shall apply:

1. Lot Size:
  - a. For residential uses, the minimum lot size shall conform to the requirements in the Rural Residential zone for such residential uses.
  - b. For nonresidential uses, the minimum lot size shall be soil based unless a technical review by City staff determines a smaller lot size is appropriate, not to be less than 10,000 square feet.
2. Frontage:
  - a. For both residential and nonresidential uses, the minimum frontage shall be 200 feet.

Section 17-54.a. Setbacks



1. For residential and nonresidential uses, the following minimum setbacks for primary and accessory buildings shall apply:
  - a. Front Yard Setback: 50 feet for primary buildings; 50 feet for accessory buildings.
  - b. Rear Yard Setback: 25 feet.
  - c. Side Yard Setback: 25 feet.

Section 17-55.a. Building Height and Separation

The following requirements shall apply:

1. Primary Building Height: maximum of 65 feet; building height may be increased by special exception according to the provisions of Article II, Section 17-24.
2. Accessory Building Height: maximum of 22 feet; building height may be increased by special exception according to the provisions of Article II, Section 17-24.

Section 17-56.a. Lot Coverage

The following requirements shall apply:

1. Lot Coverage: maximum of 75% impervious surface per lot.

(Ord. of 7/15/05)

Secs 17-57a – 17-60a Reserved.

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## ARTICLE VI

### RESIDENTIAL SINGLE-FAMILY ZONE (RS)

#### Sec. 17-61. Purpose

The intent of the Residential Single-Family (RS) zone is to provide for low to medium density residential lots for single family dwelling units. The principal use of this land is for single family residences and related uses that service the neighborhood, providing a balanced and attractive residential area with adequate air, light and open space. All uses in this zone are required to have municipal water and sewer service if available to the site.

#### Sec. 17-62. Uses

##### Permitted Uses:

1. Single family dwelling
2. Home-based child care facility
3. Home occupation
4. Accessory uses to the above

##### Uses Permitted by Special Exception:

1. Recreational facility, public
2. Accessory uses to the above

#### Sec. 17-63. Minimum Lot Size and Frontage

The following minimum requirements shall apply:

1. Lot Size: 10,000 square feet
2. Frontage: 100 feet on an accepted, existing, or approved city street. (Ord.12/1/03)

#### Sec. 17- 64. Setbacks

1. The following minimum setbacks shall apply:
  - a. Front Yard Setback: 25 feet or the average front setback of the street right of way, but no closer than 5 feet, for primary buildings; 25 feet for accessory buildings.
  - b. Rear Yard Setback: 25 feet for primary buildings, 10 feet for accessory buildings.

- c. Side Yard Setback: 10 feet each side yard for primary and accessory buildings.
2. No more than twenty-four (24) square feet in area of uncovered steps and stoops may extend beyond the minimum setbacks for any yard.
  3. A special exception for setbacks may be granted provided that the provisions of Article II, Section 17-24 are met and the setbacks shall be no less than the following:
    - a. Front Yard Setback: existing primary buildings which are nonconforming in terms of the front setback may laterally increase the degree of nonconformity within the front setback, provided that the front of the structure does not extend any closer to the front property line than the existing structure and side setbacks are met.
    - b. Rear Yard Setback: 15 feet for primary buildings on lots with less than 80 feet of depth; *A minimum of 6 feet for accessory buildings regardless of lot depth.* (Amended 11-6-00)
    - c. Side Yard Setback: 6 feet for primary and accessory buildings on lots with less than or equal to 50 feet of frontage.

Sec. 17-65. Building Height

The following requirements shall apply:

1. Primary Building Height: maximum of 35 feet or 2 ½ stories, whichever is less.
2. Accessory Building Height: maximum of 22 feet; residential building height may be increased by special exception up to 35 feet or no higher than the primary structure, whichever is less, according to the provisions of Article II, Section 17-24. (Ord. 10/20/03) For nonresidential accessory buildings and structures, the Zoning Board of Adjustment (ZBA) in conjunction with a special exception for nonresidential accessory buildings and structures is authorized to grant a special exception for such buildings and structures that will be higher than the limitations on residential building height so long as all other provisions of Article II, Section 17-24 are met. (Ord. 8-20-12)

Sec. 17-66. Lot Coverage

The following requirements shall apply:

1. Lot Coverage: maximum of 40% impermeable surface per lot.

Secs. 17-66—17-70 Reserved.

ARTICLE VII

RESIDENTIAL TWO-FAMILY ZONE (RT)

Sec. 17-71. Purpose

The Residential Two-Family (RT) zone provides for medium density residential housing with a maximum of two families per dwelling unit. While the predominant use of this zone is residential, other associated uses are allowed which provide for amenities to a residential environment. All uses in this zone are required to have municipal water and sewer service if available to the site.

Sec. 17-72. Uses

Permitted Uses:

1. Single family dwelling
2. Two-family dwelling
3. Home-based child care facility
4. Home occupation
5. Accessory uses to the above

Uses Permitted by Special Exception:

1. Group child care center- Class B
2. Recreational facility, public
3. Religious institution or place of worship
4. School
5. Accessory uses to the above

Sec. 17-73. Minimum Lot Size and Frontage

The following minimum requirements shall apply:

1. Lot Size: 10,000 square feet
2. Frontage: 100 feet on an accepted, existing, or approved city street. (Ord.12/1/03)

Sec. 17-74. Setbacks

1. The following minimum setbacks shall apply:
  - a. Front Yard Setback: 25 feet or the average front setback of the street right of way, but no closer than 5 feet, for primary buildings; 25 feet for accessory buildings.
  - b. Rear Yard Setback: 25 feet for primary buildings, 10 feet for accessory buildings.
  - c. Side Yard Setback: 10 feet each side yard for primary and accessory buildings.
2. No more than twenty-four (24) square feet in area of uncovered steps and stoops may extend beyond the minimum setbacks for any yard.
3. A special exception for setbacks may be granted provided that the provisions of Article II, Section 17-24 are met and the setbacks shall be no less than the following:
  - a. Front Yard Setback: existing primary buildings which are nonconforming in terms of the front setback may laterally increase the degree of nonconformity within the front setback, provided that the front of the structure does not extend any closer to the front property line than the existing structure and side setbacks are met.
  - b. Rear Yard Setback: 15 feet for primary buildings on lots with less than 80 feet of depth; *A minimum of 6 feet for accessory buildings regardless of lot depth.* (Amended 11-6-00)
  - c. Side Yard Setback: 6 feet for primary and accessory buildings on lots with less than or equal to 50 feet of frontage.

#### Sec. 17-75. Building Height

The following requirements shall apply:

1. Primary Building Height: maximum of 35 feet or 2 ½ stories, whichever is less; according to the provisions of Article II, Section 17-24, building height may be increased up to a maximum of 3 stories or 45 feet, whichever is less, by special exception if the building is setback from each street and lot line one (1) additional foot for each foot of additional height.
2. Accessory Building Height: maximum of 22 feet; residential building height may be increased by special exception up to 35 feet or no higher than the primary structure, whichever is less, according to the provisions of Article II, Section 17-24. (Ord. 10/20/03) For nonresidential accessory buildings and structures, the Zoning Board of Adjustment (ZBA) in conjunction with a special exception for nonresidential accessory buildings and

structures is authorized to grant a special exception for such buildings and structures that will be higher than the limitations on residential building height so long as all other provisions of Article II, Section 17-24 are met. (Ord. 8/20/12)

Sec. 17-76. Lot Coverage and Density

The following requirements shall apply:

1. Lot Coverage: maximum of 40% impermeable surface per lot.
2. Lot Density: one primary structure with a maximum of two (2) dwelling units.

Secs. 17-77—17-80. Reserved.

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## ARTICLE VIII

### RESIDENTIAL GENERAL ZONE (RG)

#### Sec. 17-81. Purpose

The Residential General (RG) zone is designed to provide for high-density multi-family residential uses. Permitted non-residential uses are those that are associated with and service residential uses. All uses in this zone are required to have municipal sewer and water services if available to the site.

#### Sec. 17-82. Uses

##### Permitted Uses:

1. Single family dwelling
2. Two-family dwelling
3. Multi-family dwelling
4. Home-based child care facility
5. Group child care center- Class B
6. Home occupation
7. Crematorium (Ord. 12-2-2013)
8. Accessory uses to the above

##### Uses Permitted by Special Exception:

1. Hotel, motel, inn, or bed and breakfast
2. Office
3. Restaurant
4. Neighborhood grocery store, provided it meets the requirements of Section 17-87 of this Article
5. Group child care center, Class A
6. Funeral home
7. Recreational facility, public
8. Governmental use
9. Religious institution or place of worship
10. School
11. Hospital
12. Nursing home
13. Sheltered care facility
14. *Bank or Credit Union* (Amended 11-6-00)
15. Barber and Beauty shops (ord. of 10/20/03)
16. Accessory uses to the above

Sec. 17-83. Minimum Lot Size and Frontage

The following minimum requirements shall apply:

1. Lot Size: 10,000 square feet for the first dwelling unit with 1,500 additional square feet for each additional dwelling unit.
2. Frontage: 100 feet on an accepted, existing, or approved city street. (Ord.12/1/03)

Sec. 17-84. Setbacks

1. The following minimum setbacks shall apply:
  - a. Front Yard Setback: 25 feet or the average front setback of the street right of way, but no closer than 5 feet, for primary buildings; 25 feet for accessory buildings.
  - b. Rear Yard Setback: 25 feet for primary buildings; 10 feet for accessory buildings.
  - c. Side Yard Setback: 10 feet each side yard for primary and accessory buildings.
2. No more than twenty-four (24) square feet in area of uncovered steps and stoops may extend beyond the minimum setbacks for any yard.
3. A special exception for setbacks may be granted provided that the provisions of Article II, Section 17-24 are met and the setbacks shall be no less than the following:
  - a. Front Yard Setback: Existing primary buildings which are nonconforming in terms of the front setback may laterally increase the degree of nonconformity within the front setback, provided that the front of the structure does not extend any closer to the front property line than the existing structure and side setbacks are met.
  - b. Rear Yard Setback: 15 feet for primary buildings on lots with less than 80 feet of depth; *A minimum of 6 feet for accessory buildings regardless of lot depth.* (Amended 11-6-00)
  - c. Side Yard Setback: 6 feet for primary and accessory buildings on lots with less than or equal to 50 feet of frontage.

Sec. 17-85. Building Height

The following requirements shall apply:



1. Primary Building Height: maximum of 35 feet or 2 ½ stories, whichever is less; building height may be increased by special exception, according to the provisions of Article II, Section 17-24, up to a maximum of 3 stories or 45 feet, whichever is less, if the building is setback from each street and lot line one (1) additional foot for each foot of additional height.
2. Accessory Building Height: maximum of 22 feet; building height may be increased by special exception up to 35 feet or no higher than the primary structure, whichever is less, according to the provisions of Article II, Section 17-24. (Ord. 10/20/03) For nonresidential accessory buildings and structures, the Zoning Board of Adjustment (ZBA) in conjunction with a special exception for nonresidential accessory buildings and structures is authorized to grant a special exception for such buildings and structures that will be higher than the limitations on residential building height so long as all other provisions of Article II, Section 17-24 are met. (Ord. 8/20/12)

Sec. 17-86. Lot Coverage

The following requirements shall apply:

1. Lot Coverage: maximum of 45% impermeable surface per lot.

Sec. 17-87. Requirements for Special Exceptions for Neighborhood Grocery Stores

Special exceptions for neighborhood grocery stores may be granted provided that the store meets the requirements of Section 17-24 and the following criteria:

1. No more than 2,500 square feet of sales area;
2. No more than the equivalent of four (4) full-time employees;
3. Hours of operation shall be no earlier than 6:00 a.m. and no later than 10:00 p.m.;
4. one (1) parking space shall be provided for every 1,000 square feet (or portion thereof) of gross sales area of the store; and
5. Illumination of the store shall be limited to hours of operation, except for purposes of security.

Secs. 17-88—17-90. Reserved

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## ARTICLE IX

### DOWNTOWN ZONE (DT)

#### Sec. 17-91. Purpose

The Downtown (DT) zone is intended to be the center or hub of the City of Berlin. Geographically, it covers the downtown area. The zone provides commercial, financial, retail, government, and housing uses. A mixture of uses is encouraged. Access is primarily pedestrian. New development should be compatible with the architectural qualities, graceful details, and scale of existing older or historic structures which give this area its character.

#### Sec. 17-92. Uses

##### Permitted Uses:

1. Multi-family dwelling either above or below the ground level (first floor). (Ord. 10/20/03)
2. Home occupation
3. Retail establishment such as a grocery, drug, merchandise, furniture, apparel, specialty goods, tobacco, book, gift and flower store, without drive-thru service
4. Customer or personal services including barber and beauty shops, repair shop for shoes, household and office appliances, and similar services with a retail component
5. Office
6. Bank or loan agency
7. Publishing or printing business
8. Radio, television and recording studio and office, excepting transmitting facilities
9. Medical or dental office
10. Restaurant
11. Fast food restaurant without drive-thru service
12. Recreation facility, commercial-indoor
13. Community center
14. Library, museum or historic site open to the public
15. Governmental use
16. Club Membership (Ord. 5-18-2015)
17. Accessory uses to the above

##### Uses Permitted by Special Exception:

1. Manufacture and retail of goods such as pottery, handcrafts, and bakery products provided not more than five (5) persons shall be employed in such operation
2. Hotels and lodging houses
3. School
4. Parking facility, commercial parking lot or parking garage, (Ord. 10/20/03)

Accessory use to above

6. First floor (ground level) dwellings, which will not front any street-side in the DT Zone and will not occupy more than forty percent (40%) of the rear floor space.  
(Ord.12/1/03)

Sec. 17-93. Minimum Lot Size and Frontage

The follow minimum requirements shall apply:

1. Lot Size: 1,500 square feet
2. Frontage: 15 feet on an accepted, existing, or approved city street.  
(Ord.12/1/03)
3. A special exception for lot size and frontage may be granted pursuant to Article II, Section 17-24, provided that the special exception shall be for no less than the following:
  - a. Lot Size: 750 square feet
  - b. Frontage: 10 feet

Sec. 17-94. Setbacks

1. The following setbacks for primary buildings shall apply:
  - a. Front and Side Yard Setbacks:

In order to achieve a traditional solid building line fronting directly on sidewalks, there shall be no front or side yard setbacks allowed in this zone unless in the judgment of the Building Inspector such setbacks are necessary to protect the public health, safety, and welfare and to carry out the intent of this Ordinance.
  - b. Rear Yard Setback: 10 feet
2. The following setbacks for accessory buildings shall apply:
  - a. Front Yard Setback: behind the primary building.
  - b. Rear Yard Setback: 3 feet
  - c. Side Yard Setback: 3 feet

3. A special exception for setbacks may be granted for accessory buildings provided that the provisions of Article II, Section 17-24 are met.

#### Sec. 17-95. Building Height and Separation

The following requirements shall apply:

1. Primary Building Height: maximum of 65 feet.
2. Accessory Building Height: maximum of 22 feet; building height may be increased by special exception up to 35 feet or no higher than the primary structure, whichever is less, according to the provisions of Article II, Section 17-24.
3. Building Separation: the minimum building separation will be determined by the Building Inspector in accordance with the Berlin Building Code and the Fire Prevention Code.

#### Sec. 17-96. Display of Goods and Merchandise Outside

Outdoor displays of goods and merchandise shall be allowed provided that the display does not block pedestrian or vehicular access and is in conformance with the "City of Berlin Sidewalk Merchandise Display Ordinance".

#### Sec. 17-97. General Requirements

The following general requirements shall apply:

1. The minimum number of on-site parking spaces required per business is zero (0). (Ord. 10/20/03)
2. Vacant lots shall be loamed and seeded and maintained in a neat fashion.
3. There shall be no drive-thru service allowed for any business in this zone.

Secs. 17-98—17-100. Reserved

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## ARTICLE X

### BUSINESS GENERAL ZONE (BG)

#### Sec. 17-101. Purpose

The purpose of the Business General (BG) zone is to provide an area for intense commercial development and light industrial facilities with a customer service area which extends beyond the immediate neighborhood. It contains uses which include the retail sale of commodities and services for the general population. A wide variety of uses are accommodated on both a pedestrian and vehicular scale.

#### Sec. 17-102. Uses

##### Permitted Uses:

1. All permitted uses and uses permitted by special exception in the Downtown (DT) zone
2. Multi-family dwelling
3. Group child care- Class A and B
4. Drive-thru service
5. Recreational facility, public
6. Crematorium (Ord. 12-2-2013)
7. Club- Membership
8. Personal laundry service
9. Trade, craft and general service establishment including, but not limited to, shops for plumbers, electricians, machinists, painters, paper hangers, upholsterers, and sign painters
10. Automobile service station
11. Auto body and auto paint shop
12. Car wash
13. Motor vehicle sales and repair facility
14. Funeral home
15. Animal grooming business
16. Warehouse
17. Open storage of lumber and building materials for retail sale
18. Contractor's yard
19. School
20. Religious institution or place of worship
21. Accessory uses to the above

##### Uses Permitted by Special Exception:

1. Sheltered care facility
2. Veterinary hospital

3. Public transportation facility
4. Light industrial use may be permitted in this zone by special exception by the Board of Adjustment, providing the following minimum requirements are met:
  - a. such light industrial establishments shall not employ more than 20 people per shift with a maximum of two eight-hour shifts daily;
  - b. maximum total building coverage shall be 50% of the lot;
  - c. maximum total lot coverage of all impervious surfaces shall be 75%;
  - d. all activities are carried on within the principal building; and
  - e. any other conditions which the Board deems reasonable and necessary according to the provisions of Article II, Section 17-24 of this Ordinance.
5. Single family dwelling (Ord. of 8/1/05)
6. Accessory uses to the above

#### Sec. 17-103. Minimum Lot Size and Frontage

The following requirements shall apply:

1. Lot Size:
  - a. For residential uses, the minimum lot size shall conform to the requirements in the Residential General (RG) zone for such residential uses.
  - b. For nonresidential uses, the minimum lot size shall be 10,000 square feet.
2. Frontage:
  - a. For residential uses, the minimum frontage shall conform to the requirements in the Residential General (RG) zone for such residential uses.
  - b. For nonresidential uses, the minimum frontage shall be 100 feet on an accepted, existing, or approved city street. (Ord.12/1/03)

#### Sec. 17-104. Setbacks

1. For residential uses, the minimum setback requirements shall conform to the requirements in the Residential General (RG) zone for such residential uses.
2. For nonresidential uses, the following minimum setbacks for primary and accessory buildings shall apply:
  - a. Front Yard Setback: 20 feet for primary buildings; 25 feet for accessory buildings.
  - b. Rear Yard Setback: 20 feet.

- c. Side Yard Setback: 6 feet; each side yard shall be increased one foot (1') in width, over the six foot (6') minimum, for every one foot (1') in building height over twenty-five feet (25').
3. *A special exception for the front yard setback for a nonresidential use may be granted provided that the provisions of Article II, Section 17-24 are met and the setback shall be no less than the following:*
  1. *Front Yard Setback: 10 feet for both primary and accessory buildings. The 10 foot line extends to the back edge of the sidewalk or the edge of the property line, and does not extend into the right-of-way area. (Amended 11-6-00)*

#### Sec. 17-105. Building Height and Separation

The following requirements shall apply:

1. Primary Building Height: maximum of 65 feet; building height may be increased by special exception according to the provisions of Article II, Section 17-24.
2. Accessory Building Height: maximum of 22 feet; building height may be increased by special exception according to the provisions of Article II, Section 17-24.
3. Building Separation: minimum of 10 feet.

