

APPENDIX B - ZONING

An Ordinance to establish zoning districts and land use regulations governing the incorporated portions in the Village of Berrien Springs, Berrien County, Michigan; to provide for regulations governing nonconforming uses and structures; to provide for a Board of Appeals and its duties and powers; to provide for the administration of this Ordinance including the official whose duty it shall be to enforce the provisions thereof; to provide penalties for the violation of this Ordinance; and, to provide for conflicts with other ordinances or regulations.

Footnotes:

--- (1) ---

Editor's note— *Ord. No. 316, adopted May 19, 2008, has been incorporated herein as appendix A. The style of the ordinance has been maintained. Obvious misspellings have been corrected. The former zoning ordinance, which was contained in ch. 48, has been repealed. Please see ch. 48 for more information.*

Cross reference— *Any ordinance pertaining to rezoning saved from repeal, § 1-13(15); buildings and building regulations, ch. 12; environment, ch. 16; signs, ch. 32; streets, sidewalks and other public places, ch. 36; vegetation, ch. 42; waterways, ch. 46; franchises, App. A.*

State Law reference— *Michigan zoning enabling act, MCL 125.3101 et seq.; Michigan planning enabling act, MCL 125.3801 et seq.*

ARTICLE I - PREAMBLE AND ENACTMENT

WHEREAS, Act 110 of 2006, the Michigan Zoning Enabling Act, empowers this municipality to enact, establish, administer and enforce a Zoning Ordinance, and

WHEREAS, the legislative body of the Village of Berrien Springs deems it necessary, for the purpose of promoting the public health, safety, and general welfare of the Village to enact such an Ordinance, and

WHEREAS, the Village Council has divided the municipality into districts and has prepared regulations pertaining to such districts in accordance with a master land use plan designed to lessen congestion in the streets, to secure safety from fire, panic and other potential dangers; promote health, safety and the general welfare; provide adequate light and air; prevent overcrowding of land; avoid undue concentrations of population; facilitate adequate provision for transportation, water, sewerage disposal, schools, parks and other public improvements, and

WHEREAS, the Village Council has given full and reasonable consideration to the character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality, and

WHEREAS, the Village Council has given due public notice of hearing related to the comprehensive amendment and has held such public hearings as required by law, and

WHEREAS, all requirements of the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, with regard to the preparation of this Ordinance and subsequent action of the Village Council have been met, and

WHEREAS, after careful study of this ordinance the Village Council of Berrien Springs recommends its approval and adoption.

NOW THEREFORE BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF BERRIEN SPRINGS, BERRIEN COUNTY, MICHIGAN, AS FOLLOWS:

ARTICLE II - TITLE AND PURPOSE

Section 2.01 - Title.

This Ordinance shall be known as the "Village of Berrien Springs Zoning Ordinance." and will be referred to herein as this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 2.02 - Purpose.

The fundamental purpose of this Ordinance is to promote the public health, safety, morals and general welfare; to develop and preserve the natural beauty and aesthetic quality of the community to the end that property values may be preserved; to encourage the use of lands in accordance with their character and adaptability; to limit the overcrowding of population; to promote adequate air and light; to lessen congestion on the public and private roads and streets; to reduce hazards to life and property; to facilitate adequate provisions for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public improvements and service; to conform with the most advantageous uses of land, resources and properties within the Village of Berrien Springs, Berrien County, Michigan.

(Ord. No. 316, 5-19-2008)

ARTICLE III - ZONING DISTRICTS AND MAP

Section 3.01 - Division of Village Into Zoning Districts.

For the purpose of this Ordinance, all of the incorporated area of the Village of Berrien Springs, Berrien County, Michigan, is hereby divided into the following Zoning Districts:

R-1A R-1B and R-1C	Single-Family Residential Districts
R-2	Two-Family Residential District
R-3	Multi-Family Residential District
R-4	Group Home Residential District
C-1	Commercial District
C-2	Central Business District
I-1	Industrial District
CD	Cluster Development (overlay) District
PUD	Planned Unit Development (overlay) District
REC	Parks, Recreation and Open Space
FP	Floodplain (overlay) District

(Ord. No. 316, 5-19-2008)

Section 3.02 - Official Zoning Map.

The area assigned to said districts and the boundaries thereof shown upon the map entitled "Zoning District Map of the Village of Berrien Springs" are hereby established, and said map and all proper notations, references and other information shown thereon are hereby made a part of this Ordinance.

The "Official Zoning Map" shall be identified by the signature of the Village President attested to by the Village Clerk under the words: "This is to certify that this is the Official Zoning Map referred to in Section 3.02 of Ordinance 316, of the Village of Berrien Springs, Berrien County, Michigan."

(Ord. No. 316, 5-19-2008; Ord. No. 358, § 2, 9-8-2015)

Section 3.03 - Boundaries of Zoning Districts.

Unless otherwise provided in this Ordinance, the boundaries of Zoning Districts shall be interpreted as following along section lines, or lines of customary subdivision of such section; or the right-of-way line of highways, streets, alleys or property lines on record at the office of the Register of Deeds of Berrien County as of the date of enactment of this Ordinance.

All zoning district lines shall commence at the edge of the highway or street right-of-way when measuring the depth of the district and as far as possible, all district lines shall run parallel to the street or highway right-of-way lines.

(Ord. No. 316, 5-19-2008)

Section 3.04 - Changes to the Zoning Map.

If, in accordance with the provisions of this Ordinance, amendments are made changing the district boundaries or other matter portrayed by the Official Zoning Map, such changes must be made on the Official Zoning Map, together with an entry made thereon as follows: "On this ___ day of _____ 200-, by official action of the Village of Berrien Springs (Ordinance Number ___), the following changes were made on the Official Zoning Map: (a brief description of the nature of the change must be inserted)" which entry must be signed by the Village President and attested to by the Village Clerk and must be made promptly after such amendment has been approved by the Village Council.

No changes of any nature may be made on the Official Zoning Map or matter shown thereon except in conformity with the procedure set forth in this Ordinance. Any unauthorized changes of whatever kind, by any person or persons, will be considered a violation of this Ordinance and punishable as provided in this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 3.05 - Official Map—Final Authority.

The Official Zoning Map is the final authority as the current status of the land and water areas, buildings and other structures of the Village, regardless of the existence of purported copies of the Official Zoning Map which may from time to time be published.

(Ord. No. 316, 5-19-2008)

Section 3.06 - Interpretation of District Boundaries.