#### Sec. 17-106. Lot Coverage

The following requirements shall apply:

1. Lot Coverage: maximum of 75% impervious surface per lot.

Secs. 17-107—17-110. Reserved

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## ARTICLE XI

### INDUSTRIAL/BUSINESS ZONE (IB)

#### Sec. 17-111. Purpose

The primary purpose of the Industrial/Business (IB) zoning district is to provide land in appropriate locations for industrial uses which improve employment opportunities and strengthen the economic base of the City. Because these industrial uses may have operational characteristics that are usually incompatible with non-industrial land uses, only a limited number of uses customarily accessory to industry are permitted.

#### Sec. 17-112. Uses

##### Permitted Uses:

1. Heavy industry
2. Light industry
3. Industrial laundry service
4. Sawmill and lumber treatment facility
5. Crematorium (12-2-2013)
6. Freight or trucking terminal
7. Warehouse
8. Industrial park
9. Uses accessory to industrial activities including offices, automobile repair facilities and living quarters used specifically by watchmen or custodians for property in the district, provided such activity meets the performance standards contained in Article XVIII.
10. Accessory uses to the above

##### Uses Permitted by Special Exception:

1. All permitted uses and uses permitted by special exception in the Business General (BG) zone
2. Storage of volatile fuels for resale provided that:
  - a. The location is deemed acceptable by the Berlin Fire Chief and the Public Works Director or his/her designee and meets accepted standards of fire protection,
  - b. The fuel storage tanks are fenced or located below ground,
  - c. The fuel storage tanks are located at least fifty (50) feet from any lot line.
3. Group child care- Class A and B
4. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NHRSA 162-H:2 (Ord. 6/16/08)
5. Accessory uses to the above

#### Sec. 17-113. Minimum Lot Size and Frontage



The following minimum requirements shall apply:

1. Lot Size: 10,000 square feet; any industry shall provide two (2) square feet of open space (including parking) for each one (1) square foot of total building footprint area.
2. Frontage: 100 feet on an accepted, existing, or approved city street. (Ord.12/1/03)

#### Sec. 17-114. Setbacks

1. For permitted uses and uses permitted by special exception in the Business General (BG) zone, the minimum setback requirements shall conform to the requirements in the Business General (BG) zone for such uses.
2. For all other uses in this zone, the following minimum setbacks for primary and accessory buildings shall apply:
  - a. Front Yard Setback: 50 feet.
  - b. Rear Yard Setback: 20 feet.
  - c. Side Yard Setback: 20 feet; each side yard shall be increased one foot (1') in width, over the twenty foot (20') minimum, for every one foot (1') in building height over twenty-five feet (25').

#### Sec. 17-115. Building Height and Separation

The following requirements shall apply:

1. Primary Building Height: maximum of 35 feet or 2 ½ stories, whichever is less; building height may be increased by special exception according to the provisions of Article II, Section 17-24.
2. Accessory Building Height: maximum of 22 feet; building height may be increased by special exception according to the provisions of Article II, Section 17-24.
3. Building Separation: minimum of 10 feet.

#### Sec. 17-116. Lot Coverage

The following requirements shall apply:

1. Lot Coverage: maximum of 75% impervious surface per lot.

Sec. 17-117. Storage of Materials

There shall be no materials stored in the setback area.

Secs. 17-118—17-120. Reserved

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## ARTICLE XII

### MANUFACTURED HOUSING

#### Sec. 17-121. Purpose

It is the intent of this Ordinance to afford realistic opportunities for the development and expansion of manufactured housing opportunities within appropriate areas of the City as required in RSA 674:32. In order to achieve that intent, this Ordinance allows for manufactured housing subdivisions and parks to be created in most of the land area zoned for residential development in the City. Within manufactured housing subdivisions, manufactured housing shall be placed on individual lots. Within manufactured housing parks, manufactured housing may be placed on individual sites or lots. Furthermore, it is the intent of this Ordinance to allow manufactured housing parks to develop at greater density concentrations than other types of standard residential development, provided that health, safety, and general welfare considerations are not violated.

#### Sec. 17-122. Manufactured Housing Standards

1. Manufactured housing is allowed within the City of Berlin only in manufactured housing subdivisions and manufactured housing parks.
2. All manufactured housing units sited in the City of Berlin must comply with BOCA and current FHA manufactured home standards.

#### Sec. 17-123. Requirements for Manufactured Housing Subdivisions

Manufactured housing subdivisions shall meet the following requirements:

1. Manufactured housing subdivisions are permitted only in the Rural Residential (RR) zone as located and bounded on the Official Zoning Map of the City of Berlin.
2. The minimum size of the tract to be subdivided must be ten (10) acres.
3. Only single-family manufactured homes are permitted, and only one (1) manufactured home may be placed on each residential lot within a subdivision.
4. Each manufactured home shall be affixed to a permanent foundation.
5. Each manufactured home in the subdivision shall meet all the minimum standards for residential development in Rural Residential (RR) zone, including, but not necessarily limited to, lot size, frontage, setback, height and parking requirements.
6. Internal roadways for the subdivision must be constructed to meet City standards.

#### Sec. 17-124. Requirements for Manufactured Housing Parks

1. Manufactured housing parks are permitted only in the Rural Residential (RR) zone as located and bounded on the Official Zoning Map of the City of Berlin.
2. There are two types of manufactured housing parks:
  - a. **Manufactured Home Rental Park**  
A rental park is for the rental of land or space within the park for the siting of manufactured homes and may also provide for the rental of utilities and accessory services.
  - b. **Manufactured Home Condominium Park**  
A condominium park is a park established as a condominium in accordance with the New Hampshire Condominium Act, RSA 356-B, as amended, or established with cooperative ownership otherwise permitted by state law.
3. Only single-family manufactured homes are permitted in both types of manufactured housing parks.

Sec. 17-125. General Standards for Manufactured Housing Parks

Manufactured housing parks of either type shall meet the following requirements:

1. Each park shall obtain subdivision approval from the City Planning Board, as required by RSA 672:14, I.
2. Each park must contain a minimum of ten (10) acres and a maximum of fifty (50) acres.
3. Each park must front on a Class V or better road.
4. The maximum density permitted in a manufactured housing park shall be computed as follows:
  - a. Determine the usable tract area in square feet by taking the gross tract area minus the following:
    - i. area of all easements;
    - ii. Area of all open water; and
    - iii. Area in excess of twenty-five percent (25%) of the total land area containing wetlands and slopes greater than fifteen percent (15%).
  - b. Divide the usable tract area by ten thousand (10,000) square feet to determine the maximum number of units allowed.

5. In all parks, each home must be placed on a parcel of land within the park, known as a site, with a minimum area of five thousand (5,000) square feet and a minimum frontage of fifty feet (50') along a private road within the park.
6. No more than one (1) home may be placed on each site and each site shall be permanently delineated on the approved site plan.
7. Setbacks for primary and accessory buildings on each site shall be as follows:
  - a. Front Yard Setback- 15 feet.
  - b. Rear Yard Setback- 10 feet for primary building; 5 feet for accessory buildings.
  - c. Side Yard Setback- 10 feet.
8. The difference in the total area of the manufactured housing park and the total area of all sites shall be set aside as common open space to be used for recreation and/or other common land purposes. Community septic disposal areas may not be included in the common open space set aside.
9. All park roads and driveways must meet state and local standards.
10. All drainage systems shall be constructed to meet City standards.
11. All sub-surface sewage disposal and water supply for individual or community systems shall meet state and City standards, or City water and sewer shall be provided. Community wells and septic disposal systems shall not be located on the required minimum area for any manufactured home.
12. No on-site facilities, such as roadways, driveways, sewers, and drainage systems, shall be dedicated to the City unless the Planning Board expressly determines that such a dedication is in the best interests of the City.
13. Manufactured housing park developments shall be adequately screened and buffered from abutting residential uses by permanent buffer area, not less than thirty feet (30') wide, composed of trees, shrubs or other suitable buffer approved by the Planning Board.
14. All manufactured homes must either be skirted with suitable code-conforming materials, approved by the Planning Board, and anchored, or placed on a permanent foundation.
15. Two (2) off-street parking spaces must be provided for each site.

## Sec. 17-126. Moving of Manufactured Housing

No manufactured home may be moved into the City of Berlin or be placed on a lot or park in the City unless a building permit has been issued by the Building Inspector.

## Sec. 17-127. Permits for Temporary Use of Manufactured Housing

1. A property owner who is building or rebuilding a home may place a manufactured home on the lot to be used as a temporary residence during construction. A building permit must be obtained for both the temporary use of a manufactured home and the home being built or rebuilt.
2. A permit for the temporary use of a manufactured home shall be issued for a period not to exceed one (1) year, to expire thirty (30) days after issuance of a certificate of occupancy for the new or rebuilt home. The Building Inspector may, for good and sufficient cause, grant the property owner a six (6) month extension of the permit. The temporary manufactured home must be removed from the property within sixty (60) days of occupancy of the new or rebuilt home.
3. A person, partnership, or corporation engaged in construction or development may obtain a permit from the Building Inspector to place one (1) or more manufactured housing units for nonresidential uses on the construction site for use as office space, storage, sanitary or rest facilities for employees. Such permits shall be issued for an initial period not to exceed one (1) year and may be extended for six (6) month periods until completion of construction or development.

Secs. 17-128—17-130. Reserved

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## ARTICLE XIII

### PLANNED DEVELOPMENT OPTION

#### Sec. 17-131. Purpose

The City of Berlin desires to encourage a more efficient development of land, construction of buildings and infrastructure than is generally achieved through conventional development, by permitting planned developments. These developments are traditionally known as Planned Unit Developments or PUDs. This Ordinance chooses to define this concept as a Planned Development Option or PDO. These PDOs are designed to promote:

1. A development pattern which preserves and utilizes natural topography and geologic features, scenic vistas, trees and other vegetation, and prevents the disruption of natural drainage pattern.
2. A more useful pattern of open space and recreation areas.
3. A development pattern in harmony with land use density and transportation objectives of the planned development's comprehensive plan.
4. A creative style of site design which more closely re-creates the traditional mixed use development of New England.
5. A maximum choice of living environments by allowing a variety of housing and building types, permitting an increased density per acre, reduction in lot size, yard dimensions, building setbacks, and area requirements.
6. Increased flexibility in the location of accessory commercial uses and services in a primarily residential area, if permitted as part of the project.
7. Increased savings in the cost of providing streets and utilities to the site.

#### Sec. 17-132. Provisions Governing the Planned Development Option

1. Planned developments will be permitted through the granting of a special use permit from the Berlin Planning Board acting in its role as the Special Use Permit Granting Authority (SUPGA), under RSA 674:21 II. All PDOs will be allowed in any zoning district of the City, except in the Downtown (DT) zone, as long as minimum acreage requirements are met. Planned developments may be designed for single or multiple uses. Any combination of residential, commercial, and industrial uses may be permitted, as long as all conditions for such developments are met. These developments will normally involve more than one building and/or one parcel and therefore will require careful preparation of a comprehensive plan for the entire land development. The review process will be thorough and deliberate.

2. Planned developments are subject to all applicable subdivision and site plan review regulations.
3. Whenever there is a conflict or difference between the provisions of this Article and those of any other Article of this Ordinance, the provisions of this Article shall prevail for land developed under the Planned Development Option. Subjects not covered by this Article shall be governed by the respective provisions found elsewhere in this Ordinance.

#### Sec. 17-133. Comprehensive Plan and Special Use Permit Procedures

1. Planned Development Option Comprehensive Plan:

Along with an application for a special use permit, the applicant of a Planned Development Option shall submit a comprehensive plan for the entire parcel showing all current and future phases of development. The plan must include a narrative of purpose and objectives of the planned development and a site plan of sufficient detail to show the proposed development.

2. Granting of a Special Use Permit:

- a. The Planning Board shall review the proposed planned development as the Special Use Permit Granting Authority (SUPGA) under the regulations of this Article for a special use permit concurrently with Berlin's Subdivision Regulations and if applicable, the Site Plan Review Regulations.
- b. A special use permit shall be granted if the Planning Board determines that the intent of this Article as well as the specific criteria of each applicable Section is met. The granting of a special use permit implies approval of the submitted comprehensive plan for the planned development, as well.
- c. The Planning Board may attach any conditions deemed necessary to fully implement the purpose and intent of this Article.

3. Implementation of a Planned Development Option:

- a. The applicant is required to construct and maintain the planned development in accordance with the approved comprehensive plan and granted special use permit.
- b. Any future changes to an approved comprehensive plan must receive a new special use permit from the Planning Board.

#### Sec. 17-134. General Standards

1. Multiple Uses Permitted:



Under the Planned Development Option, compatible residential, commercial, industrial, public, and non-public uses may be combined, provided that the proposed location of the commercial or industrial uses will not adversely affect adjacent property, and/or the public health, safety, and general welfare.

2. Minimum Project Area:

Land within the Natural Resource Overlay Zones, except in the Special Flood Hazard Area, will be included in determining the minimum gross tract. The gross tract area under any Planned Development Option shall meet the following minimum requirements:

Development Option	Minimum Gross Tract Area in Acres
Residential .....	10
Commercial.....	5
Industrial .....	30
Residential-Commercial.....	20
Commercial-Industrial .....	30
Residential-Commercial-Industrial .....	30

3. Frontage, Lot Size, and Setbacks:

- a. A planned development project shall have minimum frontage of fifty feet (50') on a public street. Lots within the planned development are not required to meet the minimum frontage, lot size or set backs as required in the underlying zone, but shall be designed and constructed so as to achieve the purposes of development as outlined in this Article and so long as such modifications will not negatively affect public health and safety and are consistent with the spirit and intent of this Ordinance.
- b. Individual lots that are smaller in area than the amount required in the underlying zone must abut the common land for a distance of at least fifty feet (50').

4. Building Height:

The maximum height for any building shall be forty feet (40'), to include a maximum of three (3) stories and a basement.

5. Building Separation:

All buildings shall be separated by at least twenty feet (20') and all buildings shall have full access to adequate light and air, with the exception that garages or storage sheds for two adjacent lots may be attached to each other. In addition, no building wall containing windows shall have any building or other solid structure placed

directly in front of it at a distance which is less than twice the height of the taller of the two buildings.

6. Density:

- a. Density is based on the net tract area to be developed. The net tract area of a parcel of land is defined as being the total area of the parcel less all non-buildable land. Non-buildable land includes all area mapped as Special Flood Hazard Area, all areas having poorly or very poorly drained soils, and all areas with a slope greater than twenty-five percent (25%). The net tract area concept shall not apply when a parcel is to be serviced by common water and sewer systems, in which case the number of units shall be based on the gross tract area.
- b. The maximum number of primary structures shall be determined by dividing the net tract area of the parcel by the minimum lot size in the underlying zone, except that the developer will be entitled to a density bonus of ten percent (10%) of the number of primary structures if more than sixty percent (60%) of the land in the development is dedicated for common open space and other requirements of this article are satisfied.

7. Lot Coverage:

The total impervious surface, including buildings, walks, paved parking areas, driveways and access roads shall not exceed fifty percent (50%) of any individual lot.

8. Access:

- a. There shall be permitted one (1) entrance and one (1) exit point for each two hundred feet (200') of road frontage on a public street, however, one (1) shared entrance and exit point is acceptable.
- b. Neither of these two access points shall be located within one hundred feet (100') of an intersection of any two public streets.
- c. One-way access shall be a minimum of sixteen feet (16') and a maximum of twenty feet (20') in width; two-way access may range from thirty-six feet (36') to forty-four feet (44') in width, to be comprised of a sixteen to twenty foot (16'-20') entrance, a sixteen to twenty foot (16'-20') exit, and a four foot (4') dividing island.

9. Project Ownership:

The project land may be owned, leased, or controlled either by a single person or corporation, or by a group of individuals or corporations. Such ownership may be by a public or private corporation.

10. Common Open Space:

A percentage of the land developed in any planned development project shall be reserved for common open space and recreational facilities for the residents or users of the area being developed, or for the City of Berlin, if accepted by City Council. The amount of open space required varies according to the mixture of development types. Minimum requirements are listed in the sections of this article pertaining to each development option. All lands required to be set aside for common open space under any Planned Development Option shall be owned and maintained in the following manner:

- a. To ensure that the land will be held in perpetuity as common open space for the purpose of recreation, conservation, park, public easement, or agriculture, the required open space area shall be permanently owned and maintained by a homeowner's association, a corporation, a land conservation trust or similar private or non-profit organization, or by the City of Berlin if accepted by the City Council.
- b. All land dedicated to the City of Berlin must be reviewed by the Planning Board as to size, shape, and location. Public utilities and similar easements and rights-of-way for water courses and other similar channels are not acceptable for common open space dedication to the City unless such land or right-of-way is usable as a trail or other similar purpose. The Planning Board shall recommend to the City Council whether the land is suitable for acceptance by the City.
- c. The ownership and maintenance of all open spaces shall be specified by the developer before approval of the final development plan.

11. Utility Requirements for All Options:

Utilities, including telephone and electrical systems, are required to be underground or adequately screened within the limits of all planned developments.

12. Compatibility with Natural Features and Other Uses in the Underlying Zone:

Buildings in planned developments shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas, in accordance with an overall plan for site development and will be compatible in terms of physical size, visual impact, intensity of use, proximity to other structures, and density of development with other uses within the underlying zone.

13. Phasing of Development:

A reasonable timetable for the phasing of an approved planned development may be established in order to mitigate the impact of development on community facilities.

#### Sec. 17-135. The Planned Residential Development Option

The purpose of the planned residential development option is to provide land in appropriate locations for the establishment of attractive residential development which is developed in a planned manner resulting in savings in the cost of providing streets and utilities while providing a maximum choice of living environments by allowing a variety of housing and building types, permitting an increased density per acre, reduction in lot size, yard dimensions, building setbacks, and area requirements as well as encouraging a more useful pattern of open space and recreation areas.

The following provisions shall apply to planned residential developments:

1. Permitted Residential Uses:

- a. Single family housing.
- b. Two-family housing.
- c. Dwelling units in single family attached dwellings or townhouses, provided all units have direct access to the ground. The units may be of condominium or cooperative type subject to the other requirements of this Ordinance. In areas where town houses are used there shall be no more than eight (8) town house units in any contiguous group.
- d. Multi-family housing.
- e. A mixture of the above housing types.
- f. Uses customarily accessory to any of the above listed uses, such as garages and other parking facilities, resident-oriented laundry facilities, recreational facilities and open space.
- g. Appropriate commercial, public, or quasi-public uses may be permitted if such uses are primarily for the benefit of the residential development.

2. Minimum Individual Lot Sizes:

A diversity of lot sizes is encouraged so long as reductions from minimum lot sizes in the underlying zone do not result in overcrowding of the land and that the layout pattern is orderly and harmonious.

- a. With Common Water and Sewage Systems: six thousand (6,000) square feet minimum lot size is required.

- b. With On-Site Water and/or Septic: The minimum individual lot size shall be sufficient to accommodate adequate on-site septic and water systems.

3. Water Systems:

- a. Under the Planned Development Option, residential developments shall be permitted only where served by adequate state-approved public or private communal water systems, unless the developer clearly demonstrates to the Planning Board that:
  - i. the costs of providing a common water supply and distribution system are prohibitive;
  - ii. Adequate ground water is available at all locations proposed for individual water systems; and
  - iii. The ground water sources proposed for individual water systems is safe from both on-site and off-site contamination.
- b. The water system must provide adequate fire protection.

4. Sewage Systems:

- a. All proposed developments of twenty-five (25) or more dwelling units shall be required to connect to a centralized sewer system.
- b. In proposed developments with fewer than twenty-five (25) dwelling units, all primary structures shall be connected to a public sanitary sewer system, if available, or to a private state approved central collection and treatment system in accordance with the New Hampshire Department of Environmental Services (DES), unless the developer clearly demonstrates to the Planning Board that:
  - i. the costs of providing a private central collection and treatment system are prohibitive;
  - ii. Adequate soils and land area are available at all locations proposed for individual septic systems; and
  - iii. The proposed individual septic systems shall in no way endanger ground water supplies which are currently being utilized by any existing development or proposed common or individual water systems.

5. Perimeter Setbacks:

All buildings and parking areas in an planned residential development shall be set back at least fifty feet (50') from any public right-of-way or boundary line except where such a development is contained in or abuts a Residential Single-Family (RS) zone, where the setback shall be at least seventy feet (70').

6. Common Open Space Requirements:

The total area of common open space within an planned residential development shall equal or exceed the sum of the areas by which any individual lots are reduced below the minimum lot area normally required in the underlying zoning district, or twenty percent (20%) of the gross tract area, whichever is larger.

Sec. 17-136. The Planned Commercial Development Option

The purpose of the planned commercial development option is to provide land in appropriate locations for the establishment of accessible and attractive commercial uses of a compatible nature which are developed in a planned manner resulting in savings in the cost of providing streets and utilities while improving employment opportunities and thereby strengthening the economic base of the City of Berlin.

The following provisions shall apply to planned commercial developments:

1. Permitted Commercial Uses:

Any combination of commercial uses, which are permitted outright, or permitted by special exception, in any zoning district of the City of Berlin are permitted by special use permit in an planned commercial development.

2. Minimum Individual Lot Sizes:

Individual lot sizes within a planned commercial development option shall be adequate, as determined by the Planning Board during the special use permit review process, to ensure that reductions from the lot size requirements in the underlying zone do not result in overcrowding of the land and that the layout pattern is orderly and harmonious.

3. Water Systems:

Planned commercial developments shall be permitted only where served by adequate state-approved public or private communal water systems. The water system must also provide adequate fire protection.

4. Sewage Systems:

All structures with required plumbing shall be connected to a public sanitary sewer system, if available, or to a private state approved central collection and treatment system in accordance with the New Hampshire Department of Environmental Services (DES).

5. Perimeter Setbacks:

All buildings and parking areas in a planned commercial development shall be set back at least seventy feet (70') from any public right-of-way or boundary line.

6. Common Open Space Requirements:

The total area of common open space within a planned commercial development shall equal or exceed the sum of the areas by which any individual lots are reduced below the minimum lot area normally required in the underlying zoning district, or twenty percent (20%) of the gross tract area, whichever is larger.

7. Arrangement of Commercial Uses:

- a. Planned development of commercial establishments is encouraged by varying the setback and other requirements if it can be shown that the development results in a more efficient and desirable use of land.
- b. Commercial buildings shall be clustered in groups having common parking areas and common entrance and exit points in order to reduce the number of potential accident locations at inter-sections with thoroughfares. Vegetative screens or fences shall be provided on the sides of the development abutting areas occupied or likely to be occupied by residences.
- c. The project shall provide for the harmonious design of buildings, for adequate and properly arranged internal traffic circulation, landscaping, and such other features and facilities as may be necessary to make the project attractive and efficient from the standpoint of the adjoining properties.
- d. All areas designed for future expansion or not intended for immediate improvement or development shall be landscaped or otherwise maintained in a neat and orderly manner as specified by the Planning Board.

Sec. 17-137. The Planned Industrial Development Options

The purpose of the planned industrial development option is to provide land in appropriate locations for the establishment of accessible and attractive industrial uses of a compatible nature which are developed in a planned manner resulting in savings in the cost of providing streets and utilities while improving employment opportunities and thereby strengthening the economic base of the City of Berlin.

The following provisions shall apply to planned industrial developments:

1. Permitted Industrial Uses:

Any combination of industrial uses, which are permitted outright, or permitted by special exception, in any zoning district of the City of Berlin are permitted by special use permit in an planned industrial development.

2. Minimum Individual Lot Sizes:

Individual lot sizes within a planned industrial development option shall be adequate, as determined by the Planning Board during the special use permit review process, to ensure that reductions from the lot size requirements in the underlying zone do not result in overcrowding of the land and that the layout pattern is orderly and harmonious.

3. Water Systems:

Planned industrial developments shall be permitted only where served by adequate state-approved public or private communal water systems. The water system must also provide adequate fire protection.

4. Sewage Systems:

All structures with required plumbing shall be connected to a public sanitary sewer system, if available, or to a private state approved central collection and treatment system in accordance with the New Hampshire Department of Environmental Services (DES).

5. Perimeter Setbacks:

All buildings and parking areas in a planned industrial development shall be set back at least seventy feet (70') from any public right-of-way or boundary line.

6. Common Open Space Requirements:

The total area of common open space within a planned industrial development shall equal or exceed the sum of the areas by which any individual lots are reduced below the minimum lot area normally required in the underlying zoning district, or twenty percent (20%) of the gross tract area, whichever is larger.

7. Arrangement of Industrial Uses:

- a. Planned development of industrial establishments is encouraged by varying the setback and other requirements if it can be shown that the development results in a more efficient and desirable use of land.



- b. Industrial uses and parcels shall be developed in park-like surroundings utilizing landscaping and existing woodlands as buffers to screen lighting, parking areas, loading docks, and/or outdoor storage of raw materials or products. A planned industrial development shall provide for the harmonious design of buildings in a compact grouping in order to economize in the provision of such utility services as are required. Thoroughfares shall be kept to a minimum throughout a planned industrial development in order to reduce through traffic.
- c. All areas designed for future expansion or not intended for immediate improvement or development shall be landscaped or otherwise maintained in a neat and orderly manner as specified by the Planning Board.

Sec. 17-138. The Planned Residential-Commercial Development Option

The purpose of the planned residential-commercial development option is to provide land in appropriate locations for the establishment of an accessible and attractive mix of residential and commercial uses of a compatible nature which are developed in a planned manner to provide attractive housing options near new employment opportunities while strengthening the economic base of the City of Berlin.

The following provisions shall apply to planned residential-commercial developments:

1. Permitted Residential and Commercial Uses:

Any residential or commercial uses which are permitted or permitted by special exception, in any zoning district of the City of Berlin are permitted by special use permit in a planned residential-commercial development.

2. Development Standards:

Development standards in the planned residential-commercial development shall be based on those for each individual use as set forth in this Article in Sections 17-135 and 17-136. To ensure compatibility of mixed uses under this option, the Planning Board may impose additional requirements in order to ensure that:

- a. individual uses are adequately buffered from abutting uses within the development;
- b. that the layout pattern is orderly and harmonious; and
- c. that the overall purposes of the Planned Development Option are maintained.

Sec. 17-139. The Planned Commercial-Industrial Development Option

The purpose of the planned commercial-industrial development option is to provide land in appropriate locations for the establishment of an accessible and attractive mix of commercial and industrial uses of a compatible nature which are developed in a planned manner resulting in savings in the cost of providing streets and utilities while improving employment opportunities and thereby strengthening the economic base of the City of Berlin.

The following provisions shall apply to planned commercial-industrial developments:

1. Permitted Commercial and Industrial Uses:

Any commercial and industrial uses which are permitted outright or permitted by special exception in any zoning district of the City of Berlin are permitted by special use permit in a planned commercial-industrial development.

2. Allocation of Commercial and Industrial Uses:

If the development is a mixture of commercial and industrial uses, no more than sixty percent (60%) of the net tract area not allocated to common open space, roads or utilities may be devoted to industrial activities.

3. All other standards for planned commercial-industrial development shall be as set forth in Sections 17-136 and 17-137 of this Article.

Sec. 17-140. The Planned Residential-Commercial-Industrial Development Option

The purpose of the planned residential-commercial-industrial development option is to provide land in appropriate locations for the establishment of an accessible and attractive mix of residential, commercial, and industrial uses of a compatible nature which are developed in a planned manner to provide attractive housing options near new employment opportunities while strengthening the economic base of the City of Berlin.

If the development is a mixture of residential, commercial and industrial uses, no more than ten percent (10%) of the net tract area may be devoted to commercial activities and nor more than twenty percent (20%) of the net tract area may be utilized for industrial activities.

The following provisions shall apply to planned residential-commercial-industrial developments:

1. Permitted Residential, Commercial, and Industrial Uses:

Any residential, commercial, or industrial uses which are permitted or permitted by special exception, in any zoning district of the City of Berlin are permitted by special use permit in a planned residential-commercial-industrial development.

2. Development Standards:

Development standards in the planned residential-commercial-industrial development shall be based on those for each individual use as set forth in this Article in Sections 17-135, 17-136, and 17-137. To ensure compatibility of mixed uses under this option, the Planning Board may impose additional requirements in order to ensure that:

- a. individual uses are adequately buffered from abutting uses within the development;
- b. that the layout pattern is orderly and harmonious; and
- c. that the overall purposes of the Planned Development Option are maintained.

Secs. 17-141-17-145. Reserved

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## ARTICLE XIV

### NATURAL RESOURCE OVERLAY ZONES

#### Sec. 17-146. Purpose

Natural Resource Overlay zones comprise those areas with characteristics that require protection and land management practices which minimize environmental degradation. The restrictions within each zone are designed to permit uses appropriate to the area while protecting the health, safety, and general welfare of the City of Berlin and its citizens, now and in the future.

#### Sec. 17-147. Conflict with Other Ordinances and Laws

The regulations in this Article overlay and supplement the provisions of the underlying zoning districts. Where any provisions of these overlay zoning districts are in conflict with provisions of the underlying zoning district regulations, other ordinances of the City of Berlin, or the laws of the State of New Hampshire, the more restrictive provisions shall apply.

#### Sec. 17-148. Overlay Zones and Boundary Lines

1. The following natural resource overlay zones are included in this Article:
  - a. Wellhead Protection
  - b. Wetlands
  - c. Steep Slopes
  - d. Special Flood Hazard Area
  - e. Mount Forist and Mount Jasper Overlay Area (Ord. 9/21/09)
2. The natural resource overlay zones are adopted as part of the Official Zoning Map of the City of Berlin, as amended.

#### Sec. 17-149. Definitions Specific to Natural Resource Overlay Zones

Alteration- Any change or modification of land, water, or existing structure.

Background Water Quality- The condition of the groundwater as it enters a site and prior to the addition of on-site generated contaminants.

Best Management Practices- Appropriate measures or practices used to minimize disturbances and pollution impacts.

Bogs- Wetlands distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

Certified Soil Scientist- An individual qualified in soil classification and mapping, certified by the New Hampshire Board of Natural Scientists under the provisions of RSA 310-A:75 et seq.

Dredging- Lowering the bottom elevation of a wetland through cleaning, deepening, widening, or excavating.

Fill- Sand, gravel, earth, or other materials of any composition whatsoever placed or deposited by humans.

Hydric Soils- Soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper soil layers, as defined by the USDA Soil Conservation Service, National Technical Committee for Hydric Soils.

Hydrophytic Vegetation- Plants adapted for life in water or saturated soils.

Marshes- Wetlands characterized by herbaceous vegetation where the water table is at or above the surface throughout the year, with potential of seasonal fluctuation, or as further defined by the N.H. Wetlands Board.

Perennial Stream- A body of flowing water in a natural channel which flows continuously, or year round.

Poorly Drained Soils- Soils in which water moves so slowly that the water table remains at or near the ground surface for a large part of the year (6 to 9 months) as defined by current USDA Soil Conservation Service standards and maps.

Prime Wetlands- Wetlands which are of substantial significance due to their size, character, fragile condition, or other relevant factors, and designated as such by the municipality under RSA 482-A:15.

Surface Waters- Wetlands characterized by areas perpetually saturated with significant amounts of standing or running water. All lakes, ponds, streams, and rivers of the State of New Hampshire are considered surface waters.

Swamps- Wetlands dominated by woody vegetation (shrubs and trees), ranging in wetness from occasionally flooded to standing water most of the year, or as further defined by the NH Wetlands Board.

Very Poorly Drained Soils- Soils in which water moves through the soil so slowly that the water table remains at or on the ground surface for the greater part of the year (9 to 10 months) as defined by current USDA Soil Conservation Service standards and maps.

Wetlands- Those areas that are inundated or saturated with surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in such conditions. Wetlands

generally include but are not limited to, swamps, marshes, bogs, and all areas of surface waters.

Wellhead Protection Area- The surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

Wetlands Buffer Area- An area adjacent to a wetland necessary to maintain the functions and values of that wetland by protecting it from potentially adverse impacts of adjacent uses.

#### Sec. 17-150. Wellhead Protection Overlay Zone

The purpose of the Wellhead Protection Overlay zone is to balance the value of groundwater as an important source of drinking water for the community with the economic impact of restricting a variety of uses within the Wellhead Protection Overlay zone.

1. Intent of the Wellhead Protection Overlay Zone:
  - a. to promote the health, safety, and general welfare of the community;
  - b. to protect, preserve and maintain the groundwater supply and wellhead protection areas within the known aquifers of the City;
  - c. to preserve and protect sources of drinking water supply for the public health and safety;
  - d. to conserve the natural resources of the City;
  - e. to protect the groundwater and wellhead protection areas of the City from adverse development or inappropriate land use practices; and
  - f. to prevent blight and the pollution of the environment.

2. Definition of Wellhead Protection Overlay Zone:

The Wellhead Protection Overlay zone is superimposed over other zones established by this Ordinance. The Wellhead Protection Overlay zone encompasses the surface and subsurface area surrounding a water well or wellfield supplying a public water system, through which contaminants are reasonably likely to move toward and reach. The limits of the Wellhead Protection Overlay zone include all areas defined in the "Wellhead Protection Study, Berlin, NH, March 1993", prepared by Provan and Lorber, Inc.

3. Determination and Adjustment:

- a. **Determination**  
Where the boundary of the Wellhead Protection Overlay zone, as delineated, is doubted or disputed by the owner, applicant, or abutter of the land in question, the burden of proof shall be upon the disputing party to show where it should be properly located. At the request of the Planning Board, the City may engage the services of a professional geologist, soil scientist or the New Hampshire Department of Environmental Services to determine more accurately the location and extent of the resource in question at the scale of the subdivision plat or site plan, at the expense of the owner, applicant, or abutter.
- b. **Adjustment**  
  
The delineation may be modified by the Planning Board upon receipt of findings of the on-site survey. The Planning Board shall have the authority to make the final determination as to the location of a disputed boundary.

4. **Uses:**

- a. In the Wellhead Protection Overlay zone, the requirements of the underlying districts continue to apply, except that uses are prohibited where indicated by "N" in the chart found in Section 17-150.5 of this Article. Uses indicated by "SUP" in Section 17-150.5 require a special use permit from the Berlin Planning Board, acting in its function as the Special Use Permit Granting Authority (SUPGA), under RSA 674:21 II.
- b. To receive a special use permit, the proposed use must either be permitted by right or by special exception in the underlying zoning district.
- c. All uses permitted by right or by special exception in the underlying zoning district which are neither prohibited ("N") nor require a special use permit ("SUP") under this Article shall be assumed permitted by right or by special exception in the Wellhead Protection Overlay zone.

5. **Table of Restricted Uses- Wellhead Protection Overlay Zone:**

Legend: N= Prohibited Use, SUP= Requires a Special Use Permit

Use Designation	Restriction
General service & repair shop	SUP
Metalworking shop	SUP
Manufacturing facility	SUP
Waste & scrap processing & storage	SUP
Domestic septic system	SUP

Laboratory (including photographic processing)	SUP
Agricultural use	SUP
Stormwater infiltration pond & leaching basin	SUP
Cleaning service (laundry, auto, etc.)	SUP
Food processing plant	SUP
Wood preserving & furniture stripping	SUP
Excavation/grading	SUP
Manure/fertilizer storage	SUP
Electronic circuit assembly	SUP
Print shops & facilities	SUP
Under & aboveground petroleum or chemical storage facility	SUP
Vehicle service & repair shops & facilities	SUP
Concrete, asphalt, and tar manufacturing	N
Fueling & maintenance of earthmoving equipment	N
Sewerage/wastewater treatment system excluding domestic septic systems	N
Hazardous waste facility	N
Salt/deicing material storage	N
Solid waste landfill	N
Snow dump	N
Junkyard	N

6. Special Use Permit Procedures:

a. Special Use Permit Granting Authority

The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin. Such special use permit shall be granted if the SUPGA determines that the intent of this Article as well as the specific criteria of Section 17-150.6.b are met. In making such determination, the SUPGA shall give consideration to the written recommendations of the Health Department and the Engineering Department (if any), to the simplicity, reliability, and feasibility of the control measures proposed and to the degree of threat to water quality which would result if the control measures were to fail. The NH Code of Administrative Rules Part Env-Ws 421 Best Management Practices (BMP) shall also be used as a reference and authority for this determination process.



b. Special Use Permit Criteria

A special use permit shall be granted in the Wellhead Protection Overlay zone only if the SUPGA determines that all of the following are true:

- i. at the boundaries of the premises the groundwater quality resulting from on-site waste disposal, other on-site operations, natural recharge, and background water quality will not fall below the most recent standards established by the Ambient Groundwater Quality Standards, NH Code of Administrative Rules Part Env-Ws 1403.5, or
- ii. upon determination by the SUPGA that existing groundwater quality is already below the standards delineated in Section 17-150.6.b.i. above, the proposed activity will result in no further degradation, and
- iii. The NH Code of Administrative Rules Part Env-Ws 421 Best Management Practices (BMP) are being followed.

c. Special Use Permit Conditions

Before granting a special use permit under this Section, the Planning Board may, after due consideration and consultation with other City Officials and technical reports as may be necessary; attach any conditions deemed necessary to fully implement the purpose and intent of this Article.

d. Submittals

In addition to the requirements of the underlying zone, the following shall be submitted when applying for a special use permit within the Wellhead Protection Overlay zone:

- i. A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by their Material Safety Data Sheets and a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion, and leakage, and to provide for spill prevention and control of spills.
- ii. A description of potentially toxic or hazardous wastes to be generated, indicating storage, and disposal method.
- iii. Evidence of permit approval consistent with the City of Berlin's Sewer Use Regulations, for any discharge of industrial wastes to the sewer system.

- iv. For underground storage of toxic and hazardous materials, evidence of qualified professional supervision of system design and installation.
- v. Analysis by a qualified licensed professional Engineer experienced in groundwater evaluation and/or geohydrology certifying compliance with Section 17-150.6.b.