If uncertainty as to the boundary of any district shown on the Zoning Map, the Board of Appeals shall determine the location of such boundaries according to the rules for interpretation of district boundaries established in this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 3.07 - Annexed Lands.

Any land annexed to or consolidated into the Village will be classified as R-1B until reclassified by an amendment to this Ordinance, unless annexed into the Village pursuant to P.A. 171 of 1958, as amended, providing for the transfer of the current zoning classification.

(Ord. No. 316, 5-19-2008)

ARTICLE IV - R-1A, R-1B AND R-1C SINGLE FAMILY RESIDENTIAL DISTRICTS

Section 4.01 - Intent.

The Single Family Residential District is planned as the prime residential area principally for the location of owner occupied single family dwellings and certain other compatible accessory use buildings, structures and land uses. The R-1B and R-1C District designations is granted to lots that have been platted and recorded prior to the adoption of the Zoning Ordinance Amendment Number 195, having a lot frontage width less than ninety (90) feet. The R-1A designation applies to all lots created after the date of the adoption of this Ordinance and requires that a lot have a minimum lot frontage width be ninety feet or more.

(Ord. No. 316, 5-19-2008)

Section 4.02 - Uses Permitted by Right.

No building, structure, or part thereof shall be erected, altered or used, or land used, in whole or in part, except for the following permitted uses:

- A. Owner occupied single-family dwelling and accessory use buildings and structures on a zoning lot.
- B. Rental occupied single family dwellings when such units are registered with the Village President as required by Ordinance 311, "The Village of Berrien Springs, Rental Housing Ordinance."^[2]
- C. Publicly owned and operated parks and accessory buildings.
- D. Minor home occupations within a single-family permitted principal use (See Article XX).
- E. An essential service as defined in this Ordinance.

(Ord. No. 316, 5-19-2008)

Footnotes:

--- (2) ---

Note— Rental can only be to a single family. See the definition of "Family" under Article XXVII.

Section 4.03 - Uses Permitted by Special Use Permit.

The following uses are permitted in this district subject to obtaining a special use permit as provided in Article XIX.

- A. Major home occupations permitted within a single-family home or accessory building (See Article XX.)
- B. Child Care as part of a home occupation.
- C. Bed and breakfast operations in compliance with Article XVI, Section 16.02.
- D. Schools, churches, Village or other government agency buildings.
- E. Wind energy generation equipment and utility transmission facilities not deemed an essential service.

(Ord. No. 316, 5-19-2008)

Section 4.04 - Accessory Buildings and Structures.

Accessory buildings or structures defined in Article XXVII, customarily incidental to uses herein permitted may not be erected, altered or used in this district except in conformity with the yard requirements set forth in Article IV, Section 4.09.

(Ord. No. 316, 5-19-2008)

Section 4.05 - Signs Permitted.

Signs permitted in the R-1A, R-1B and R-1C Residential Districts shall conform to the provisions of Article XVIII.

(Ord. No. 316, 5-19-2008)

Section 4.06 - Parking Requirements.

Off-street parking shall be provided in conformance with Article XVII.

(Ord. No. 316, 5-19-2008)

Section 4.07 - Visual Screening Requirements.

An adequate visual blockage screen between any outdoor storage area and the side or rear yard lot line shall be required. This visual blockage shall be no less than six (6) feet in height.

(Ord. No. 316, 5-19-2008)

Section 4.08 - Building Height Regulations.

No residential building or structure shall exceed two and one-half (2½) stories or exceed thirty-five (35) feet in height.

(Ord. No. 316, 5-19-2008)

Section 4.09 - Yard, Setback and Lot Area Regulations.

No principal or accessory use building or structure, nor any enlargement thereof, shall be hereafter erected except in conformance with the following yard, lot area, and width requirements:

- A. Front Yard: There shall be a front yard of no less than twenty-five (25) feet, provided where there are existing buildings or structures having front yards less than twenty-five (25) feet in depth, the Zoning Administrator may approve a setback equal to the average depth of previously constructed buildings located within two hundred (200) feet on either side of the building proposed to be erected.
- B. Side Yard: There shall be a side yard so located that the side yard on each side of the building shall not be less than eight (8) feet in width measured from the side lot line to nearest point on any part of the structure erected

thereon, including overhang of roof eaves.

Side Yard Public Street Frontage Setback: The side yard shall be not less than twenty (20) feet.

- C. *Rear Yard:* There shall be a rear yard of no less than twenty-five (25) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.
- Accessory Use Rear Yard: There shall be a rear yard for all accessory use buildings and structures including (e.g. garages, play structures, storage sheds, etc.) of no less than eight (8) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.
- D. *Lot Area:* The minimum lot area shall be as follows:
- R-1A Zoning District - 11,100 square feet ^(a)
 - R-1B Zoning District - 8,200 square feet ^(a)
 - R-1C Zoning District - 6,200 square feet ^(a)
- E. *Lot Width:* The minimum width shall be as follows:
- R-1A Zoning District - 90 feet ^(a)
 - R-1B Zoning District - 66 feet ^(a)
 - R-1C Zoning District - 50 feet ^(a)
- F. *Maximum Lot Coverage of All Buildings and Structures:* The maximum lot coverage shall be as follows:
- R-1A Zoning District - 35% ^(b)
 - R-1B Zoning District - 40% ^(b)
 - R-1C Zoning District - 40% ^(b)
- G. *Other Requirements:* See Section 15.10 pertaining to corner lots for further requirements.

Notes to dimensions:

^a A maximum variance of ten (10) percent may be granted in the lot size or width by the Zoning Board of Appeals, so long as a variance in one does not create a variance in the other larger than ten (10) percent.

^b Excluding garages and/or carports.

(Ord. No. 316, 5-19-2008)

Section 4.10 - Area of Dwelling.

Every single-family dwelling in the R-1A Zoning District shall have a first floor area of no less than one thousand (1,000) square feet and in the R-1B and R-1C Zoning District have a first floor area of no less than eight hundred (800) square feet. Each dwelling unit in this district shall also have a front building dimension of not less than thirty-three (33) feet measured at the foundation. The minimum front building dimension shall be maintained not less than thirty-three (33) percent of the length of the longest building side wall.

(Ord. No. 316, 5-19-2008)

ARTICLE V - R-2 TWO-FAMILY RESIDENTIAL DISTRICT

Section 5.01 - Intent.

The Two-Family Residential District is planned as the prime residential area for the placement of attached duplex and other two-family residential dwellings and certain other compatible accessory use buildings, structures and land uses.