7. Design and Operations Requirements:

Within the Wellhead Protection Overlay zone the following design and operations requirements shall be observed, except for single family dwellings where these standards shall serve as guidelines only.

a. Storage

Provision shall be made to protect against toxic or hazardous material discharge or loss through corrosion, accidental damage, spillage, or vandalism through such measures as provision for spill control in the vicinity of chemical or fuel delivery points, secure storage areas for toxic or hazardous material, and indoor storage provisions for corrodible or dissolvable materials.

b. Location

Where the premises are partially outside of the Wellhead Protection Overlay zone, such potential pollution sources as on-site waste disposal systems shall, to the degree feasible (based upon engineering criteria, not financial criteria), be located outside the zone.

c. Disposal

Provisions shall be made to assure that any waste disposed into the sewers shall conform with the City of Berlin's Sewer Use Regulations. Connecting sewers from the building shall be vitreous clay pipe or any other pipe shown to provide equivalent protection against corrosion.

d. Excavation and Grading

No excavation and grading in the Wellhead Protection Overlay zone shall go below a depth of four feet (4') of clean material above the high water table.

e. Impervious Surfaces

Within the Wellhead Protection Overlay zone, no more than twenty percent (20%) of the lot shall be covered with impervious surfaces unless a

stormwater management plan is prepared which ensures that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards NH Code of Administrative Rules Part Env-Ws 1403.5 at the property boundary.

f. Monitoring

Periodic monitoring may be required by the SUPGA, including sampling of wastewater disposed to off-site systems or drywells and sampling from groundwater monitoring wells to be located and constructed as specified in the Special use permit, with reports to be submitted to the SUPGA and the Board of Health, and with costs to be borne by the owner of the premises.

Sec. 17-151. Wetlands Overlay Zone

The purpose of the Wetlands Overlay zone is to protect the public health, safety, and general welfare by controlling and guiding the use of land areas which fall under the definition of Wetlands Overlay zone as delineated on the official zoning map of the City of Berlin.

1. Intent of the Wetlands Overlay Zone:

- a. to protect the wetlands, watercourses, surface and groundwater supplies and water bodies of the town from degradation;
- b. to regulate the development of structures and land uses within the overlay zone which could contribute to the pollution of surface or ground water;
- c. to encourage those uses that can be appropriately and safely located in the Wetlands Overlay zone;
- d. to prevent the destruction or alteration of natural wetlands which may provide flood protection, ground water recharge, augmentation of stream flow during dry periods and pollution abatement;
- e. to preserve and protect wildlife habitats and maintain ecological balance;
- f. to enhance the aesthetic values associated with wetlands; and
- g. to prevent the expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of abuse or inharmonious use of wetlands.

2. Definition of Wetlands Overlay Zone:

The Wetlands Overlay zone is superimposed over other zones established by this Ordinance. The limits of the Wetlands Overlay zone include all wetlands and buffer areas, defined as follows:

- a. poorly drained, or very poorly drained soils as defined by the most recent USDA Natural Resource Conservation Service's soil survey;
- b. wetlands buffer area is defined as twenty-five feet (25') from any wetland edge.

3. Determination and Adjustment:

a. Determination

Where the boundary of the Wetlands Overlay zone, as delineated, is doubted or disputed by the owner, applicant, or abutter of the land in question, the burden of proof shall be upon the disputing party to show where it should be properly located. At the request of the Planning Board, the City may engage the services of a Certified Soil Scientist or a wetlands scientist to determine the precise location of the wetland overlay zone limit in the properties affected, based on the existence of poorly drained or very poorly drained soils, at the scale of the subdivision plat or site plan, at the expense of the owner, applicant or abutter.

b. Adjustment

The delineation may be modified by the Planning Board upon receipt of findings of the on-site survey. The Planning Board shall have the authority to make the final determination as to the location of a disputed boundary.

4. Permitted Uses:

- a. Forestry and tree farming using best management practices to protect wetlands from damage from factors such as soil erosion and chemical application.
- b. Agriculture using best management practices to protect wetlands from damage from soil erosion and chemical applications.
- c. Wildlife refuges, habitat development and management.
- d. Parks and outdoor recreation uses as are consistent with the purposes of this Article.
- e. Conservation areas and nature trails.

- f. Water impoundments less than one acre in size, as long as an application for said impoundment is accompanied by a written recommendation supporting the creation of the impoundment from the Berlin Conservation Commission (if existing).
5. Uses Requiring a Special Use Permit from the Planning Board:
- a. Water impoundments less than one acre in size, if not supported by the Berlin Conservation Commission, and water impoundments greater than one acre in size, but only if the Berlin Planning Board finds that the impoundment does not unreasonably interfere with the functioning of natural systems or that the environmental benefits of the impoundment outweigh the adverse impacts.
  - b. Water dependent uses, such as docks and boathouses, as long as such uses are permitted by the NH Shoreline Protection Act and all other applicable state and federal laws, and constructed in such a way to meet all the standards of those laws.
  - c. Accesses or driveways which meet all standards of the City of Berlin for such construction, and rights of way for overhead power and telephone lines, so long as they are located and constructed so as to cause the least reasonably practicable damage to the wetland, and only if there is no feasible alternate location.
  - d. Wells and water lines.
6. Prohibited Uses:
- a. The erection or construction of any structure.
  - b. Alteration of the natural surface configuration by the addition of fill or by excavation or dredging.
  - c. Uses which utilize, store, process, or dispose of toxic substances which may pose a threat to surface or groundwater quality.
  - d. Underground fuel storage tanks.
7. Special Use Permit Procedures:
- a. Special Use Permit Granting Authority
- The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin. In granting a special use permit, the SUPGA shall give consideration to the written recommendations of the Berlin Engineering

Department (if any), to the simplicity, reliability, and feasibility of the control measures proposed and to the degree of threat to wetland quality which would result if the control measures were to fail.

b. Special Use Permit Conditions

Before granting a special use permit under this Section, the Planning Board may, after due consideration and consultation with other City Officials and technical reports as may be necessary; attach any conditions deemed necessary to fully implement the purpose and intent of this Article.

Sec. 17-152. Steep Slopes Overlay Zone

The purpose of this ordinance is to regulate the intensity of use in areas of steeply sloping terrain in order to limit soil loss, erosion, excessive storm water runoff, the degradation of surface water and to maintain the natural topography and drainage patterns of land.

1. Definition of Steep Slopes Overlay Zone: The Steep Slope Overlay zone is superimposed over all other zones established by this Ordinance. This ordinance will include all areas of natural terrain having slopes in excess of 15% located within the City of Berlin. Land disturbance for the purpose of this ordinance shall mean any activity involving the clearing, cutting, excavation, grading, filling, storing, transporting of land or any other activity, which causes land to be exposed to the danger of erosion.
2. Determination and Adjustment:
  - a. The maximum disturbance allowed in slope areas between 0 to 14.9% may be up to 100% of the total area of the parcel and are permitted without review by City staff.
  - b. The proposed development of a parcel in slope areas between 15% to 24.9% shall undergo a technical review of the proposal by City staff. City staff will reserve the right to require complex proposals to be reviewed and approved by a Professional Engineer.
  - c. The proposed development of a parcel in slope areas of 25% or greater shall be subject to a review of the steep slope site as laid out under special use permit from Planning Board.
  - d. Where the boundary of the Steep Slope Overlay zone, as delineated, is doubted or disputed by the owner, applicant or abutter of the land in question, the burden of proof shall be upon the disputing party to show where it should be properly located. At the request of the Planning Board, the City may engage the services of a licensed Land Surveyor or other qualified professional to determine the precise location of the Steep Slope Overlay zone limit, in the properties affected, at the scale of the subdivision plat or site plan, at the expense of the owner, applicant, or abutter.

e. The delineation may be modified by the Planning Board upon receipt of findings of the on-site survey. The Planning Board shall have the authority to make the final determination as to the location of a disputed boundary.

3. Special Use Permit from the Planning Board:

For all earth moving activities on slopes of 25% or greater, the Applicant shall submit a review of the steep slope site prepared by a Professional Engineer. The review of the steep slope site submitted to the Planning Board shall be reviewed by the Public Works Director or his/her designee. The Public Works Director or his/her designee shall determine if the review of the steep slope site as submitted is complete and in conformance with the ordinance requirements. The Public Works Director or his/her designee shall recommend acceptance or rejection of the plan or may require that specific conditions be complied with in order for the plan to merit acceptance. The Applicant's review of the steep slope site as prepared by a Professional Engineer will include at a minimum the following:

- a. Slopes in classes of 0-14.9%, 15-24.9% and greater than 25% based on two-foot (2') contour analyzed on ten-foot (10') vertical intervals.
- b. Location of all water bodies including but not limited to streams, lakes, and wetlands.
- c. Existing natural and topographic features.
- d. Location of all proposed and existing buildings and streets.
- e. Location of all existing vegetation including meadow, forest, and scrub lands broken down by those areas of vegetation, which will be removed as well as vegetation to be preserved; specifications for re-vegetation shall also be included.
- f. Specific methods, which will be utilized to control soil erosion, sedimentation, soil loss and excessive storm water runoff both during and after construction.
- g. A statement and description of the stability of the soils on site and the appropriateness of the construction method proposed.
- h. Hydrology, drainage and flooding analysis to include a statement on the effect of the proposed development upon water bodies drainage paths including downstream impacts or wetlands in the vicinity of the project.
- i. A statement describing the underlying geology attesting to the stability of the site.
- j. Calculations of the area of proposed disturbance of each slope class on each proposed lot as well as within any proposed road right-of-way.
- k. Grading plan for the construction site and all access routes.

The review of the steep slope site submitted shall be reviewed by both the Planning Board, the City Planner and the Public Works Director or his/her designee. The

Planning Board with input from the Public Works Director or his/her designee shall accept or reject the plan as submitted or may require that specific conditions be complied with in order for the plan to meet approval.

No building permit shall be issued on parcels that are found to be greater than a slope of 25 % and no grading or site clearing shall occur until a review of the steep slope site including all of the above items has been reviewed and approved by the planning board.

4. Conservation Options:

All development proposals, which propose development on steep slopes, may use the following conservation options.

- a. Lands to be preserved in 100 percent open space due to the presence of steep slopes may be offered for dedication to the municipality, a private land trust, or a non-profit agency in order to preserve and maintain the area in its natural state.
- b. The use of conservation easements on steep slopes shall be encouraged to preserve the area in perpetuity.

5. Exemptions:

Land development plans, which were approved prior to the adoption date of this ordinance, shall be exempt from these requirements.

6. Compatibility with other permit and ordinance requirements:

Development approvals issued pursuant to this ordinance are to be considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by other applicable codes, rules, acts or ordinances. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, general welfare and the protection of water quality. (Ord of 6/20/05)

### Sec. 17-153. Special Flood Hazard Area Overlay Zone

This provision, formerly known as the Floodplain Development Ordinance, is incorporated into this Article of the zoning ordinance (Natural Resource Overlay Zones) as the "Special Flood Hazard Area Overlay Zone" pursuant to RSA 674:16. The regulations in this section overlay and supplement the Zoning Ordinance of the City of Berlin.

1. The purpose of the Special Flood Hazard Area Overlay zone is to limit the nature and intensity of development of flood prone areas to those uses which can be appropriately and safely located in the flood plain and thereby serve the following objectives:

- a. secure safety from floods;
- b. prevent loss of life and reduce property damage and other losses and risks associated with flood conditions;



- c. preserve the location, character and extent of natural drainage courses, and
- d. maintain ecological balance.

*Certain areas of the City of Berlin, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the city of Berlin, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Special Flood Hazard Area Overlay Zone.*

2. The following regulations in this Ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the *County of Coos NH*", dated *February 20, 2013*, together with the associated Flood Insurance Rate Maps dated *February 20, 2013*, which are declared to be a part of this ordinance and are hereby incorporated by reference. These maps *and study* are on file with the City Clerk, the Planning Department, and the Building Inspector.

### 3. Definition of Terms:

The following definitions shall apply only to this Special Flood Hazard *Overlay Zone*, and shall not be affected by the provisions of any other ordinance of the City of Berlin.

"Area of Special Flood Hazard" is the land in the floodplain within the City of Berlin subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones *A and AE*.

"Base Flood" means the flood having a one percent possibility of being equaled or exceeded in any given year.

"Basement" means that portion of a building having its floor subgrade (below ground level) on all sides.

"Building"- see "structure."

"Development" means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures including manufactured homes, mining, dredging, filling, grading, paving, excavation, or drilling operation *or storage of equipment or materials*.

"FEMA" means the Federal Emergency Management Agency.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from a) the overflow of inland or tidal waters; b) the usual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means an official map incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Berlin.

*"Flood Insurance Study" (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.*

"Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"Flood Proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

"Floodway"- see "Regulatory Floodway."

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; c) individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior, or directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

"Manufactured Home", for the purposes of this Ordinance, means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" includes mobile homes, park

trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. *This includes manufactured homes located in a manufactured home park or subdivision.*

*"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.*

"Mean Sea Level" means the National Geodetic Vertical Datum (NGVD) of 1929, *North American Vertical Datum (NAVD) of 1988*, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

*"New construction" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.*

"100-Year Flood"- see "base flood".

"Recreational Vehicle" means a vehicle which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

"Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation *more than a designated height*.

*"Special flood hazard area" - see "Area of Special Flood Hazard"*

"Special Use Permit Granting Authority" The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a

foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) The appraised value prior to the start of the initial repair or improvement, or (2) In the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

*"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.*

"Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, *North American Vertical Datum (NAVD) of 1988*, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

4. All proposed development, as defined in Section 17-153 of the Special Flood Hazard Area Overlay zone, in any special flood hazard areas shall require a building permit issued by the Building Inspector.

5. The Building Inspector shall review all permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonable safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- a. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. be constructed with materials resistant to flood damage;
- c. be constructed by methods and practices that minimize flood damages; and
- d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

6. Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

7. For all new or substantially improved structures located in Zones A or AE, the applicant shall furnish the following information to the Building Inspector:

- a. The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b. If the structure has been flood-proofed, the as-built elevation (in relation to NGVD) to which the structure was flood-proofed.
- c. Any certification of flood-proofing.

The Building Inspector shall maintain, for public inspection, and shall furnish such information upon request.

8. The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

Prior to issuance of a permit for any proposed development or a building permit for new construction or substantial improvements located in a *special* flood hazard area, the Building Inspector shall review the plans of said development with the Special Use Permit Granting Authority (SUPGA), and request their approval of said development. Provided that the Special Use Permit Granting Authority (SUPGA) approves the proposed development, the Building Inspector then shall submit the plans of said development to the Public Works Director or his/her designee and Water Works Superintendent for their approval. The

Building Inspector may issue a building permit only after all three approvals have been received.

9. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the *Wetlands Bureau* of the New Hampshire *Department of Environmental Services* and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the *Wetlands Bureau*.

The applicant shall submit, to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during base flood discharge.

10. a. In special flood hazard areas, the Building Inspector shall determine the 100 year flood elevation in the following order of precedence according to the data available:

i. In Zone *AE* refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

ii. In *Zone A*, the Building Inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from any federal, state, or other source

including data submitted for development proposals submitted to the community (i.e., subdivisions, site approvals).

b. The Building Inspector's 100 year flood elevation determination will be used as criteria for requiring, in Zones *A* and *AE* that:

i. All new construction or substantial improvement of residential structures has the lowest floor (including basement) elevated to or above the 100 year flood elevation.

ii. That all new construction or substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:

a) Be flood-proofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

iii. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to use of over-the-top or frame ties to ground anchors.

iv. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

a) The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;

b) The area is not a basement; and

c) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be

provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

v. Recreational vehicles placed on sites within Zones A and AE shall either:

a) Be on the site for fewer than 180 consecutive days;

b) Be fully licensed and ready for highway use; or

c) *Meet all standards of Section 4 of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Section 10, b (iii) of this ordinance.*

*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.*

#### 11. Variances and Appeals:

a. Any order, requirement, decision, or determination of the Building Inspector made under this Ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

b. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

i. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

ii. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

iii. That the variance is *the minimum* necessary, considering the flood hazard, to afford relief.

c. The Zoning Board of Adjustment shall notify the applicant in writing that the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

d. The community shall maintain a record of all variance actions, including their justification for their issuance, and report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator. Sec. 17-42. Location of Zones



The location and boundaries of Berlin's zoning districts, numbered 1-7 above, are defined on the "Zoning Map of the City of Berlin, NH, November 1, 1999" which is hereby adopted as part of this Ordinance by reference.

The Wellhead Protection Overlay Zone, Wetlands Overlay Zone, and Steep Slope Overlay Zone (numbers 8a, 8b, and 8c above) are defined in Article XIV, Sections 17-150, 17-151, and 17-152 of this Ordinance.

The FEMA Special Flood Hazard Area Overlay zone (number 8d above) is defined as all lands defined as Special Flood Hazard Areas by the Federal Emergency Management Agency in its "Flood Insurance Study for the *County of Coos, NH*" dated *February 20, 2013*, together with the associated Flood Insurance Rate Maps dated *February 20, 2013*, which are *declared to be a part of this ordinance and are hereby incorporated by reference*.

#### Sec. 17-154. Mount Forist and Mount Jasper Overlay Area

This provision is to promote development as allowed by the Rural Residential Zone of this ordinance as well as protect the natural environment of the community. These two important landmarks have been identified by the community as important natural features and the intent of this section is to maintain their local importance while balancing the demands for development on either of these mountains.

1. Any development plans within the Mount Forist or Mount Jasper Overlay Area shall be submitted to the Planning Board for review. The bounds of the overlay area are shown on the map on the following page.
2. Any development on either mountain within the zone shall not be visible above the tree line unless the applicant receives a waiver from the Planning Board.

Any development plan shall be constructed in a manner that is consistent with the natural environment of the property. (Ord. 9/21/09)

Secs. 17-155—17-158. Reserved

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## ARTICLE XV

### SIGNS

#### Sec. 17-159. Purpose

These regulations governing signs are designed to preserve and enhance Berlin's character by requiring new and replacement signs to be creative, distinctive, appropriately sized, and compatible with surroundings. Signs should be suitable to the type of activity to which they pertain and expressive of the identity of individual proprietors and of the community. These regulations shall also discourage excessive visual competition in signs and thereby reduce distractions and obstructions from signs which would adversely affect traffic safety. They shall also alleviate hazards caused by signs projecting over or encroaching on public ways.

#### Sec. 17-160. Definitions Specific to Signs

Attached Signs- All signs except free-standing signs.

Billboard- See off-premise sign.

Awning or Canopy Sign- A sign painted on or attached to the cover of a metallic frame, either rigid, hinged, rolling or folding types.

Electronic Message Display - A sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means (Ord 10/3/2016)

Facade- The exterior walls of a building exposed to public view.

Flashing Sign- A sign whose illumination is not kept constant in intensity at all times when in use, and which exhibits changes in light, color, direction, or animation. Illuminated signs which indicate the date, time, and temperature will not be considered flashing signs.

Free-Standing Sign- A self-supporting sign not attached to any building, but in a fixed location. This does not include moveable, portable or trailer-type signs.