(Ord. No. 316, 5-19-2008)

Section 5.02 - Uses Permitted by Right.

No building, structure, or part thereof shall be erected, altered or used, or land used, in whole or in part, except for the following permitted uses:

- A. One owner occupied single or two-family dwelling and accessory use buildings on a zoning lot.
- B. Rental occupied single or two-family occupied dwellings when such units are registered with the Village President as required by Ordinance 311, "The Village of Berrien Springs, Rental Housing Ordinance." ^[3]
- C. Minor home occupations within a single-family permitted principal use (See Article XX).
- D. Publicly owned and operated parks and accessory buildings.
- E. An essential service as defined in this Ordinance.

(Ord. No. 316, 5-19-2008)

Footnotes:

--- (3) ---

Note— Rental can only be to a single family. See the definition of "Family" under Article XXVII

Section 5.03 - Uses Permitted by Special Use Permit.

The following uses are permitted in this district subject to obtaining a special use permit as provided in Article XIX.

- A. Major home occupations permitted within a single-family home or accessory building (See Article XX).
- B. Child Care as part of a home occupation.
- C. Bed and breakfast operations in compliance with XVI, Section 16.02.
- D. Schools, churches, Village or other government agency buildings.
- E. Wind energy generation equipment and utility transmission facilities not deemed an essential service.

(Ord. No. 316, 5-19-2008)

Section 5.04 - Accessory Buildings and Structures.

Accessory buildings or structures defined in Article XXVII, customarily incidental to uses herein permitted may not be erected, altered or used in this district except in conformity with the yard requirements set forth in Article V, Section 5.09.

(Ord. No. 316, 5-19-2008)

Section 5.05 - Signs Permitted.

Signs permitted in the R-2 Residential District shall conform to the provisions of XVIII.

(Ord. No. 316, 5-19-2008)

Section 5.06 - Parking Requirements.

Off-street parking shall be provided in conformance with Article XVII.

(Ord. No. 316, 5-19-2008)

Section 5.07 - Visual Screening Requirements.

An adequate visual blockage screen between any outdoor storage area and the side or rear yard lot line shall be required. This visual blockage shall be no less than six (6) feet in height.

(Ord. No. 316, 5-19-2008)

Section 5.08 - Building Height Regulations.

No residential building or structure shall exceed two and one-half (2½) stories or exceed thirty-five (35) feet in height.

(Ord. No. 316, 5-19-2008)

Section 5.09 - Yard, Setback and Lot Area Regulations.

No principal building or structure, nor any enlargement thereof, shall be hereafter erected except in conformance with the following yard, lot area, and width requirements:

- A. *Front Yard:* There shall be a front yard of no less than twenty-five (25) feet, provided where there are existing buildings or structures having front yards less than twenty-five (25) feet in depth, the Zoning Administrator may approve a setback equal to the average depth of previously constructed buildings located within two hundred (200) feet on either side of the building proposed to be erected.
- B. *Side Yard:* There shall be a side yard so located that the side yard on each side of the building shall not be less than eight (8) feet in width measured from the side lot line to nearest point on any part of the structure erected thereon, including the overhang of roof eaves.
Side Yard Street Frontage Setback: The side yard shall be not less than twenty (20) feet.
- C. *Rear Yard:* There shall be a rear yard of no less than eight (8) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.
Accessory Use Rear Yard: There shall be a rear yard for all accessory use buildings and structures including (e.g., garages, play structures, storage sheds, etc.) of no less than eight (8) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.
- D. *Lot Area:* The minimum lot area shall be eight thousand two hundred (8,200) square feet. ^(a)
- E. *Lot Width:* The minimum width shall be sixty-six (66) feet. ^(a)
- F. *Maximum Building Lot Coverage:* The maximum lot coverage shall not exceed forty (40) percent. ^(b)
- G. *Other Requirements:* See Section 15.10 pertaining to corner lots for further requirements.

Notes to dimensions:

^a A maximum variance of ten (10) percent may be granted in the lot size or width by the Zoning Board of Appeals, so long as a variance in one does not create a variance in the other larger than ten (10) percent.

;sup\sup;; Excluding garages and/or carports.

(Ord. No. 316, 5-19-2008)

Section 5.10 - Area of Dwelling.

Every single-family dwelling located in the Two-Family Residential District shall have a first floor area of no less than eight hundred (800) square feet. Each dwelling unit in this district shall also have a front building dimension of not less than thirty-three (33) feet measured at the foundation. The minimum front building dimension shall be maintained not less than thirty-three (33) percent of the length of the longest building side wall.

(Ord. No. 316, 5-19-2008)

ARTICLE VI - R-3 MULTI-FAMILY RESIDENTIAL DISTRICT

Section 6.01 - Intent.

The Multi-Family Residential District is planned as the residential area for the erection of attached multi-family dwellings and certain other compatible accessory use buildings, structures and land uses. All rental units shall be registered with the Village President as required by Ordinance 301 "The Village of Berrien Springs, Rental Housing Ordinance."

(Ord. No. 316, 5-19-2008)

Section 6.02 - Uses Permitted by Right.

No building, structure, or part thereof shall be erected, altered or used, or land used, in whole or in part, except for the following permitted uses:

- A. One, or more, buildings or structures containing two, or more, dwelling units on a zoning lot.
- B. Minor home occupations within a single-family permitted principal use (See Article XX).
- C. Publicly owned and operated parks and accessory buildings.
- D. An essential service as defined in this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 6.03 - Uses Permitted by Special Use Permit.

The following uses are permitted in this district subject to obtaining a special use permit as provided in Article XIX.

- A. Major home occupations permitted within a single-family home or accessory building (See Article XX.)
- B. Schools, churches, Village or other government agency buildings.
- C. Wind energy generation equipment and utility transmission facilities not deemed an essential service.

(Ord. No. 316, 5-19-2008)

Section 6.04 - Accessory Buildings and Structures.

Accessory buildings or structures defined in Article XXVII, customarily incidental to uses herein permitted may not be erected, altered or used in this district except in conformity with the yard requirements set forth in Article VI, Section 6.09.

(Ord. No. 316, 5-19-2008)

Section 6.05 - Signs Permitted.

Signs permitted in the R-3 Residential District shall conform to the provisions of Article XVIII.

(Ord. No. 316, 5-19-2008)

Section 6.06 - Parking Requirements.

Off-street parking shall be provided in conformance with Article XVII.

(Ord. No. 316, 5-19-2008)

Section 6.07 - Visual Screening Requirements.