Illuminated Sign- Any sign lit by electrical bulbs, florescent lights, or neon tubes on, in or directed toward such sign. Neon tubes used as abstract, graphic, decorative, or architectural elements shall be considered to constitute an illuminated sign.

Landmark Sign- A sign or marker of artistic or historical merit, uniqueness, or extraordinary significance to the community as identified by the state, local Historical Preservation Society, the City Council, or the Planning Board.

Lintel- The horizontal support member across the head of a door or window.

Moveable Sign- A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.

Off-Premises Sign- Any sign which is not on the premises of the business which it advertises or gives direction to, including a billboard.

On-Premises Sign- Any sign that advertises, calls attention to or identifies the occupant of the premises on which the sign is maintained, or the business transacted thereon, or advertises the property itself or any part thereof for sale or rent.

Projecting Sign- A sign which is affixed to a building and which extends more than six (6) inches beyond the surface to which it is affixed.

Roof Sign- A sign which is located above, or projects above, the lowest point of the eaves or the top of a parapet or mansard wall of any building, or which is painted on or fastened to a roof.

Sign- Any display, with one or several sides, of lettering, logos, colors, lights, or illuminated neon tubes visible to the public from outside of a building or from a traveled way, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises, excluding window displays of merchandise.

Temporary Sign- A sign intended to be used for a period of no more than thirty (30) days.

Wall Sign- Any sign which is painted on, incorporated into, or affixed parallel to a wall, including parapet or mansard walls, of a building, and which extends not more than six (6) inches from the surface of that building.

Window Sign- A sign displayed permanently on the interior or exterior of a window, designed to be viewed from the exterior of the building.

#### Sec. 17-161. Administration

A permit shall be applied for according to the provisions of Article XX, Section 17-213 prior to erecting, replacing, rebuilding, reconstructing, moving, or relocating all signs, except those allowed without permits according to Section 17-163 of this Article.

#### Sec. 17-162. Sign Area and Height Measurement

##### 1. Sign Area:

- a. The surface area of a sign shall be determined by the maximum height of the sign multiplied by the maximum width. The surface area of a sign shall

include all lettering or elements of a sign, accompanying design and symbols, together with the background, whether open or closed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself and which are not designed to attract attention. Where the sign consists of letters or symbols affixed to a surface or building, without any distinguishing border, panel, or background, the area shall be considered to be the smallest rectangle or shape which encompasses all of the letters and symbols.

- b. The area of multi-faced signs shall be determined by adding together the area of all sign faces visible from any one point. When two identical signs are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are fixed to the same sign structure, the sign area shall be computed by the measurement of one of the faces.
- c. The total sign area for a property shall be the sum of the area of all signs located on the property.

## 2. Sign Height:

- a. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of the grade prior to construction or the newly established grade after construction, exclusive of any filling, mounding, or excavation solely for the purpose of locating the sign.

### Sec. 17-163. Signs Allowed Without A Permit

The following signs are allowed in all zoning districts as a permitted use without a sign permit providing that such signs comply with the general requirements of this Article. The area of these signs will not count toward the total maximum sign area allowed in a zone.

1. Signs erected or posted or maintained for public safety or welfare or pursuant to any governmental function, law, or regulation.
2. Signs relating to trespassing, hunting, and private ownership of roadways or other property are permitted provided that the total area of any one side of such sign shall not exceed one (1) square foot in area.
3. Historical markers, statues, memorial signs, and plaques, names of buildings and dates of construction.
4. Number and name plates with no advertising message identifying residents which are mounted on the house, apartment, mailbox, lamp post or on a lawn sign. Such

signs are not to exceed two (2) square feet and shall not be illuminated except by a supporting lamp post or house light.

5. Directional signs indicating entrance and exit driveways, parking regulations, and signs deemed essential to protect the public health, safety, and welfare provided that such signs are two (2) square feet or smaller. These signs shall contain no advertising or logo material.
6. A bulletin board or announcement board, not exceeding twenty-four (24) square feet in display area, in connection with any nonprofit organization, school, church, library, or similar public structure located on the premises of the organization it is advertising for.
7. One (1) temporary non-illuminated sign advertising the sale, rent or lease of the premises shall be no greater than nine (9) square feet in area for residential, or twelve (12) square feet in area for commercial or industrial zones. Such sign shall be removed within thirty (30) days following the sale or lease of the premises.
8. Political signs as regulated by RSA 664.
9. Two (2) temporary, non-illuminated, on-premise signs pertaining to yard sales, garage sales, auctions, church fairs, produce sales, book sales and similar special sales or events provided that they are not erected more than two (2) days prior to the event and that they are removed within one day of the end of the event. These signs shall not exceed twelve (12) square feet in total area.
10. Off-premise signs pertaining to yard sales, garage sales, auctions, church fairs, produce sales, book sales and similar special sales or events provided that they are erected only on the day of the event, are directional in nature and are removed the same day of the event. Each sign shall be no more than one (1) square foot in area and may not be posted on utility poles.
11. One (1) temporary non-illuminated sign on a building or property under construction identifying the architect, owner, developer, or contractor. Such sign shall not exceed thirty-two (32) square feet in area for a commercial application and sixteen (16) square feet in area for a residential application. Such sign shall be removed within thirty (30) days following substantial completion of the project.
12. Signs and decorations displayed as part of the celebration of holidays, or national, state, or local citywide events or festivals.
13. Temporary special promotional signs, *on or off premise*, for public, institutional, cultural, or civic events occurring within or relative to the City. Such signs shall not exceed forty (40) square feet in area and shall not be erected more than ten (10) days prior to the special event and shall be removed no later than three (3) days after the event by the sign owner. *If the proposed sign is to be displayed on City*

*property, then appropriate written permission shall be obtained from the City Clerk's office before displaying any temporary signage. (Amended 11-6-00)*

14. decorative flags are permitted in all zones provided that such flags shall not exceed twenty (20) square feet in residential zones and residential property in any zone and sixty (60) square feet in area in commercial and industrial zones and shall be mounted on the side of a building or from a pole which is no more than thirty-five feet (35') high.
15. National flags are permitted in all zones (Ord. 10/20/03)
16. Inflatable signage for special events will be allowed without a permit. The signs will be allowed to be put up one week before an event and shall be taken down three days after the event is over. Inflatable signage that is to be used for a significant period will require a permit. The signage shall be placed out of the City's right of way and shall not encumber traffic or pedestrians traveling near or around the object. (Ord.12/20/04)

#### Sec. 17-164. Signs Allowed By Permit Only

##### 1. Signs in Rural Residential, Residential Single Family, and Residential Two-Family Zones:

In Rural Residential (RR), Residential Single-Family (RS), and Residential Two-Family (RT) zones, the following provisions regarding business signs shall apply:

- a. The maximum total sign area per lot is three (3) square feet, unless otherwise allowed by special exception.
- b. One (1) freestanding sign is permitted per lot with a maximum area of two (2) square feet, and a maximum height of six feet (6') off the ground. The sign must be setback a minimum of four feet (4') from any property line. By special exception, the sign area may be increased up to a maximum of twenty-four (24) square feet.
- c. One (1) wall sign is permitted per lot with a maximum area of two (2) square feet.
- d. One (1) projecting sign is permitted per lot with a maximum area of two (2) square feet.

##### 2. Signs in Residential General (RG) Zone:

In the Residential General (RG) zone, the following provisions regarding business signs shall apply:

- a. The maximum total sign area per lot is three (3) square feet. By special exception, the total sign area may be increased up to a maximum of thirty-two (32) square feet.
- b. One (1) freestanding sign is permitted per lot with a maximum area of two (2) square feet, and a maximum height of six feet (6') off the ground. The sign must be setback a minimum of four feet (4') from any property line. By special exception, the sign area may be increased up to a maximum of twenty-four (24) square feet.
- c. One (1) wall sign is permitted per business with a maximum area of two (2) square feet. By special exception, the wall sign area may be increased up to a maximum of twelve (12) square feet provided that the height of a wall sign may not exceed two feet (2') and the width shall not exceed the facade width.
- d. One (1) projecting sign is permitted per business with a maximum area of two (2) square feet.

3. Signs in the Downtown Zone:

In the Downtown (DT) zone, the following provisions regarding all signs shall apply:

- a. The maximum total sign area per lot is one hundred forty (140) square feet.
- b. One (1) freestanding sign is permitted per lot with a maximum area of thirty-two (32') square feet and a maximum height of twenty-five (25') feet from the ground. The sign must be setback a minimum of ten feet (10') from any property line. (Ord of 9/4/07)
- c. One (1) wall sign is permitted per building facade which faces a street or pedestrian way. The height of a wall sign shall not exceed four feet (4') and the width shall not exceed the facade width or thirty-two feet (32'), whichever is less.
- d. One (1) projecting sign is permitted per business with a maximum area of sixteen (16) square feet and no dimension shall exceed six feet (6').
- e. One (1) awning sign is permitted per business, the maximum area of which shall not exceed twenty-five percent (25%) of the vertical surface area of the awning itself.
- f. Window signs are permitted provided that they do not exceed thirty-three percent (33%) of the window area.

- g. All signs, excluding window signs, must be made from or resemble natural materials such as wood, metal, stone or cloth, and may be painted.

4. Signs in the Business General Zone:

In the Business General (BG) zone, the following provisions regarding all signs shall apply:

- a. The maximum total sign area per lot is one hundred fifty (150) square feet. This represents the amount of signage allowable for one lot which will also include one off premise sign. The area of the off premise sign shall be included in the total square footage available for the parcel. Any freestanding signs erected shall be set back a minimum of ten feet (10') from any property line and shall be no higher than twenty-five feet. (Ord. 5/21/07)
- b. Window signs are permitted provided that they do not exceed thirty-three percent (33%) of the window area.
- c. One (1) "open", "sale", or similar type of flag is permitted provided that the flag does not exceed three feet (3') by five feet (5') in size. The flag shall only be displayed during hours when the principal use is open. The flag shall not project or hang over a public right-of-way, including sidewalks, in a manner which intrudes upon, infringes upon or cause hazard to the public. The height of any pole or support structure for such flag shall not exceed fifteen feet (15').
- d. Menus or restaurant bill of fare signs mounted flat against the exterior of the building, and not exceeding total area of five (5) square feet, are also permitted.
- d. Signs indicating the current time and/or temperature are permitted provided they meet all other provisions of this Ordinance.

5. Signs in the Industrial/Business Zone:

In the Industrial/Business (IB) zone, the following provisions regarding all signs shall apply:

- a. The maximum total sign area per lot is one hundred fifty (150) square feet. This represents the amount of signage allowable for one lot which will also include one off premise sign. The area of the off premise sign shall be included in the total square footage available for the parcel. Any freestanding signs erected shall be set back a minimum of ten feet (10') from



any property line and shall be no higher than twenty-five feet. Ord. of 5/21/07)

- b. Window signs are permitted provided that they do not exceed thirty-three percent (33%) of the window area.

## 6. Special Signage Situation

For the Business General, Downtown, and Industrial/Business zones only

In any case where two or more businesses are on one lot, each business shall be allowed to have a sign attached to their portion of the building and a portion of a shared (cluster) sign. The cluster sign will count as one of the allowed freestanding signs for the lot in applicable zone. The total area of all signage allowed for each business shall not exceed the limits set forth as calculated below.

The size of above signs shall be per the following:

Distance of sign from the right of way: Maximum square footage per sign:

5-50 feet = 64 square feet

Over 51 feet = the distance from the right of way times 1.25 (i.e. 80 feet from edge of right of way =  $80 \times 1.25 = 100$  sq. feet (Ord. 10/20/03)

## 7. Signs in the Jericho Gateway Zone

- a. The maximum total sign area per lot is two hundred (200) square feet. This represents the amount of signage allowable for one lot which will also include one off premise sign. The area of the off premise sign shall be included in the total square footage available for the parcel. Any freestanding signs erected shall be set back a minimum of ten feet (10') from any property line and shall be no higher than thirty-five feet. By special exception, the signage for the property can be increased to four hundred square feet for parcels with more than three hundred (300) feet of frontage on an accepted street.
- b. Menus or restaurant bill of fare signs mounted flat against the exterior of the building, and not exceeding total area of five (5) square feet, are also permitted.
- d. Window signs are permitted provided that they do not exceed thirty-three percent (33%) of the window area. (Ord. 5/21/07)

8. Electronic Message Displays (Ord 10/3/2016)

Electronic Message Displays may be permitted in Business General and the Industrial Business Zones subject to the following requirements:

- a. Operation – such displays shall be limited to messages that appear or disappear from the display with no movement or scrolling. In no instance shall the display use the flash mode of operation.
- b. Display Time – each message on the sign must be displayed for a minimum of 10 seconds, with the exception of time and temperature displays which may change every three seconds.
- c. Illumination – the display must be equipped with automatic and manual dimming controls. The maximum nighttime brightness shall not exceed 700 NITs (candela per square meter).
- d. Hours of operation – 5am until 12am; 12 am to 5am with a static message.
- e. Content – The display may only be used to advertise goods and services on the property, time and temperature, and public service announcements. It may not be used to sell advertising to outside businesses.
- f. Size, height and distance from right of way shall follow the provisions of the underlying zone in which the sign is located.

Sec. 17-165. Prohibited Signs

The following signs are prohibited in all districts:

1. Streamers, pennants, spinners or other similar devices shall not be constructed, posted, or erected in any zone.  
(Ord.12/20/04)
2. Roof signs.
3. Flashing signs, signs containing moving parts or letters, and signs containing reflective elements which sparkle or twinkle in sunlight are not permitted.
4. Any sign advertising or identifying a business or organization which is either defunct or no longer located on the premises for more than six months is not permitted. This shall not apply to signs deemed to have historic value.
5. Moveable or portable signs of the changeable-type, reader-board type, or portable signs advertising specific products or services.
6. No sign, except for traffic, regulatory or informational signs shall use the words "stop", "caution", or "danger", or shall incorporate red, amber, or green lights resembling traffic signals, or shall resemble "stop" or "yield" signs in shape and color.

7. Unregistered or uninspected vehicles or trailers, including parts thereof, which have attached to, or located on them, any sign or advertising device designed to provide advertisement of products, or to direct people to a business or activity, shall not be parked or located on a public right-of-way, public property or private property so as to be visible from the public right-of-way.

#### Sec. 17-166. General Requirements

The following requirements apply in all zoning districts:

1. All signs and their support structures must be maintained in good condition and repair at all times. Signs that are structurally unsafe, and constitute a hazard to public safety and health by reason of inadequate maintenance, dilapidation, or abandonment shall be removed.
2. Except as permitted in this article, no sign shall be permitted within any platted right-of-way.
3. Signs shall not be affixed to a utility pole, or to a support for signs designed to direct the public and provide safety such as speed limit signs, stop signs, or any other highway signs.
4. Projecting signs shall not extend into a vehicular public way, or be less than ten (10) feet above a pedestrian way.
5. Signs shall not be placed where they will obstruct scenic views.
6. Signs shall not obstruct required doors, windows, or fire escapes. Signs shall not obstruct light, air or interfere with proper functioning of the building;
7. Signs shall not interfere with the line of sight for traffic.
8. Any residential development having a homeowners association or condominium association may have one sign identifying the development. Such sign shall not exceed sixteen (16) square feet.

#### Sec. 17-167. General Illumination Standards

The following requirements apply to all signs unless other wise specified in this article:

1. In all residential zones (RR, RS, RT, RG) and the Downtown (DT) zone, signs that are illuminated, must be externally illuminated with a white light.

2. In Business General (BG) and Industrial/Business (IB) zones, signs may be either externally or internally illuminated.
3. No person may erect a sign which flashes.
4. No person may erect a sign with exposed electrical wires.
5. Any lights illuminating a sign may not create a nuisance or a hazard to pedestrian or vehicular traffic because of intensity or direction of illumination.
6. Canopies or awnings shall not be internally illuminated.

#### Sec. 17-168. Nonconforming Signs

Any sign which does not conform to this Ordinance, but legally exists at the time of adoption of this Ordinance is a nonconforming sign.

1. Nonconforming signs may not be enlarged, repainted, relocated, reworded, or otherwise altered in a manner which increases its non-conformity. No change in type, size of message area and/or support structure, height, location, message, illumination, number or material shall be made which increases non-conformity.
2. Any sign which has deteriorated so that the cost of restoration would exceed fifty percent (50%) of the replacement cost, shall not be repaired, rebuilt, or altered except in conformance with the provisions of this Ordinance.
3. Any sign replacing a non-conforming sign shall conform to the provisions of this Ordinance.
4. Nonconforming signs removed or destroyed by any means and not replaced within six (6) months shall lose their nonconforming status.

Secs. 17-169—17-173. Reserved

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## ARTICLE XVI

### PARKING AND LOADING REGULATIONS

#### Sec. 17-174. General Parking Regulations

1. All required off-street parking spaces shall have at least one (1) access to a public street right-of-way.
2. In determining the number of required off-street parking spaces for any use, gross floor area shall mean the total horizontal area of all floors of a building found between surrounding walls.
3. For any use not listed in Section 17-176 of this Article, the off-street parking requirements shall be as for the closest similar use to be determined by the Zoning Officer, taking into consideration the number of employees, the number of visitors, the site, and gross floor area of the building.
4. Any required handicapped parking spaces shall meet the minimum standards of the Americans with Disabilities Act (ADA).
5. The minimum off-street parking requirements of Section 17-176 may be met in three ways:
  - a. The provision of on-site parking.
  - b. Where public parking is available within six hundred feet (600') of a use, non-residential off-street parking requirements may be altered or eliminated by the Planning Board on an individual basis through the Site Plan Review process.
  - c. Private leased off-site parking spaces within six hundred feet (600') of a use may be substituted for non-residential on-site parking requirements by the Planning Board on an individual basis through the Site Plan Review process.
6. Any industrial, manufacturing, or commercial uses shall provide sufficient off-street parking and maneuvering facilities for company-owned vehicles.
7. No storage of material or equipment in parking areas shall be allowed except for temporary storage as part of an approved building construction operation.
8. Parking for non-residential uses shall not be located within the front or side yard areas in any residential district. In other districts, parking in the front yard area shall not be closer than ten feet (10') from any street right-of-way line. (Ord. 10/20/03)

## Sec. 17-175. Minimum Parking Design Standards

1. The standard parking space size shall be a minimum of nine feet (9') wide and eighteen feet (18') long.
2. All handicapped parking spaces shall meet the design requirements of the Americans with Disabilities Act (ADA).

## Sec. 17-176. Off-Street Parking Minimum Requirements

The following off-street parking requirements shall apply to all zones except the Downtown (DT) zone:

Auto Repair or Service Station: Two (2) spaces for each repair bay, plus one (1) space per employee in the maximum shift.

Group Child Care Center-Class A or B: One (1) space for every five (5) children.

Convalescent or Rest Home: One (1) space per three (3) beds at design capacity and one (1) space for each employee in the largest work shift.

Funeral Home: A minimum of twenty (20) spaces plus ten (10) additional spaces for each chapel or viewing room in excess of one (1).

Hospital: One (1) space per two (2) beds at design capacity and one (1) space for each two (2) employees in the largest work shift.

Hotel, Motel or Inn: One (1) space per sleeping unit, plus one (1) space per employee in the largest shift, plus one (1) space per seventy-five (75) square feet of public meeting space. Additional spaces are required for other uses such as restaurants, retail space, etc. occupying over one hundred (100) square feet of floor area devoted to such use.