An adequate visual blockage screen between any outdoor storage area in the side or rear yard lot line shall be required. This visual blockage shall be no less than six (6) feet in height.

(Ord. No. 316, 5-19-2008)

Section 6.08 - Building Height Regulations.

No residential building or structure shall exceed three (3) stories or exceed forty (40) feet in height.

(Ord. No. 316, 5-19-2008)

Section 6.09 - Yard, Setback and Lot Area Regulations.

No principal building or structure, nor any enlargement thereof, shall be hereafter erected except in conformance with the following yard, lot area, and width requirements:

- A. *Front Yard:* There shall be a front yard of no less than twenty-five (25) feet, provided where there are existing buildings or structures having front yards less than twenty-five (25) feet in depth, the Zoning Administrator may approve a setback equal to the average depth of previously constructed buildings located within two hundred (200) feet on either side of the building proposed to be erected.
- B. *Side Yard:* There shall be a side yard so located that the side yard on each side of the building shall not be less than eight (8) feet in width measured from the side lot line to nearest point on any part of the structure erected thereon, including overhang of roof eaves.
Side Yard Street Frontage Setback: The side yard shall be not less than twenty (20) feet.
- C. *Rear Yard:* There shall be a rear yard of no less than eight (8) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.
Accessory Use Rear Yard: There shall be a rear yard for all accessory use buildings and structures including (e.g., garages, play structures, storage sheds, etc.) of no less than eight (8) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.
- D. *Lot Area:* The minimum lot area shall be two thousand four hundred (2,400) square feet for each dwelling unit.
- E. *Lot Width:* The minimum width shall be ninety (90) feet.
- F. *Maximum Building Lot Coverage:* The maximum lot coverage shall not exceed fifty (50) percent.

G. *Other Requirements:* See Section 15.10 pertaining to corner lots for further requirements.

Notes to dimensions:

^a Minimum side yard requirements increases by two (2) feet for each story over two (2).

;sup\sup; Excluding garages and/or carports.

(Ord. No. 316, 5-19-2008)

Section 6.10 - Area of Dwelling.

Every dwelling unit in the Multi-Family Residential District shall have a floor area of no less than four hundred (400) square feet and floor area requirements for rental occupied living units located within a multi-unit structure shall comply with the minimum room and living unit size requirements of the Michigan Construction Code.

(Ord. No. 316, 5-19-2008)

ARTICLE VII - CD CLUSTER RESIDENTIAL DEVELOPMENT DISTRICT (OPEN SPACE PRESERVATION)

Footnotes:

-- (4) --

State Law reference— *Open space preservation, MCL 125.3506.*

Section 7.01 - Intent.

The Cluster Residential Development (overlay) District is an alternative development process from the traditional zoning regulations governing residential development as authorized by Section 506 of the Michigan Zoning Enabling Act, P.A. 110 of 2006. Specifically, the Article provides the option for a developer or land owner to develop the same number of dwelling units as authorized by the underlying zoning district regulation on eighty (80) percent, or less (at the discretion of the local municipality), of the property where such undeveloped portion of the property is dedicated as open space in perpetuity.

(Ord. No. 316, 5-19-2008)

Section 7.02 - Open Space Defined.

Open space for the terms of this Ordinance is defined as land other than streets, roads, driveways, parking areas, building lots, landscaped yard areas immediately surrounding building and structures and any other portion of the property not left in (or restored) with natural vegetative cover greater that twenty-five (25) feet wide and running continuous and contiguous throughout the proposed cluster development, except for the crossing of streets, roads and walkways.

(Ord. No. 316, 5-19-2008)

Section 7.03 - Relationship to Underlying Zoning Regulations.

The Cluster Residential Development (overlay) District option for land development is allowable for use on any vacant and undeveloped parcel of land located within an R-1A, R-1B, R-1C and R-3 Residential Zoning District having minimum of two (2) acres of land area.

A. *Uses Permitted by Right and Special Use Permit.* Any use permitted by right and any use allowable by the terms

of the underlying zoning district in which the property is located for which a special use permit is issued in accord with the terms of this ordinance.

- B. *Applicable Gross Density.* The gross density of development of the subject property shall be determined by dividing the minimum lot size required by the underlying zoning district in which the property is located into the gross square feet of the property to be developed; mathematically rounded upward to the higher whole number.
- C. *Setback, Lot Frontage and Building Height Provisions.* All cluster developments shall provide a front, rear and side yard setback around the perimeter of the property line equal to or greater than the minimum requirements of the underlying zoning district in which the property is located. The lot frontage of the cluster development shall (unless varied by the Board of Appeals) conform to the minimum lot frontage requirement of the underlying zoning district in which the property is located. Building height requirements shall conform to the requirement of the underlying zoning district in which the property is located.
- D. *Public Water and Wastewater Requirements.* No cluster development shall be approved which does not provide public water and wastewater service to all habitable buildings and structures.

(Ord. No. 316, 5-19-2008)

Section 7.04 - Site Plan and Rezoning Approval Requirements.

An application for cluster development approval shall be accompanied with a site plan which shall be processed in accordance with Article XXI. Approval of a cluster development is a rezoning of the subject property designating the property as an Cluster Development (overlay) District.

(Ord. No. 316, 5-19-2008)

Section 7.05 - Plat of Subdivision or Condo Subdivision Plan (Exhibit C) Requirement.

All cluster developments shall be recorded as a Plat of Subdivision pursuant to the Michigan Land Division Act, P.A. 87 of 1997, as amended (formally the Michigan Subdivision Control Act) or as a Subdivision Plan (Exhibit C to the Master Deed) pursuant to the requirements of the Michigan Condominium Act, P.A. 59 of 1978, as amended.

(Ord. No. 316, 5-19-2008)

State Law reference— Condominium act, MCL 559.101 et seq.; land division act, MCL 560.101 et seq.

Section 7.06 - Permanent Open Space Requirements.

Permanent open space, for the terms of this Ordinance, shall mean permanently undeveloped by means of a conservation easement, plat dedication, restrictive covenant or other legal means that runs with the land, in a form acceptable to the Village Council. In acceptance of the plat/plan of subdivision, pursuant to the Michigan Land Division or Condominium Act, the Village Council shall consider the form of management and maintenance of the open space and apply such conditions to the approval of the Plat of Subdivision or Plan of Subdivision to assure that such open space shall be properly managed and maintained in perpetuity and that the conservation easement, deed restrictions or condominium dedication shall be adequately monitored and enforced by the organization or entity holding title to the easement or property rights of the designated open space.