Industrial, Manufacturing: One (1) space per each one and one-half (1.5) employees on the largest shift, or, one (1) space per six hundred (600) square feet of gross floor area, whichever is greater.

Laundromat: One space for every three (3) washing machines or dry cleaning machines.

Lodging or Rooming House: One (1) parking space shall be provided on the premises for each rental unit plus one (1) space per employee in the largest shift.

Office, General: One (1) space per two hundred (200) square feet of gross floor area or one and one-half (1.5) spaces per each employee, whichever is greater.

Office, Home General: One (1) space per each staff member not residing on-premises in addition to the residential parking requirements.

Office, Medical: One (1) space per one hundred (100) square feet of gross floor area, or, four (4) spaces per practitioner and one (1) space per each office staff member, whichever is greater.

Private Club: One (1) space per two (2) persons allowed by building capacity, or, one (1) space per seventy-five (75) square feet of assembly room space, whichever is greater.

Private or Commercial Recreational Facility-Indoor: One (1) space for each four hundred (400) square feet of gross floor area.

Residential, Single Family, Two-Family, and Multi-Family Dwellings: One (1) space per dwelling unit.

Retail Commercial and Service Use: One (1) space per two hundred (200) square feet of sales area plus one (1) space per six hundred (600) square feet of gross floor area of storage.

Restaurant: One (1) space per three (3) seats, plus one (1) space per employee in the largest shift, or, one (1) space per one hundred fifty (150) square feet of floor area used, whichever is greater. Where there is a bar, add one (1) space per two (2) seats.

Restaurant, Fast-Food Establishment: One (1) space for every two (2) seats, plus one (1) space per each employee in the largest shift, or, one (1) space per thirty (30) square feet of gross floor area, plus one (1) space per each employee in the largest shift, whichever is greater.

Theater, Auditorium, Church or Similar Place of Public Gathering: One (1) space for each four (4) seats of total seating capacity.

Veterinary Hospital: Four (4) spaces per practitioner plus one (1) space per employee on the largest shift.

Wholesale Distribution, Warehouse: One (1) space per eight hundred (800) square feet of gross floor area, or, one (1) space per employee in the maximum shift, whichever is greater.

#### Sec. 17-177. General Loading Regulations

1. Off-street loading space shall be provided for all non-residential uses, except in the Downtown (DT) zone. Public roadways and sidewalks shall not be considered as part of such off-street loading space.
2. Except in the Downtown (DT) zoning district, new or enlarged non-residential uses shall provide loading spaces at the rate of one (1) space up to the first ten thousand (10,000) square feet of gross floor area, plus one (1) additional space for each

additional twenty thousand (20,000) square feet, or portion thereof, of gross floor area.

2. Each loading space shall contain a minimum of one thousand (1,000) square feet so as to include space for maneuvering.

#### Sec. 17-178. Parking in the Downtown (DT) Zone

1. Special Use Permit Procedures for Parking in the Downtown (DT) Zone:

- a. Special Use Permit Granting Authority

The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin. The SUPGA shall give consideration to the written recommendations of the Engineering Department, as to the reliability and feasibility of the design standards proposed and to the degree of threat to the public health and safety if those standards were to fail.

- b. Special Use Permit Conditions

Before granting a special use permit under this Section, the Planning Board may, after due consideration and consultation with other City Officials and technical reports as may be necessary; attach any conditions deemed necessary to fully implement the purpose and intent of this Article. Technical reports or consultation requested by the Planning Board will be at the expense of the applicant.

- c. Submittals

The applicant must submit the following with their application for a special use permit in addition to any other standard application forms and application fees:

- i. For all new downtown parking applications, a complete application for Site Plan Review must be submitted jointly with the application for a special use permit.
- ii. Application will be accompanied by a plan that is approved and stamped by a licensed NH Engineer as well as any other professional that worked on the plan.
- iii. Applications that propose five spaces or less will be reviewed by the Public Works Director or his/her designee and City Planner



- iv. All applications will be reviewed by the City Planner, Zoning Officer, Public Works Director or his/her designee, Fire Chief, and Police Chief before being reviewed by the Planning Board.
- d. Design Standards for Parking in the Downtown (DT) Zone
  - 1. Every parking space and access driveway thereto shall be surfaced with bituminous binder, concrete, asphalt, gravel or crushed stone, which shall meet the approval of the Public Works Director or his/her designee and the Planning Board and shall be graded and drained so as to dispose of all surface water accumulation in an approved manner.
  - 2. All parking areas within ten (10) feet of any property line may, at the discretion of the Planning Board, be required to have a curb or substantial bumper no less than four (4) feet from the lot lines for property protection.
  - 3. All spaces shall be located in the rear of the existing building or property.
  - 4. Any fixture used to illuminate any parking area shall be so arranged as to direct the light away from the street and away from adjoining premises used for residential purposes.
  - 5. Parking areas shall be so designed that backing or maneuvering can be safely and adequately accomplished on the premises.
  - 6. Each application shall include a landscaping plan that minimizes the parking areas presence in the Downtown Zone. The landscaping plan should not include any type of vegetation or structures that will restrict sight distances or clearances.
- 7. All applications shall include all relevant requirements of the Site Plan Review Regulations. A conceptual consultation with city planning staff is encouraged. (Ord. 10/20/03)

Secs. 17-179—17-180. Reserved

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## ARTICLE XVII

### STANDARDS FOR SPECIFIC USES

#### Sec. 17-181. Junk Motor Vehicles

No more than one (1) motor vehicle which does not have a valid state motor vehicle inspection sticker may be stored outside of a building on a lot. This provision shall not apply to a licensed new or used motor vehicle dealer or a licensed junk motor vehicle dealer as defined in RSA 236:112, as amended, or to vehicles and equipment solely used for agricultural purposes. (Ord. 1/7/08)

#### Sec. 17-182. Motor Vehicles and Trailers Used for Storage

No motor vehicle, trailer or motor vehicle accessories, including parts thereof, whether registered or inspected, may be used for the storage of goods or materials for more than 90 days except for storing construction materials at a construction site.

#### Sec. 17-183. Fences

1. No fence shall exceed six feet (6') in height unless a special exception is granted by the Board of Adjustment for such fence.
2. No fence shall be erected prior to obtaining a building permit from the Building Inspector.
3. The finished side of a fence shall face outward from the property on which the fence is located when such fence is located on a property or lot boundary line. Likewise, the side of a fence containing the posts or poles and other bracing appurtenances shall face inward to the property on which the fence is located when such fence is located on a property or lot boundary line.
4. When erected near a property or lot boundary line, the entire fence including any of its supporting structures or appurtenances shall be contained within the property on which the fence is being located.

#### Sec. 17-184. Yard Sales

The conduct of a temporary yard sale, garage sale, auction, or any such sale, offering items for purchase by the general public, shall be permitted on any property. There shall be no more than four (4) sales per calendar year at any one (1) residence, and each sale may not exceed a period of four (4) consecutive days.

#### Sec. 17-185. Swimming Pools

*As per the BOCA National Building Code 625.0 (adopted by the City of Berlin) any non-commercial swimming pool which is designed to contain more than twenty-four inches (24") in depth of water or has a surface area of more than 250 square feet, shall not be constructed without a building permit. Any pool that requires any type of structural material shall also require a building permit. Swimming pools shall not be placed in front yards. All pools shall have a side and rear setback of at least six feet. Any changes in the BOCA codes will supersede the regulations set forth in this ordinance regarding swimming pools. (Amended 11-6-00)*

## Sec. 17-186. Telecommunication Facilities

### 1. Purpose:

The purpose of this Article is to establish general guidelines for the siting of telecommunication facilities and to enhance and fulfill the following goals:

- a. Preserve the authority of the City of Berlin to regulate and to provide reasonable opportunities for the siting of telecommunication facilities while ensuring that telecommunications providers service remains effective and efficient.
- b. Reduce or eliminate adverse impacts such telecommunication facilities may create including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, reduction in property values, and health and safety concerns.
- c. Provide for co-location and minimal impact siting options through an assessment of technology, current location options, future location availability, innovative siting techniques, and siting possibilities beyond the geographic boundaries of the City of Berlin.
- d. Require cooperation and co-location between competitors, to the highest extent possible, in order to reduce cumulative negative impacts on the City of Berlin.
- e. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and encourage the owners and users of towers and antennas to configure them in a manner that minimizes adverse visual impacts of the structures.
- f. Provide for constant maintenance and safety inspections for all telecommunications facilities and appurtenances.
- g. Provide for the removal or upgrade of technologically outdated facilities.

- h. Provide for the removal of abandoned facilities including a procedure for the City of Berlin to remove abandoned towers in certain cases to ensure the public health and safety.

2. Definitions Specific to Telecommunication Facilities:

Alternative Tower Structure- Innovative siting techniques such as man-made trees, clock or bell towers, steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers and their appurtenances.

Antenna- Any exterior apparatus designed for telephonic, radio, television, personal communications services (PCS), pager network, repeater, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

Antenna Array- A collection of antennas attached to a mount to send and receive by a wireless telecommunications facility.

Co-Location- Locating multiple telecommunication facilities on a single mount.

FAA- An acronym meaning Federal Aviation Administration.

FCC- An acronym meaning Federal Communications Commission.

Guyed Towers- A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height- When referring to a telecommunication structure, shall mean the distance measured from ground level to the highest point on the telecommunication structure, even if said highest point is an antenna or other appurtenance.

Lattice Tower- A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.

Mast- A thin pole that resembles a street light standard or a telephone pole.

Monopole- A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel, or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount- The structure or surface upon which antennas are mounted, including but not limited to:

- a) ground-mount: mounted on the ground;
- b) structure-mount: mounted on a structure other than a building;
- c) roof-mount: mounted on the roof of a building; and

d) side-mount: mounted on the side of a building.

Pre-existing Towers and Antennas- Any tower or antenna lawfully constructed or permitted prior to the adoption of this Ordinance. Additionally, any tower or antenna lawfully constructed in accordance with this Ordinance that predates an application currently before the Planning Board.

Telecommunications Facilities- Any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless service, cellular telephone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services.

Tower- Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term also includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

3. Regulation:

Telecommunication facilities shall be allowed by special use permit, in accordance with RSA 674:21 II, as either primary or accessory uses in all zones in the City of Berlin provided that the Design Standards outlined in Section 17-186.5 of this Article are met.

4. Special Use Permit Procedures for Telecommunication Facilities:

a. Special Use Permit Granting Authority

The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin. The SUPGA shall give consideration to the written recommendations of the Engineering Department, as to the reliability and feasibility of the design standards proposed and to the degree of threat to the public health and safety if those standards were to fail.

b. Special Use Permit Conditions

Before granting a special use permit under this Section, the Planning Board may, after due consideration and consultation with other City Officials and technical reports as may be necessary; attach any conditions deemed necessary to fully implement the purpose and intent of this Article.

c. Submittals

The applicant must submit the following with their application for a special use permit in addition to any other standard application forms and application fees:

- i. For all commercial telecommunication facilities, a complete application for Site Plan Review must be submitted jointly with the application for a special use permit.
- ii. A scaled plan including a scaled elevation view, topography, radio frequency coverage, tower height, setbacks, parking, fencing, landscaping and adjacent land uses.
- iii. Written proof that the proposed use/facility complies with FCC regulations on radio frequency (RF) exposure guidelines, and FAA regulations on tower lighting requirements.
- iv. Written proof that an evaluation has taken place satisfying the requirements of the National Environmental Policy Act (NEPA), further referenced in applicable FCC rules. Such written proof shall include the results of the evaluation.
- v. An inventory of existing towers that are within the jurisdiction of the City of Berlin and those within two-miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers.
- vi. For applications for a new tower, the applicant shall submit written evidence demonstrating that no existing tower or structure can accommodate the applicant's proposed antenna. This evidence shall consist of one or more of the following:
  - (a) Substantial evidence that no existing towers or structures are located within the geographic areas required to meet the applicant's engineering requirements.
  - (b) Substantial evidence that existing towers or structures are not of sufficient height to meet the applicant's engineering requirements, and why.
  - (c) Substantial evidence that existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - (d) Substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with an antenna on

an existing tower or structure, or an antenna on an existing tower or structure would cause interference with the applicant's proposed antenna.

- (e) Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- (f) Substantial evidence that demonstrates other limiting factors that render existing towers and structures unsuitable for the applicant's proposed antenna.

- vii. For applications for a new tower, the applicant shall submit an agreement with the City that allows for the maximum allowance of co-location upon the new structure. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the City of Berlin, and grounds for the application to be denied.
- viii. The applicant shall submit engineering information detailing the size and coverage required for the telecommunication facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with NH RSA 676:4(g).
- ix. Each application for a tower, monopole, or alternative structure shall be submitted with a design certified by a competent engineer that the structure has been engineered to accommodate the maximum number and type of all compatible telecommunication media antennae.

## 5. Design Standards:

### a. Height Requirements

The following height requirements shall only apply to telecommunications facilities and shall supersede all other height regulations as required by the City of Berlin Zoning Ordinance. For telecommunication structures other than towers and antennas, the maximum height allowed shall be consistent with that in the underlying zoning district.

- i. Maximum Height for New Telecommunication Towers  
180 feet.
- ii. Maximum Height of Co-Located Antenna on Existing Tower  
Current height plus 15% to a maximum of 180 feet.
- iii. Maximum Height of Antenna on Existing Structure  
Current height plus 20 feet to a maximum of 180 feet.

b. Setbacks and Separation

The following setbacks and separation requirements shall apply only to telecommunication facilities, and shall supersede all other such standards found elsewhere in this Ordinance or other applicable City Ordinances and Regulations.

- i. Telecommunication towers shall be set back a distance equal to one hundred percent (100%) of the height of the tower from any boundary line, above ground utility line, or other primary building located on the property the tower is sited upon.
- ii. Tower guys, and all other accessory structures shall conform with the minimum setback requirements of the zoning district in which said structures and appurtenances are located.
- iii. Towers over ninety feet (90') in height shall not be located within fifteen hundred feet (1,500') of any existing tower.

c. Security Fencing

Towers shall be enclosed by appropriate security fencing not less than six feet (6') in height, which shall be equipped with an appropriate anti-climbing device.

d. Landscaping

- i. Towers shall be landscaped with a buffer of suitable vegetation that effectively screens as much of the tower and related structures as possible. The minimum standard buffer shall consist of a landscaped strip, ten feet (10') wide outside the perimeter of the tower and related structures. Existing natural vegetation may be deemed a sufficient buffer on large, remote, wooded lots.
- ii. Existing mature tree growth and natural land forms present on the site shall be preserved to the maximum extent possible.



e. Aesthetics and Lighting

- i. Towers shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness. Self-weathering steel may also be used provided strength requirements are met.
- ii. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and previously developed environment.
- iii. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- iv. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, it shall be designed to minimize disturbance to the surrounding views.
- v. Towers shall not contain any permanent or temporary signs, writing, symbols, graphic representation, or advertisement of any kind.

7. Financial Security:

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board may require a form of financial security to be posted as a condition of approval for a special use permit for a telecommunication facility. This security, in an amount to be determined by the Planning Board, may be in the form of, cash or a non-lapsing irrevocable letter of credit or other form acceptable to the Board and the City Attorney. It will be posted by the applicant and held by the City until the telecommunication facility is removed. It shall be the sole responsibility of the applicant, its assign, or its successor in interest, to ensure that acceptable and adequate security, once posted, is maintained continuously and without lapse. Lapse of adequate security shall be grounds to revoke a special use permit and cause for the telecommunication facility to be removed.

8. Annual Certification of Compliance and Continued Need:

The owner of a telecommunication facility shall provide an annual certification to the Zoning Officer verifying compliance with any conditions of approval for a special use permit and current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. The certification shall also verify that the structure is still needed for the

operation of the owner's network. Said certification shall be submitted to the Zoning Officer prior to January 31 of each year. Failure to submit an annual certification shall constitute abandonment and be grounds for removal of the telecommunication facility.

9. Performance Standards and Abandonment:

- a. All towers, antennas and other telecommunications facilities and equipment shall meet or exceed current standards and regulations of the FAA, FCC and any other agency of the federal or state governments having controlling regulatory authority, and if such standards or regulations are changed, the owners or operators of such facilities or equipment shall ensure that it complies with the revised standards or regulations within six (6) months of the effective dates of the revision, unless a more stringent compliance schedule is mandated by the controlling authority; and failure to comply in accordance with the applicable schedule shall constitute abandonment and shall be grounds for the removal of such facilities or equipment at the owner's expense through execution of the posted security.
- b. The owner of a tower, antenna or other telecommunication facilities and equipment shall be responsible for ensuring that such facilities and equipment conform at all times to City regulations and meet the applicable standards published by the Electronic Industries Association, as amended; and if, upon inspection, the City determines that such regulations or standard are not being met, or that the facilities or equipment pose a danger to persons, property or the community, they shall notify the owner of the defects in writing; and if the owner shall not, within thirty (30) days, remedy such defects, his failure to do so shall constitute abandonment and shall be grounds for the removal of the facilities and equipment at the owner's expense through execution of the posted security.
- c. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner provides proof of quarterly inspections, and such antenna or tower shall be removed in accordance with the following procedure:
  - i. The Planning Board shall hold a public hearing after due notice to abutters and to the last known owner/operator of the antenna or tower.
  - ii. If at such hearing the Planning Board determines that the antenna or tower is in fact abandoned, it shall issue a declaration of abandonment to the owner/operator.

- iii. Within ninety (90) days after issuance of such declaration the owner shall remove the abandoned structure, and, if he shall not, the City may execute the posted security and have the structure removed at the owner's expense.
- iv. If there are two or more users of a single tower, the provisions of this subsection shall not become effective until all users cease using such tower.

10. Exemptions:

a. Amateur Radio; Receive-Only Antennas

This Ordinance shall not govern any tower, or the installation of any antenna that is under seventy feet (70') in height and is owned and operated by a federally licensed amateur or citizens band station operator, and/or is used exclusively for receive-only antennas. This section adopts the provisions and limitations as referenced in NH RSA 674:16, IV.

b. Essential Services and Public Utilities

Henceforth, from the date of adoption of this Ordinance, telecommunications facilities shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the City's ordinances and regulations. Siting for telecommunications facilities shall be considered a use of land as addressed by this Article.

- c. Co-location applications shall be examined by administrative review. The applications will be reviewed by the City Planner, Public Works Director or his/her designee, Zoning Officer and Building Inspector. The application process will be the same as presented in this section, but will not be reviewed by the Planning Board, unless it is determined necessary by the above mentioned staff (Ord. 10/20/03)

Sec. 17-187. Sexually Oriented Businesses

1. Purpose:

The intent of this Article is to regulate the secondary effects of sexually oriented businesses in the following areas: crime control, protection of property values and the public health, safety and welfare, the prevention of civic blight, and the protection of children. It is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually

oriented entertainment to their intended market; and neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

2. Locational Requirements:

The location, placement, and separation of sexually oriented businesses shall be established as follows. Measurements shall be the straight line distance from structure to structure.

a. Zoning District Requirements

Sexually oriented businesses shall only be located within the Business General (BG) zoning district of the City of Berlin.

b. Use Setbacks

Sexually oriented businesses shall not be located within five hundred feet (500') of any of the following uses:

- i. public or private school;
- ii. Child day care agency (as defined by RSA 170-E:2, IV, as amended)
- iii. Public recreational field, or similar public-owned facility;
- iv. Religious institution, church, or place of worship;
- v. hospital, nursing home, or sheltered care facility.

c. Separation of Businesses

There shall be a minimum of five hundred feet (500') between each sexually oriented business.

d. Town Line Setback

Sexually oriented businesses shall not be located within one thousand feet (1000') of any municipal boundary.