(Ord. No. 316, 5-19-2008)

Section 7.07 - Incentive Bonus Density for Increased Open Space.

The Village Council may approve upon request by the developer and upon finding the proposed plan increases the amount of open space beyond twenty (20) percent of the total lot area, and when such increase complies with the standards for a Special Land Use found in Article XI, Section 19.03, subparagraph 1 increase in the number of units allowable by the terms of the underlying zoning district. The increase in the number of units shall not exceed fifty (50) percent of the gross density, the total number of units allowable by the terms of the underlying zoning district.

(Ord. No. 316, 5-19-2008)

Section 7.08 - Variances Due to Unique Site Conditions.

Upon a finding by the Village Council that a particular property proposed for development as a cluster development has significant natural features; specifically topography, plant and/or animal habitat, wetlands, the Village Council may recommend the strict terms of this section of the Ordinance be waved by the Board of Appeals for the purpose of protecting and preserving the unique and significant natural features of the property.

(Ord. No. 316, 5-19-2008)

Section 7.09 - Zoning Map Designation.

Upon approval of a Cluster Development pursuant to this Article, the Village Clerk shall indicate the subject property on the Official Zoning Map as a Cluster Development (overlay) District by designating the property "CD" and including the data of the rezoning approval in the record of maps amendments.

(Ord. No. 316, 5-19-2008)

ARTICLE VIII - R-4 GROUP HOME RESIDENTIAL DISTRICT

Section 8.01 - Intent.

The intent of this district is to provide a special zoning district and approval process for the location of student and other group home dwelling units. Certain group homes including "family day-care" and "group day-care" homes are expressly allowed in the R-1A, R-1B, R-1C, R-2 and R-3 residential zoning districts for residential facilities that house no more than six (6) residents, pursuant to the requirements of the Michigan Zoning Enabling Act, P.A. 110 of 2006, Section 206 (MCL 125.3206). Facilities that provide care or treatment of persons being released from, or are assigned, by correctional institutions, or any group home including "family day-care" and "group day-care" homes housing more than six (6) residents shall not be permitted in the R-1A, R-1B, R-1C, R-2 or the R-3 residential zoning district; however, the Village Council may recommend other suitable locations for the rezoning of land for such purposes in any C-1 Commercial zoning district. Student housing and other group homes and adult foster care facilities that house more than six (6) residents shall only be allowed in the R-4 district.

(Ord. No. 316, 5-19-2008)

Section 8.02 - State License Required.

Operators of any licensable facility must present to the Zoning Administrator a copy of the applicable license when such facility must be licensed by the Michigan Department of Independent Family Living, the Michigan Department of Public Health or any other regulating agency prior to processing the rezoning of any property to the R-4 Group Home Residential Zoning District classification.

(Ord. No. 316, 5-19-2008)

Section 8.03 - Standards for Approval.

The following standards for approval are applicable to all requests for all R-4 Group Home rezoning:

- A. The site meets the minimum site size requirement of the current zoning district in which the property is located if the facility is designed to house no more than six (6) residents and, if designed to house more than (6) residents, in addition to meeting the minimum site size requirement of the current zoning district in which the property is located, at minimum, an additional three thousand (3,000) square feet of lot area for each resident over six (6).
- B. The existing or proposed building meets the minimum square footage requirements for the current zoning district in which the site is located and, in addition thereto, if the building or structure is designed to house more than six (6) residents, there is a total of a total of 150 additional square feet of useable building floor area for each resident dedicated for recreational, dining, and sleeping purposes.
- C. No approval for a R-4 Group Home Residential District shall be granted for any facility housing more than six (6) residents located within a one thousand five hundred (1,500) feet of any previously approved R-4 Group Home Residential District.
- D. Building height, yard setback, parking, visual screening, accessory buildings and structures, and sign requirements shall comply with the requirements of the current zoning district regulations of the zoning district designation prior to the rezoning of the property to the R-4 Group Home Residential District.

(Ord. No. 316, 5-19-2008)

Section 8.04 - Site Plan and Rezoning Approval Requirements.

An application for a Group Home Residential District approval shall be accompanied with a site plan which shall be processed in accordance with Article XXI. Approval of a R-4 Group Home Residential Home District is a rezoning of the subject property.

(Ord. No. 316, 5-19-2008)

Section 8.05 - Abandonment of Use and Rezoning.

Upon the abandonment of a group home operation, the Village Council may upon it own motion, take action to rezone the property to the zoning district classification the property was designated prior to its rezoning to the R-4 Group Home Residential District classification.

(Ord. No. 316, 5-19-2008)

ARTICLE IX - REC - PARKS, RECREATION AND OPEN SPACE DISTRICT

Section 9.01 - Intent.

The intent of this district is designed to identify specific land areas in the Village in which public and private park and recreation activities can be enjoyed by both residents and visitors alike. Such uses shall include but not be limited to camping facilities, recreational and cultural buildings and facilities, outdoor education and ecological buildings/facilities, athletic/sports

parks, child playgrounds, permanent preserved open space, etc., operated by the Village, a not-for-profit organization or a for profit private business entity as may now exist or be created in the future.

(Ord. No. 316, 5-19-2008)

Section 9.02 - Principal Uses Permitted.

1. Commercial, semi-public or private recreational facilities such as camping grounds, recreational camping/lodging vehicle developments as parks for lease or for sale developments, (including site condominiums), membership clubs such as or tennis clubs, golf courses, riding academies, stables, and other similar non-motorized recreational uses
2. Private noncommercial recreational areas including institutional and community recreation centers.
3. Preserved open space properties pursuant to a legally enacted conservation easement or other legal dedication instrument recorded with the County Register of Deeds.
4. Other park and recreation land and facilities, such as but not limited to, athletic/sports parks, child playgrounds, etc.
5. Public, semi-public or private nature preserves, museums and libraries.
6. Accessory structures and uses including wind energy generation equipment that are customarily and incidental to the above permitted uses.

(Ord. No. 316, 5-19-2008)

Section 9.03 - Approvals.

Any development in this district shall be approved pursuant to Article XXI - Site and Facade Plan Review, specifically the provision of Section 21.02 for new developments. Any development shall maintain a minimum of a twenty-five (25) foot front, front, side and rear yard setbacks from any adjacent property either used for residential purposes or zoned for any residential use.

It is the expressed intent of any development within this district to be regulated by the site plan approved by the Village Council.