3. Screening:

“Specified sexual activities” or “specified anatomical areas” including instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities” or their images, shall not be visible in any fashion whatsoever from the exterior of the building within which the business is located.

**WARNING: THIS BEGINS A SECTION CONTAINING SEXUALLY EXPLICIT LANGUAGE.**

4. Definitions Specific to Sexually Oriented Businesses:

Adult Arcade- Any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specific sexual activities” or “specified anatomical areas.”

Adult Bookstore or Adult Video Store- An establishment which, as one of its principal business purposes, offers for sale or rental, or for any other form of consideration, any one of the following:

- a. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, or other video reproductions, slides, computer software, or other visual representations which depict or describe “specified sexual activities” or “specified anatomical areas.”
- b. Instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

Adult Cabaret- A nightclub, bar, restaurant or similar commercial establishment, or a private membership, fraternal membership, or social club which during a substantial portion of the total presentation time features:

- a. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
- b. Films, motion pictures, video cassettes, or other video reproductions, slides, computer software, or other visual representations which depict or describe “specified sexual activities” or “specified anatomical areas.”

Adult Motion Picture Theater- An establishment where, in any form of consideration, films, motion pictures video cassettes, or other video reproductions, slides, or other photographic representations are shown, in which a substantial portion of the total presentation time is devoted to the showing of material distinguished by an emphasis on matter depicting, describing, or related to “specified sexual activities” or “specified anatomical areas.” However, in no case shall motion pictures rated G, PG, PG-13, or R be considered material distinguished by an emphasis on depicting, or relating to “specified sexual activities” or “specified anatomical areas.”

Adult Theater- A theater, concert hall, auditorium, or similar place of public assembly which features any display of persons who appear in a state of nudity or live performances in which a substantial portion of the total presentation time is devoted to the showing of material which depicts or describes “specified anatomical areas” or by “specified sexual activities.”

Principal Business Purpose- A principal business purpose shall be deemed to exist, for the purposes of this article, if more than 225 square feet of a business is devoted to the sale, display, depiction, or expression of “specified sexual activities,” “specified anatomical areas“, or instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

Sexually Oriented Business- A business whose principal business purpose, as defined above, is devoted to the sale, rent, display, depiction, or expression of “specified sexual activities,” “specified anatomical areas“, or instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

Specified Anatomical Area- Human genitals and anus, female breasts.

Specified Sexual Activities- Means and includes the definition of "sexual conduct" as set forth in RSA 571-B:1, IV.

Substantial Portion of the Total Presentation Time Related to Sexual Content- Occurring on more than seven (7) days within any fifty-six (56) consecutive day period.

THIS ENDS THE SECTION CONTAINING SEXUALLY EXPLICIT LANGUAGE.

Secs. 17-188—17-190. Reserved

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## ARTICLE XVIII

### PERFORMANCE STANDARDS

The following performance standards, together with all applicable State of NH standards and the City of Berlin Building, Fire and Life Safety Codes, as amended, shall be met in all zoning districts of the City of Berlin.

#### Sec. 17-191. Purpose

It is the intent of these performance standards to permit potential nuisances to be measured objectively, to protect the community from all such hazards and nuisances, and to provide clear community performance standards and enforcement procedures.

#### Sec. 17-192. General Standards

No structure or use in the City of Berlin shall emit noise, odors, air emissions, glare, heat, light, vibration or liquid and solid waste, which is found to be obnoxious, harmful, or a nuisance to the municipality and its residents. Neither shall any structure or use operate so as to create a fire, explosion, or safety hazard within the City of Berlin.

#### Sec. 17-193. Specific Standards

##### 1. Air Pollution, Including Smoke, Fumes, Gases, Dust, Dirt, and Fly Ash:

Emissions into the atmosphere shall not exceed the limits set by, and shall meet the regulations and standards of, the New Hampshire Department of Environmental Services, Division of Air Resources, or their successors.

##### 2. Odor:

a. Any condition or operation, except as noted in Section 17-193.2.b, below, which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public, or which interferes unreasonably with the comfort of the public, shall be removed, stopped, or so modified as to remove the offending odor.

b. Shelters for farm animals or a storage area for manure, fertilizer or other noxious substances attached to an active agricultural operation or the keeping of farm animals shall be no nearer than one hundred feet (100') from a lot line.

##### 3. Heat and Radiation:

There shall be no emission or transmission of heat or heated air so as to be discernable at the property line, and no emission of radiation which is not conforming to the standards of the New Hampshire State Radiological Control Agency, or their successor.

4. Fire, Explosion, and Safety Hazards:

All structures shall be constructed and maintained in conformance with regulations of the State of New Hampshire and all applicable sections of the Fire and Life Safety Codes of the City of Berlin as amended.

5. Noise:

a. Persistent noise at the property line from business or industrial uses shall not exceed a maximum of seventy (70) decibels at the A-weighted response scale, as measured by a sound level meter meeting the current standards of the American National Standards Institute "Specification for Sound Level Meters", between 6:00 a.m. and 10:00 p.m., Monday thru Saturday and 8:00 a.m. to 10:00 p.m. on Sunday. Persistent noise at the property line shall not exceed sixty (60) decibels by the same measurement standard between 10:00 p.m. and 6:00 a.m. Sunday thru Saturday and 10:00 p.m. Saturday to 8:00 a.m. on Sunday.

b. Sample Sound Levels Measured in Decibels

Sample Sound Levels Measured in Decibels	
Decibels	Activity
30	Whisper
40	Quiet room
50	Rain
60	Conversation, Dishwasher
70	Busy traffic, Vacuum
80	Alarm clock
90	Lawnmower
100	Snowmobile, Chain saw

*Source: NH Sunday News- July 7, 1996 from the American Speech-Language-Hearing Assoc.*

c. Intermittent noise is required to be muffled so as not be objectionable due to its beat frequency or shrillness.

6. Vibration:

No vibration shall be produced which is transmitted through the ground and is discernable without the aid of instruments at, or at any point beyond, the property



line; nor shall any vibration produced exceed a maximum displacement of "g peak" measured at or beyond the property line using, either seismic or electronic vibration measuring equipment.

7. Glare and Exterior Lighting:

The source of exterior lighting shall be arranged in such a manner as not to be detrimental to adjacent properties or create a hazard on a public way. No glare may be created which could impair the vision of a driver of any motor vehicle, or which produces illumination in excess of one (1.0) foot candles in any residential zoning district.

8. Waste Disposal:

The disposal of sewage and waste materials, liquid and solid, including hazardous materials, shall provide for the treatment and effective disposal of such waste in compliance with the regulations promulgated by the New Hampshire Department of Environmental Services, Divisions of Waste Management and Water Supply and Pollution Control, the New Hampshire Department of Public Health, or their successors, and the City of Berlin.

9. Storage:

In all zones, except the Industrial/Business (IB) zone, no raw or partially processed or finished material, machinery, or equipment shall be stored in the open so as to be detrimental to adjacent properties.

Sec. 17-194. Administration of Performance Standards

1. Procedure in Cases of Violation:

- a. If a determination of violation is made by the City, using equipment and personnel available to the City, the Zoning Officer shall give written notice to cease the violation, by certified mail, return receipt requested, to those responsible for the violation. Such notice shall describe the particulars of the violation, and shall require an answer or correction of the alleged violation to the satisfaction of the Zoning Officer within thirty (30) days of receipt of notice, unless a shorter time limit is specified.
- b. The official notice shall further state that the above administrative decision may be appealed to the Zoning Board of Adjustment.

2. Response to Notice of Violation:

- a. Correction of the Violation within the Time Limit

If, within the time limit set, there is no reply, but the alleged violation is corrected to the satisfaction of the Zoning Officer, "Violation Corrected" shall be noted on the Zoning Officer's copy of the Notice, which shall be retained in the record.

b. Reply Requesting an Extension of Time

If a reply is received within the time limit set indicating an alleged violation will be corrected to the satisfaction of the Zoning Officer, but that more time is required than was granted by the original notice, the Zoning Officer may grant an extension of time, if an extension is warranted by the circumstances of the case, and if such extension will not, in his or her opinion, cause imminent peril to life, health or property. In acting upon a request for an extension of time, the Zoning Officer shall state his/her reasons for granting or refusing the request in writing and shall transmit the same by certified mail, return receipt requested, to those whom the original notice was sent.

c. Administrative Appeal to the Board of Adjustment

Technical determinations of compliance with this Ordinance may be requested by the Board of Adjustment, with costs for such technical determination to be paid by the applicant of the appeal.

d. Failure to Reply or Correct

If there is no reply and the violation is not corrected to the satisfaction of the Zoning Officer within the time limit set, the Zoning Officer shall take, or cause to be taken, such action as is warranted by the continuation of an alleged violation after notice to cease.

Secs. 17-195--17-200. Reserved

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## ARTICLE XIX

### BOARD OF ADJUSTMENT

#### Sec. 17-201. Membership

A Board of Adjustment was established on February 17, 1964 consisting of five (5) members as provided for by RSA 673:3. The members of the Board of Adjustment, one of whom may be a member of the Planning Board under the provisions of RSA 673:7 II (a) shall be appointed by the Mayor, subject to the confirmation of the Council. They shall be residents of the City of Berlin, and shall serve without compensation. Elected officials and City employees may not be regular members or alternate members of the Board of Adjustment.

In accordance with the laws of the State of New Hampshire, RSA 673, the following provisions shall also apply:

1. The term of an appointee to the Board of Adjustment shall be three (3) years. The initial terms of members first appointed shall be staggered so that no more than two appointments occur annually, except when required to fill vacancies. [RSA 673:5 II]
2. The appointing authority may appoint no more than five (5) alternate members. The terms of the alternate members shall be three (3) years. [RSA 673:6 I (a)]
3. The Board of Adjustment shall elect a Chairperson, a Vice-Chairperson, and Secretary from its own membership. [RSA 673:8]
4. When a regular member is absent, or whenever a regular member disqualifies him or herself according to the provisions of RSA 673:14, the chairperson shall designate an alternate, if one is present, to act in the absent member's place as provided for in RSA 673:11.
5. After public hearing, appointed members may be removed by the appointing authority upon written findings of inefficiency, neglect of duty, or malfeasance in office. The appointing authority shall file with the City Clerk a written statement of reasons for the removal under this section. [RSA 673:13]
6. When there is a permanent vacancy, the original appointing authority shall appoint a person to serve the unexpired term as per RSA 673:12.

#### Sec. 17-202. Powers and Duties

In accordance with RSA 676:1, the Board of Adjustment shall adopt and amend rules of procedure concerning the method of conducting its business. The Board of Adjustment

shall have the following powers and duties as provided under RSA 674:33, to be exercised only upon written appeal or application.

1. Appeals from Administrative Decisions:

- a. The Board of Adjustment shall hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the provisions of this Ordinance. [RSA 674:33 I (a)]
- b. Appeals to the Board of Adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. For the purposes of this Section, the administrative officer shall mean any official or board who has responsibility for issuing permits or certificates under this Ordinance, or for enforcing this Ordinance. [RSA 676:5]
- c. Within 30 days of the date of the decision of the administrative officer, the appeal shall be submitted to the Zoning Officer. The appellant shall set forth in writing the grounds of his or her appeal and shall refer to the specific provisions of the zoning ordinance involved. Following the receipt of the appeal, the Zoning Officer shall notify the Board of Adjustment.
- d. In exercising its powers as described under this subsection, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken. [RSA 674:33 II]
- e. The concurring vote of three (3) members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.
- f. Prior to exercising its appeals powers, the Board of Adjustment shall hold a public hearing with notice in accordance with RSA 676:7 and Section 17-203.
- g. The effect of an appeal to the Board, including suspension of permits and stay of proceedings, is stated in RSA 676:6.

2. Variances:

- a. The Board of Adjustment shall have the power to authorize upon appeal in specific cases variances from the terms of this Ordinance if the applicant demonstrates that he or she meets each of the following requirements:

- i. denial of the variance will result in unnecessary hardship to the owner seeking it;
  - ii. No decrease in the value of surrounding properties will result if the variance is granted;
  - iii. Granting the variance will benefit the public interest;
  - iv. The proposed use is not contrary to the spirit and intent of this Ordinance; and
  - v. by granting the variance, substantial justice will be done.
- b. Notwithstanding subsection a., above, the Board of Adjustment may grant a variance from the terms of this Ordinance without finding a hardship arising from the condition of a premises subject to the Ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that the provisions of RSA 674:33 V (a) & (b) are followed.
- c. In exercising its powers as described under this subsection, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken. [RSA 674:33 II]
- d. The concurring vote of three (3) members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

3. Special Exceptions:

- a. The Board of Adjustment shall have the power to grant special exceptions to the terms of this Ordinance, in appropriate cases and subject to appropriate conditions and safeguards. All special exceptions shall be made in harmony with the general purpose and intent of this Ordinance, and shall be in accordance with the general or specific rules contained in this Ordinance. [RSA 674:33 IV]
- b. The concurring vote of three (3) members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

4. Other Duties:

The Board of Adjustment shall perform other duties as designated to it by state statute and according to procedures outlined in those statutes. Examples of such other duties is the granting of equitable waivers of dimensional requirement as outlined in RSA 674:33-a, appeals to the provisions of RSA 674:41 (Erection of Buildings on Streets) as outlined in 674:41 II, and acting in the capacity of the Building Code Board of Appeals in accordance with RSA 673:1 V, 3.

#### Sec. 17-203. Public Hearing and Notice

The Board of Adjustment is required to hold a public hearing in accordance with provisions of state law regarding any appeal from an administrative decision, request for a grant of variance or approval of a special exception or any other matter within the Board's powers as set forth in RSA 674:33.

1. Proper notice shall be given in the following manner and as defined in RSA 676:7:
  - a. The appellant and all the abutters, as defined in Article XXI of this Ordinance, and holder of conservation, preservation, or agricultural preservation restrictions shall be notified, by the Chairman of the Zoning Board of Adjustment, of the hearing by certified mail, return receipt requested, stating the time and place of the hearing, and such notice shall be given not less than five (5) days before the date fixed for the hearing of the appeal.
  - b. A public notice of the hearing shall be placed in a newspaper of general circulation in the area, not less than five (5) days before the date fixed for the hearing of the appeal.
2. The cost of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the Board of Adjustment to terminate further consideration and to deny the appeal/application without public hearing.
3. The public hearing shall be held within thirty (30) days of the receipt of an appeal from an administrative decision or an application for a special exception or grant of variance.
4. Any party may appear in person or be represented by his or her agent or attorney at the public hearing.
5. The Board shall hear all abutters, and holders of conservation, preservation, or agricultural preservation restrictions desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate.

6. The Zoning Officer shall attend all hearings and shall present to the Board of Adjustment all plans, photographs, or other factual material which is appropriate to an understanding of the appeal or application for a special exception or variance.
7. The Board of Adjustment may, before taking final action on any matter, refer it to the Planning Board for review and recommendation. Where the approval of the Planning Board is required, on the same matter, under this Ordinance, the Board of Adjustment shall, before taking final action, refer it to the Planning Board for review and recommendation. The action of the Planning Board shall be reported to the Board of Adjustment within twenty (20) days of such referral. Any recommendation received from the Planning Board shall be disclosed at the public hearing and shall become a part of the record of the matter.
8. The Board of Adjustment may continue hearings to a future date for good cause.
9. Written notice of the decision of the Board shall be sent to the appellant and the Building Inspector within seven (7) days of its action on any matter. In the case of denial of an appeal, variance, or special exception, the Board shall set forth for the record a detailed reason for denial including how the applicant has met, or failed to meet, any necessary conditions for approval.

#### Sec. 17-204. Meetings Open to the Public and Nonpublic Sessions

Meetings open to the public and nonpublic sessions of the Board of Adjustment shall be conducted in accordance with the provisions of RSA 91-A and all local codes found in the Code of the City of Berlin.

Secs. 17-205—17-210. Reserved

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## ARTICLE XX

### ADMINISTRATION AND ENFORCEMENT

#### Sec. 17-211. Administration

The Administrative Officer of this Ordinance shall be the Zoning Officer or their duly appointed representative. The Zoning Officer, shall provide the Board of Adjustment all the factual materials, plans, and records necessary for the Board to perform its duties.

#### Sec. 17-212. Enforcement

The Enforcement Officer of this Ordinance shall be the Zoning Officer or their duly appointed representative. It shall be the duty of the Zoning Officer to enforce this Ordinance according to the provisions outlined in this Ordinance.

#### Sec. 17-213. Building Permits, Sign Permits, Certificates of Occupancy and Accompanying Fees

##### 1. Permits:

The following permits shall be required and shall be issued by the Building Inspector when in the opinion of the Zoning Officer the applicant for such permit has complied in all respects with the provisions of this Ordinance:

##### a. Building Permit

No building, fence, swimming pool, or other structure as required by the City of Berlin Building Code, as amended, shall be constructed, structurally altered, enlarged, or moved unless a building permit for such action has been issued by the Building Inspector.

##### b. Sign Permit

No sign shall be erected, displayed, altered, or enlarged until an application has been filed and a sign permit for such action has been issued.

##### c. Certificate of Occupancy

A certificate of occupancy is required as specified in the City of Berlin Building Code, as amended.

##### 2. Fees:

Permit application fees and filing fees must be paid as established by the Mayor and City Council.



Sec. 17-214. Violations

1. The Zoning Officer shall be responsible for the enforcement of any violation of this Ordinance, any provision, condition, or specification of any approved application, plat, plan, or drawing, or violation of a permit or certificate issued or neglected to be obtained under the provisions of this Ordinance.
2. The procedure for enforcement shall follow the provisions set out in RSA 676:15, 17, 17-a, 17-b, as amended, for injunctive relief, fines and penalties, cease and desist orders and local land use citation; pleas by mail. Appropriate measures of enforcement will be taken relative to the violation.

Secs. 17-215—17-220. Reserved

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## ARTICLE XXI

### DEFINITIONS

In the interpretation and enforcement of this Ordinance, all words other than those defined specifically below shall have the meanings implied by their context in this Ordinance or their ordinarily accepted meanings.

#### Sec. 17-221. General Terminology

The word person includes a firm, association, organization, partnership, trust company, or corporation as well as an individual. The word shall is mandatory, the word may is permissive.

The word lot includes the words plot or parcel.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

#### Sec. 17-222. Specific Definitions

##### Abandonment:

The relinquishment of property, or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property. In the case of a nonconforming use of a building, structure or land, that nonconforming use is considered abandonment if the circumstances around the cessation of use are indicative of: (1) an intention to abandon or relinquish the use; and (2) an overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use. A nonconforming use of a building, structure, or land which has ceased for a period of twelve consecutive months shall not be considered temporary and shall not be resumed unless the cessation was involuntary. Replacement by a conforming use shall also constitute abandonment of the nonconforming use.