(Ord. No. 316, 5-19-2008)

Section 9.04 - Area and Bulk Requirements.

There are no specific minimum lot size, bulk, density, or other dimensional requirements for this district other than the perimeter yard setback requirements noted in Section 9.03 and a maximum building height requirement of 2½ stories and 35 feet in building height.

(Ord. No. 316, 5-19-2008)

ARTICLE X - C-1 COMMERCIAL DISTRICT

Section 10.01 - Intent.

The Commercial District is established as a district in which the principal use of land is for mercantile establishments of all types, personal service establishments, eating and drinking establishments, professional and other business offices, offices of governmental institutions (including schools and municipal buildings), churches etc., and all other similar uses that rely upon street/road frontage and site access that accesses on-site parking.

(Ord. No. 316, 5-19-2008)

Section 10.02 - Uses Permitted By Right.

Land, buildings or structures in this zoning district may be used for the following purposes only:

- A. Retail, personal service and related commercial establishments; retail gasoline sales facilities; restaurants; professional service and other offices; assembly halls of schools, churches and other organizations; financial institutions, including automated teller machines; group homes, including nursing, child and adult foster care facilities not elsewhere regulated; florist and greenhouse commercial businesses; funeral homes; furniture stores; village/township, school and other government buildings; bed & breakfast operations; lodges, fraternal, labor and social organizations, and accessory uses as regulated hereafter.
- B. Other uses when determined to be similar and compatible with the intent of the zoning district by the Village Council.
- C. An essential service as defined by this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 10.03 - Uses Permitted by Special Use Permit.

The following uses are permitted in this district subject to obtaining a special use permit as provided in Article XIX.

- A. Utility transmission facilities not deemed an essential service.
- B. Residential living units when incorporated within the second story of the principal building or structure meeting the minimum room size requirements of the Michigan Construction Code.
- C. Motels, hotels and other lodging facilities, except bed and breakfast operations allowed by Section 10.02, subparagraph A.
- D. Theaters and any other business offering entertainment of any type, except sexually orientated businesses regulated by Article XII, Section 12.02.
- E. Any festivals and/or events including, fairs, outdoor dances, temporary displays, circuses and other similar activities including the provision of food and beverages for consumption on premises provided such food operations and facilities meet the requirements of the Berrien County Health Department that are conducted by private businesses or not-for-profit organizations on private (or public property with permission granted by the Village Council) designed to be temporary in nature, that being less than fourteen (14) days in duration.
- F. The outdoor display or sale of any good or products, including agricultural produce.
- G. Wind energy generation equipment and utility transmission facilities not deemed an essential service.
- H. Any business possessing any kind of off-premises liquor license or on-premises liquor license as further defined in chapter 6 entitled "alcoholic liquor".

(Ord. No. 316, 5-19-2008; Ord. No. 351, § 1, 10-6-2014)

Section 10.04 - Uses Excluded.

No junk yard, recycling operation or business involving livestock, or business likely to create detrimental noise, odors, fumes, radiation or vibration, as determined by the Village Council shall be located or operated in this district.

(Ord. No. 316, 5-19-2008)

Section 10.05 - Accessory Buildings and Structures.

Accessory buildings or structures defined in Article XXVII, customarily incidental to uses herein permitted may not be erected, altered or used in this district except in conformity with the yard and lot requirements of this district.

(Ord. No. 316, 5-19-2008)

Section 10.06 - Signs Permitted.

Signs permitted in the C-1 Commercial District shall conform to the provisions of Article XVIII.

(Ord. No. 316, 5-19-2008)

Section 10.07 - Parking Requirements.

Off-street parking shall be provided in conformance with Article XVII.

(Ord. No. 316, 5-19-2008)

Section 10.08 - Visual Screening Requirements.

Every commercial lot or parcel of land that abuts a lot or parcel of land zoned for residential purposes must provide an adequate visual blockage screen between the commercial and residential lot or parcel of land. This visual blockage shall be no less than six (6) feet in height, in accord with Article XVI, Section 16.05.

(Ord. No. 316, 5-19-2008)

Section 10.09 - Building Height Regulations.

No commercial building or other buildings or structures shall not exceed two and one-half (2½) stories or exceed thirty-five (35) feet in height.

(Ord. No. 316, 5-19-2008)

Section 10.10 - Yard, Setback and Lot Area Requirements.

No principal or accessory use building or structure, nor any enlargement thereof, shall be hereafter erected except in conformance with the following yard, lot area, and width requirements:

- A. *Front Yard:* There shall be a front yard of no less than twenty-five (25) feet, measured from the edge of the public or private highway or street right-of-way line. Where there are existing buildings or structures having front yards less than twenty-five (25) feet in depth within two hundred (200) feet on either side of the building proposed to be erected, the Zoning Administrator shall approve a setback equal to the average depth of previously constructed buildings located within two hundred (200) feet on either side of the building proposed to be erected.
- B. *Side Yard:* There shall be a side yard so located that the side yard on each side of the building shall not be less than five (5) feet in width measured from the side lot line to nearest point on any part of the structure erected thereon, including the overhang of roof eaves. If the property abuts a residential district the setback shall be eight (8) feet.
- C. *Rear Yard:* There shall be a rear yard of no less than five (5) feet, unless altered due to practical difficulties related

to the size or configuration of the zoning lot as determined by the Board of Appeals. If the property abuts a residential district the setback shall be seven (7) feet.

Accessory Use Rear Yard: There shall be a rear yard for all accessory use buildings and structures including (e.g. garages, play structures, storage sheds, etc.) of no less than five (5) feet, unless altered due to practical difficulties related to the size or configuration of the zoning lot as determined by the Board of Appeals.

- D. *Lot Area:* The minimum lot area shall be eleven thousand two hundred (11,200) square feet.
- E. *Lot Width:* The minimum width shall be one hundred (100) feet.
- F. *Maximum Lot Coverage of All Buildings and Structures:* The maximum lot coverage shall not exceed fifty (50) percent.

(Ord. No. 316, 5-19-2008)

ARTICLE XI - C-2 CENTRAL BUSINESS DISTRICT

Section 11.01 - Intent.

The Central Business District is established as a district in which the principal use of land is for mercantile establishments of all types, personal service establishments, eating and drinking establishments, professional and other business offices, offices of governmental institutions (including schools and municipal buildings), churches, etc., including residential living units not located on the ground floor where such businesses are not required to provide front or side yards nor are required to provide on-site parking, the latter being provided by public parking either on-street or within Village owned off-street parking facilities.

(Ord. No. 316, 5-19-2008)

Section 11.02 - Uses Permitted by Right.

Land, buildings or structures in this zoning district may be used for the following purposes only:

- A. Retail, personal service and related commercial establishments; restaurants; professional service and other offices; assembly halls of schools, churches and other organizations; financial institutions, including automated teller machines; group homes, including nursing, child and adult foster care facilities not elsewhere regulated; florist and greenhouse commercial businesses; funeral homes; furniture stores; village/township, school and other government buildings; bed & breakfast operations; lodges, fraternal, labor and social organizations, and accessory uses as regulated hereafter.
- B. Second (and above) story dwelling units meeting the minimum room size requirements of the Michigan Construction Code.
- C. Other uses when determined to be similar and compatible with the intent of the zoning district by the Village Council.
- D. An essential service as defined by this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 11.03 - Uses Permitted by Special Use Permit.

The following uses are permitted in this district subject to obtaining a special use permit as provided in Article XIX.

- A. Utility transmission facilities not deemed an essential service.

- B. Motels, hotels and other lodging facilities, excluding bed and breakfast operations allowed by Section 11.02, subparagraph A.
- C. Theaters and any other business offering entertainment of any type except sexually orientated businesses regulated by Article XII, Section 12.02.
- D. Any festivals and/or events including, fairs, outdoor dances, temporary displays, circuses and other similar activities including the provision of food and beverages for consumption on premises provided such food operations and facilities meet the requirements of the Berrien County Health Department that are conducted by private businesses or not-for-profit organizations on private (or public property with permission granted by the Village Council) designed to be temporary in nature, that being less than fourteen (14) days in duration.
- E. The outdoor display or sale of any good or products, including agricultural produce.
- F. Wind energy generation equipment and utility transmission facilities not deemed an essential service.
- G. Any business possessing any kind of off-premises liquor license or on-premises liquor license as further defined in chapter 6 entitled "alcoholic liquor".

(Ord. No. 316, 5-19-2008; Ord. No. 352, § 1, 10-6-2014)

Section 11.04 - Uses Excluded.

No junk yard, recycling operation or business involving livestock, or business likely to create detrimental noise, odors, fumes, radiation or vibration, as determined by the Village Council shall be located or operated in this district.

(Ord. No. 316, 5-19-2008)

Section 11.05 - Accessory Buildings and Structures.

Accessory buildings or structures defined in Article XXVII, customarily incidental to uses herein permitted may not be erected, altered or used in this district except in conformity with the yard and lot requirements of this district.

(Ord. No. 316, 5-19-2008)

Section 11.06 - Site and Facade Plan Required.

Prior to the issuance of a building permit in the C-2 Central Business District for any new construction or for the remodeling of any existing building or structure that will involve the exterior facade or other exterior surface in any way, the Zoning Administrator shall cause the application including a site and a facade plan prepared pursuant to the provisions of Article XXI to determine compliance with the approved and published design and color standards or guidelines for the Central Business District, or Appearance Plan and Appearance Standards or Guidelines. The Village Council shall notify the applicant concerning any features and colors inconsistent with the approved standards. Any proposed new construction or remodeling of any existing buildings found to be inconsistent with the standards or guidelines for the district by the Village Council shall be disqualified for any incentive offered by the Village or Downtown Development Authority (if established by the Village Council).

(Ord. No. 316, 5-19-2008)

Section 11.07 - Signs Permitted.

Signs permitted in the C-2 Central Business District shall conform to the provisions of Article XVIII.

(Ord. No. 316, 5-19-2008)

Section 11.08 - Parking Requirements.

There are no off-street parking requirements for this district.

(Ord. No. 316, 5-19-2008)

Section 11.09 - Building Height Regulations.

No commercial building or other buildings or structure shall exceed three (3) stories or exceed forty-five (45) feet in height.

(Ord. No. 316, 5-19-2008)

Section 11.10 - Yard, Setback and Lot Area Requirements.

No principal or accessory use building or structure, nor any enlargement thereof, shall be hereafter erected except in conformance with the following yard, lot area, and width requirements:

- A. *Front Yard:* There is no minimum front yard requirement. It is the intent of this district to require the front building line to be located on the front property line, except as provided in the following paragraph.
If the building is not built on the property line, then a five (5) foot setback is required.
- B. *Side Yard:* There is no side yard requirement. If the building is not built on the property line, then a seven (7) foot setback is required. A side yard setback of eight (8) feet is required if the property abuts a residential district.
- C. *Rear Yard:* There is no rear yard requirement. A rear yard setback of seven (7) feet is required if the property abuts a residential district.
- D. *Lot Area:* There is no minimum lot size requirement in this district.
- E. *Lot Width:* There is no minimum lot width in this district.
- F. *Maximum Lot Coverage of All Buildings and Structures:* The maximum lot coverage shall not exceed ninety (90) percent.

(Ord. No. 316, 5-19-2008)

ARTICLE XII - I-1 INDUSTRIAL DISTRICT

Section 12.01 - Intent.

The Industrial District is established as a district in which the principal use of land is for industries and other businesses which do not emit noise, vibration, smoke, dust, odors, heat, glare, and other influences sufficient to constitute an adverse influence and detract from adjacent residential or commercial zoning districts.

(Ord. No. 316, 5-19-2008)

Section 12.02 - Uses Permitted by Right.

Land, buildings or structures in this zoning district may be used for the following purposes only:

- A. Manufacturing, assembly, warehousing industrial operations of all types not emitting noise, vibration, smoke, dust, odors, heat, glare, and other influences off-site.
- B. Other uses when determined to be similar and compatible with the intent of the zoning district by the Village

Council

- C. Sexually orientated businesses when in compliance with Chapter 8 of the Compiled Ordinance of the Village of Berrien Springs, titled Sexually Orientated Businesses, concerning the prohibition of the location of such businesses from certain protected uses and the separation distance between sexually orientated businesses.
- D. An essential service as defined by this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 12.03 - Uses Permitted by Special Use Permit.

The following uses are permitted in this district subject to obtaining a special use permit as provided in Article XIX.

- A. Any use permitted in the C-1 Commercial, except such uses which use outdoor display of goods and merchandise.
- B. Utility transmission facilities not deemed an essential service.
- C. A medical marijuana growing operation when in compliance with chapter 9(A), entitled "medical marijuana growing operation businesses".

(Ord. No. 316, 5-19-2008; Ord. No. 346, § 1, 8-18-2014)

Section 12.04 - Uses Excluded.