##### Abutter:

Any person whose property adjoins or is directly across the street or stream from the land under consideration by the land use board. For the purpose of testimony only, and not for the purposes of notification, the term shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.

##### Accessory Use:

A use of land or of a building or portion thereof which is customarily incidental and subordinate to the primary use of the land or building and located on the same lot with the primary use.

Accessory Building:

See "Building, Accessory".

Administrative Officer:

Shall mean the Zoning Officer of the City of Berlin or their designee whose duty it shall be to administer this Ordinance as provided in Article XX of this Ordinance.

Automobile Service Station:

Any building or premises where items such as gasoline, oil, grease, batteries, tires, and automobile accessories may be dispensed at retail, and where, in addition, minor servicing and repair may be made, and cold drinks, candy, tobacco, and similar goods sold as accessory to a principal use. Uses permissible at an automobile service station do not include major mechanical and auto body work, painting, welding, or other work involving noise, glare, fumes or smoke, or automobile storage, or sales areas.

Building:

Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

Building, Accessory:

A building detached from a principal building located on the same lot and customarily incidental and subordinate to that of the primary building, including but not limited to private garages, car-ports and sheds used and/or owned by the occupants of the building to which it is accessory.

Building, Primary:

A building in which the principal use of the lot on which it is located is conducted. A garage or other accessory building is considered to be part of the primary building if it is attached to the primary building.

Building Coverage:

The ratio of the combined horizontal area of all primary and accessory buildings on the lot, measured from the exterior surface of the exterior walls at ground level, to the total lot area.

Building Height:

Building height shall be measured by vertical feet or by number of stories according to the provisions of this Ordinance specific to each zoning district.

1. By vertical feet: The vertical distance measured from the finished grade of the lot to the highest point of the roof above the highest story, excluding chimneys,

ventilators, tanks and other uninhabited accessory features required above the roof (not exceeding 25').

2. By number of stories: Where height is determined by the number of stories in a building, a habitable basement or attic shall be counted as a story, except that a story not containing an independent apartment and located under a sloping roof shall be counted as a half story when the area of the story at a height four feet (4') above the floor does not exceed two-thirds the floor area of the story immediately below it.

#### Building Separation:

The horizontal distance between buildings on the same lot.

#### Campground:

A plot of ground upon which two (2) or more campsites are located, established, or maintained for occupancy by camping units (any tent, trailer, lean-to, recreation vehicle or similar structure) maintained and operated as temporary living quarters for recreation, education, or vacation purposes.

#### Child Care Facility:

1. Group Child Care Center- Class A: A child care agency where care, protection, and supervision are provided, on a regular schedule, at least twice a week to more than twelve (12) children, including children of the adult provider.
2. Group Child Care Center- Class B: A child care agency where care, protection, and supervision are provided, on a regular schedule, at least twice a week to no more than twelve (12) children, including children of the adult provider.
3. Home-Based Child Care Facility: A private residence where care, protection and supervision are provided, for a fee, at least twice a week, for no more than six (6) children at one time, including children of the adult provider.

#### Club- Membership:

An organization catering exclusively to members and their guests, utilizing a premises or building for recreational, educational or athletic purposes, and providing that there are no commercial activities except as required for the membership and purposes of such organization. Such clubs shall include, but are not limited to, country clubs, sports or health clubs and service or fraternal organizations.

#### Community Center:

A building used for recreational, social, educational and cultural activities, open to the public or a designated part of the public, usually owned and operated by a public or nonprofit group or agency.

#### Condominium:

A building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

**Contractors Yard:**

Storage area for a contractor's equipment and materials.

**Crematorium:**

A use to reduce (a dead body) to ashes by the action of fire. It is a use generally associated with funeral establishments or may be a separate use designed for cremation. (Ord. 12-2-2013)

**Deck:**

An uncovered projecting structure adjacent to the front, rear or side of a building, which is elevated above the surface of the ground and gives direct access to or from the building. A deck may have a railing and/or steps.

**Density:**

The number of families, individuals, dwelling units, households or housing structures per unit of land.

1. **Gross Density:** In residential districts, gross density means the number of dwelling units per acre of the total land area included in a project excluding nothing.
2. **Net Density:** In residential districts, net density means the number of dwelling units per acre of the total land area of a project excluding certain areas, such as streets easements or wetlands as defined a particular section of this Ordinance.

**Development:**

The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; and any use or extension of the use of land.

**Drive-thru Service:**

A service that by design, physical facilities, or packaging procedures encourages or permits customers to receive services or obtain goods while remaining in their motor vehicles.

**Dwelling:**

Any building, or portion thereof, which is designed or used exclusively for human habitation, including single-family detached, single family attached, two-family, and multi-family units.

1. **Single-family detached:** A building containing one dwelling unit which is not attached to any other dwelling by any means.

2. Single family attached: A building containing three or more dwelling units, each of which has primary ground floor access to the outside, and which are attached to each other by common vertical walls. Such dwellings include townhouses, row houses, and similar structures.
3. Two-family: A building on a single lot containing two dwelling units sharing a common wall.
4. Multi-family: A building or portion thereof containing three or more dwelling units, including units that are located one over the other. Such dwellings include garden apartments and what is commonly known as apartment buildings.

**Dwelling, Attached:**

A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

**Dwelling, Detached:**

A dwelling that is not attached to any other dwelling by any means.

**Dwelling, Seasonal:**

A building containing a dwelling unit that lacks one or more of the basic amenities or utilities required for all-year or all-weather occupancy. Seasonal dwellings do not include recreational vehicles.

**Dwelling Unit:**

One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with cooking, sleeping, and sanitary facilities provided within the dwelling.

**Enforcement Officer:**

Shall mean the Zoning Officer of the City of Berlin or their designee whose duty it shall be to enforce this Ordinance as provided in Article XX of this Ordinance.

**Family:**

One or more persons, not necessarily related by blood, marriage, adoption, or guardianship, living together in a dwelling unit as a single housekeeping unit representing an intentionally structured relationship, implying a permanent and long-term relationship as opposed to one that is short-term or transient. A family is distinguished from persons occupying a hotel, inn, lodging house, motel, nursing home, or sheltered care facility as herein defined.

**Farm:**

A parcel of land used primarily for the commercial soil-dependent cultivation of agricultural crop-production and/or for the keeping of farm animals.

**Farm Animals:**

Dairy animals, poultry, livestock such as beef cattle, sheep, swine, horses, ponies, mules or goats or any mutations or hybrids thereof, and bees.

**Farm Stand:**

A roadside structure or stand limited to nine hundred (900) square feet in floor area for the seasonal display and sale of farm products, primarily those grown on the premises or on the land of the owner of the farm stand.

**Frontage:**

That portion of a lot bordering a highway or street right of way, usually the side where the main building entrance is located or in the general direction in which the principal building faces. On a corner or through lot, the frontage may be designated by the owner but should be consistent with the orientation of the other lots and improvements on the same side of the street and consistent with the street address of the property.

**Funeral home:**

A building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

**Governmental Use:**

Any use or facility administered by federal, state, or local government entities including, but not necessarily limited to, a library, municipal building, fire station, and similar uses of a civic nature.

**Gross floor area:**

Shall mean the total horizontal area of all floors of a building included between surrounding walls.

**Heavy Industry:**

See "Industry, Heavy".

**Home Occupation:**

Any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the residence dwelling unit. Such occupations will not employ more than two non-resident employees, will involve no more than twenty-five percent (25%) of the gross floor area of the dwelling unit, will not have any exterior storage of materials or equipment, and will not have any display of products visible from the street.

**Hotel:**

A facility open to the general public offering transient lodging accommodations for more than sixteen (16) persons and providing additional services, such as restaurants, meeting rooms, and entertainment. (Ord 9/8/2015)

**Household Pet:**

Animals that are customarily kept for personal use or enjoyment within the home such as domestic dogs, cats, tropical birds, and rodents. Household pets shall not include farm animals.

**Industrial Park:**

A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration to transportation facilities, circulation, parking, utility needs, aesthetics, and compatibility.

**Industrial Use:**

The manufacture, compounding, fabrication, assembly, treatment, processing, packing, or warehousing of materials or products.

**Industry, Heavy:**

A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

**Industry, Light:**

The assembly, manufacture, processing, packaging, or other industrial operations predominantly from previously prepared materials, of finished products or parts, conducted in such manner that all resulting cinders, dust, fumes gas, odors, smoke and vapor are effectively confined to the premises, or disposed of so as to avoid any air pollution and conducted in such a manner that noise, flashing lights and vibrations will not be a nuisance or otherwise detrimental to abutting properties.

**Inn:**

A commercial facility for the housing and feeding of transients.

(For facilities accommodating sixteen (16) persons or less, see "Lodging House", for those accommodating more than sixteen (16) guests, see "Hotel".) (Ord 9/8/2015)

**Junk:**

Any scrap, waste, reclaimable material, or debris, whether or not stored, for sale, or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed, or other use or disposition.

**Junkyard:**

Any area, lot, land, parcel, building, or structure, or part thereof, used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.

**Kennel:**

A commercial establishment in which dogs, cats, or other domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.



#### Laundry Service:

1. Personal: An establishment providing washing, drying or dry-cleaning services for individuals, whether as a paid service or self-service utilizing coin-operated machines.
2. Industrial: An establishment providing washing and drying services for other businesses, as a paid service; considered light industry.

#### Light Industry:

See "Industry, Light".

#### Lodging House:

A building, other than a hotel or motel, in which rooms are rented with or without meals to four (4) or more but not exceeding sixteen (16) persons. The term Lodging House shall include Boarding House, Rooming House, Bed and Breakfast, or other similar accommodation in which rooms are rented to individuals not comprising a family unit. (Ord 9/8/2015)

#### Lot:

A parcel of land occupied or capable of being occupied under this Ordinance by a primary building and any accessory buildings and having frontage upon a private way or street that has been officially approved by the Planning Board or accepted by the City Council.

#### Lot Line:

A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

1. Front: The lot line separating a lot from a street right-of-way.
2. Rear: The lot line opposite and most distant from the front lot line.
3. Side: Any lot line other than a front or rear lot line.

#### Manufactured Housing:

Manufactured housing means any structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. All manufactured housing units sited in the City of Berlin must comply with BOCA and current FHA manufactured home standards and shall not include presite built housing as defined in this Ordinance.

#### Manufactured Housing Park:

A parcel of land designed for the placement of manufactured housing units, with or without a permanent foundation, on individually owned or rented sites with required improvements and utilities and common open space, which may or may not include services and facilities for the residents. A manufactured housing park shall consist of a minimum of ten (10) acres and a maximum of fifty (50) acres.

**Manufactured Housing Subdivision:**

An approved subdivision created by a developer for individual ownership and for the placement, for living purposes, of individually owned single-family manufactured housing units. A subdivision of this type shall consist of a minimum of ten (10) acres.

**Minor Communication Facility:**

Any transmitting antenna site which measures ten percent (10%) or less of NIER threshold levels (550 milliwatts per centimeter square), based on the maximum equipment output measured at the property line and the nearest occupied structure, such facilities may include a cellular telephone antennae or receive-only satellite dish antennae.

**Motel:**

A building or group of detached or connected buildings designed or intended to be used primarily for the providing of sleeping accommodations for transient automobile travelers, with the majority of rooms having direct access to each lodging unit from the outside, or from a common corridor, and with on-site parking for each lodging unit. A tourist court with more than one unit or a motor lodge shall be deemed to be a motel.

**Motor Vehicle Sales and Repair Facility:**

An establishment for the display, sale, and repair of new and used motor vehicles, recreational vehicles, manufactured housing, and boats. No retail sale of gasoline or retail sale of oil except as incidental to the repair facility.

**Neighborhood Grocery Store:**

A pedestrian oriented retail establishment of less than twenty-five hundred (2,500) square feet of sales area intended to serve the neighborhood in which it is located and offering for sale prepackaged food products, household items, newspapers, magazines, sandwiches and other freshly prepared foods for off-premise consumption, but without pumps for the retail sale of petroleum products.

**Nonconforming Structure, Lot, or Use:**

Any structure or lot or the use of any structure or land, which lawfully existed at the time of the enactment of this Ordinance, or any amendments thereto, and by reason of adoption, revision or amendment, fails to conform in whole or in part to the current provisions of this Ordinance

**Nursing Home:**

A residential facility for the provision of extended or short-term care and rehabilitative services primarily for elderly or handicapped individuals or those requiring rehabilitative services, but not providing the range of medical services provided by a hospital.

**Office:**

A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication equipment.

**Pet:**

See "Household Pet".

**Phased Development:**

Development undertaken in a logical time frame and geographic sequence. Each phase must be able to exist as a separate entity if the project does not build out to completion.

**Planned Development:**

An area of land of minimum contiguous size, as specified in this Ordinance, and under unified control to be planned and developed as a whole in a single development or as a phased development. Includes one or more principal and accessory buildings and uses, is built according to plans that include not only streets, circulation ways, utilities, lots and building locations, and the like, but also provisions, operations and maintenance plans of common open space and facilities as required under this development option.

**Porch:**

A covered but unheated projecting structure adjacent to the front, rear or side of a building, which is elevated above the surface of the ground and gives direct access to or from the building. A porch may be screened or have windows and have a railing and/or steps.

**Pre-site built housing:**

Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed, or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development (HUD) minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this Ordinance pre-site built housing shall be treated as a conventional constructed dwelling and shall not include manufactured housing as defined in this Ordinance.

**Primary Building:**

See "Building, Primary".

**Private Garage:**

A structure used for the storage of personal goods with no more than four (4) bays for motor vehicles.

**Public Transportation Facility:**

Any land-based vehicle or transportation facility providing a service for the transport of people, including associated offices, garages, and parking areas. This definition excludes air-based transport.

**Recreation Facility, Commercial-Indoor:**

A business establishment, open to the public for a fee, designed, and equipped for the indoor conduct of sports and leisure time activities such as dance, bowling, skating, swimming, tennis or racket ball, but not including mechanical, electronic or video game arcades.

**Recreational Facility, Public:**

A place designed and equipped for the conduct of sports and leisure time activities which are open to the general public, with or without a fee.

**Recreational Vehicle:**

A vehicular-type portable structure, without a permanent foundation, that can be towed, hauled, or driven, primarily designed as a temporary living accommodation for recreation, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

**Religious Institution or Place of Worship:**

An institution that people attend to participate in or hold religious services, meetings and other activities. Includes parish houses, rectories, and convents.

**Restaurant:**

A retail establishment where food and drink are prepared, served and consumed primarily within the principal building; and where no ordering and pickup of food takes place from a motor vehicle. Restaurants include taverns, cafeterias, lunch rooms and bars, nightclubs and similar establishments. Restaurants or nightclubs which offer music, entertainment, or dancing may require increased parking.

**Restaurant, Fast Food:**

An establishment, characterized by a frequent turn-over in customers, that specializes in quick food service with a limited menu of pre-prepared foods, usually served in disposable containers.

**Restaurant, Drive-Thru:**

An establishment where food and drink are sold to be consumed inside or outside the confines of the restaurant, and where ordering and pick-up of food may take place from a motor vehicle. Drive-thru restaurants may require specific conditions for parking, traffic circulation, and safety.

**Right of Way:**

Means and includes all present and proposed town, state and federal highways and the land on either side of same as covered by statutes to determine the widths of rights of way.

**School:**

Any public or private educational facility including vocational or technical institutions, for the purpose of teaching, educating, or training children or adults. This excludes child care facilities of any kind.

**Secretary of the Planning Board:**  
An employee of the Berlin Planning Department.

**Separation Between Buildings:**  
The distance between buildings on the same lot.

**Setback:**  
The distance between the nearest portion of a building and a lot or a right of way line, whichever is closer (see "Yard").

**Sheltered Care Facility:**  
A nonprofit or for-profit facility for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation.

**Sign:**  
Any display, with one or several sides, of lettering, logos, colors, lights, or illuminated neon tubes visible to the public from outside of a building or from a traveled way, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises, excluding window displays and merchandise. For additional definitions related to signage, see Article XV, Signs.

**Slope:**  
The deviation of a surface from the horizontal, usually expressed in percent or degrees. Slope percent is computed by dividing the vertical distance by the horizontal distance times one hundred (100).

**Special Exception:**  
A use of land or buildings permitted in a particular zoning district when specific provision for such special exception is made in this Zoning Ordinance and subject to the specific conditions as set forth in this Ordinance.

**Special Use Permit:**  
A use permitted, where specified in this Ordinance, only after the Special Use Permit Granting Authority (SUPGA) has reviewed the proposal and determined that the applicant complies with the provisions of this Ordinance.

**Special Use Permit Granting Authority:**  
The City of Berlin Planning Board.

**Street:**

A public right of way established by or maintained under public authority, a private way open for public use, and a private way plotted or laid out for ultimate acceptance as a public street whether or not constructed. "Street" means, relates to and includes street, avenue, boulevard, road, lane, alley, viaduct, highway, freeway, and other ways (RSA 672:13).

**Structure:**

A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. By this definition, all buildings are structures; however, not all structures are buildings.

**Subdivision:**

The division of a lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. In addition, other meanings found in RSA 672:14 are a part of this definition by reference as well.

**Swimming Pool:**

A water-filled enclosure, such as a pool, pond, or open tank, permanently constructed or portable, containing more than twenty-four inches (24") of water at any point, designed, used and maintained for swimming and bathing.

1. Private: Exclusively used by the residents and guests of a single household, a multi-family development, the members and guests of a club, or the patrons of a motel or hotel, without paying a specific pool admission charge.
2. Community: Open to the public and generally operated with a charge for admission.

**Use Setback:**

The distance from one specified use to another.

**Variance:**

A variance is a waiver or relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions unique to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of this Ordinance will result in unnecessary or undue hardship. Each of the following conditions must be found in order for a variance to be legally granted:

1. No diminution of the value of surrounding properties would be suffered;
2. Granting of the variance would be of benefit to the public interest;
3. Denial of the variance would result in unnecessary hardship to the owner seeking it;
4. By granting the variance substantial justice would be done, and
5. The proposed use must not be contrary to the spirit and intent of this Ordinance.

**Veterinary Hospital:**

A building designed for or used in the practice of veterinary medicine dealing with the prevention and treatment of diseases and injuries in animals, especially domestic animals. Boarding of animals is limited to short-term care incidental to the hospital use.

Warehouse:

A building used primarily for the storage of goods and materials.

Yard:

An open space that lies between a building and the nearest lot line.

1. Front: The space extending across the full width of the lot between a building and the front lot line or edge of right of way and measured perpendicular to the building at the closest point to the front lot line or edge of right of way.
2. Rear: The space extending across the full width of the lot between a building and the rear lot line or edge of right of way and measured perpendicular to the building at the closest point to the rear lot line or edge of right of way.
3. Side: A space extending from the front yard to the rear yard between a building and the side lot line or edge of right of way and measured perpendicular to the building at the closest point to the side lot line or edge of right of way.

Yard Sale:

The sale of used and new items, of personal property to the general public, in an indoor or outdoor display, conducted upon a lot as an accessory use and regulated by Section 17-184 of this Ordinance. This term shall also include lawn sales, barn sales, garage sales, porch sales, and flea markets.

Secs. 17-223—17-230. Reserved

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