No junk yard, recycling operation or business involving livestock, or business likely to create detrimental noise, odors, fumes, radiation or vibration, as determined by the Village Council shall be located or operated in this district.

(Ord. No. 316, 5-19-2008)

Section 12.05 - Accessory Buildings and Structures.

Accessory buildings or structures defined in Article XXVII, customarily incidental to uses herein permitted may not be erected, altered or used in this district except in conformity with the yard and lot requirements of this district.

(Ord. No. 316, 5-19-2008)

Section 12.06 - Signs Permitted.

Signs permitted in the I-1 Industrial District shall conform to the provisions of Article XVIII.

(Ord. No. 316, 5-19-2008)

Section 12.07 - Parking Requirements.

Off-street parking shall be provided in conformance with Article XVII.

(Ord. No. 316, 5-19-2008)

Section 12.08 - Visual Screening Requirements.

Every lot or parcel of land that abuts a lot or parcel of land zoned for residential purpose must provide an adequate visual blockage screen between that commercial and residential lot or parcel of land. This visual blockage shall be no less than six (6) feet in height, in accord with Section Article XVI, Section 16.07.

(Ord. No. 316, 5-19-2008)

Section 12.09 - Building Height Regulations.

No building or structure shall exceed two and one-half (2½) stories or exceed thirty-five (35) feet in height. The Board of Appeals may waive this height requirement for industrial uses requiring greater height when such space is designed primarily to house equipment and not occupied for production purposes.

(Ord. No. 316, 5-19-2008)

Section 12.10 - Yard, Setback and Lot Area Requirements.

No principal or accessory use building or structure, nor any enlargement thereof, shall be hereafter erected except in conformance with the following yard, lot area, and width requirements:

- A. *Front Yard:* There shall be a front yard of no less than fifteen (15) feet, measured from the edge of the public or private highway or street right-of-way line. Where there are existing buildings or structures having front yards less than fifteen (15) feet in depth within two hundred (200) feet on either side of the building proposed to be erected, the Zoning Administrator shall approve a setback equal to the average depth of previously constructed buildings located within two hundred (200) feet on either side of the building proposed to be erected. If the property abuts a residential district a setback of twenty-five (25) feet is required.
- B. *Side Yard:* . There is no side yard requirement. If the building is not built on the property line, then a seven (7) foot setback is required. A setback of thirty (30) feet is required if the property abuts a residential district.
- C. *Rear Yard:* There shall be a rear yard of no less than fifteen (15) feet. A setback of thirty (30) feet is required if the property abuts a residential district.
- D. *Lot Area:* The minimum lot area shall be eleven thousand two hundred (11,200) square feet.
- E. *Lot Width:* The minimum width shall be one hundred (100) feet.
- F. *Maximum Lot Coverage of All Buildings and Structures:* The maximum lot coverage shall not exceed seventy-five (75) percent.

(Ord. No. 316, 5-19-2008)

ARTICLE XIII - PUD - PLANNED UNIT DEVELOPMENT DISTRICT

Footnotes:

--- (5) ---

State Law reference— *Planned unit development, MCL 125.3503.*

Section 13.01 - Purpose of Planned Unit (overlay) Development.

The use, area, height, bulk and placement regulations of this Ordinance are primarily applicable to the usual situation of one (1) principal building on one (1) lot.

These requirements would in certain developments have results that would less serve the public health, safety, and welfare than if a controlled degree of flexibility were allowed. A development may be of such size as to justify permitting certain specifically defined departures from the regulations of the zoning district. Permitting these uses can in certain cases increase

convenience, be comparable with the overall character of the district, and not be injurious to the adjoining properties, subject to limitations of the zoning district in which the property is currently located.

(Ord. No. 316, 5-19-2008)

Section 13.02 - Intent.

A Planned Unit Development is intended to encourage the following:

- A. Preserves open space and other sensitive lands through uses of creative design that takes advantage of special features including geography, vegetative cover, topography, site size or shape for their best potential, and
- B. Incorporates a variety of land uses including residential, commercial and industrial purposes plus their accessory uses allowing a creative approach in the development of a specific site to meet anticipated residential, commercial and industrial demand.

(Ord. No. 316, 5-19-2008)

Section 13.03 - Applicability to 2 Acre Sites—Land Division and Condominium Plats.

Any plat of subdivision submitted for recording under the terms of the State of Michigan Land Division Act, P.A. 87 of 1997, as amended (formally Subdivision Control Act) or any plan of subdivision under the Condominium Act, P.A. 59 of 1978, as amended consisting of two (2) or more acres of land area, shall be submitted and processed as a Planned Unit Development, pursuant to the terms of this Article and other applicable sections of this Ordinance.

(Ord. No. 316, 5-19-2008)

State Law reference— Condominium act, MCL 559.101 et seq.; land division act, MCL 560.101 et seq.

Section 13.04 - Procedures for Submission of PUD Plans.

These procedures are intended to state the requirements at each stage of the review process. However, each applicant shall have the opportunity to submit an application for approval of a Planned Unit Development at either the Preliminary PUD Development Plan stage or the Final PUD Development Plan stage, if the application and other submission documents have been prepared according to the terms of this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 13.05 - Pre-Application Conference.

Before submitting an application for a Planned Unit Development, an applicant at his option may confer with the Village Council to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of plans, surveys, etc.

(Ord. No. 316, 5-19-2008)

Section 13.06 - Contents and Submission of a Preliminary PUD Development Plan.

Proceedings are commenced by application for approval of a Planned Unit Development, to the Village Council with a Preliminary PUD Development Plan prepared in accord with the following specifications:

A Preliminary PUD Development Plan should include maps and/or diagrams showing enough of the area surrounding the proposed Planned Unit Development to demonstrate the relationship of the Planned Unit Development to adjoining uses and sufficient information to explain the nature of the proposed development and the relationship of the development to the existing supply of public utilities. The maps and/or diagrams which are part of the Preliminary Planned Unit Development may be in general schematic form but must contain, at minimum, the following information:

1. The existing topographic character of the land with contours shown at intervals of not greater than ten (10) foot intervals;
2. Existing and proposed land uses and the approximate location of buildings and other accessory structures;
3. The character, type, and number of dwelling units or other principal and accessory buildings proposed (if buildings will contain commercial and/or industrial uses);
4. The approximate location of streets including their ingress/egress ways and provision for parking vehicles;
5. The locations of all public uses, including schools, parks, playgrounds, common open spaces, walkways/trailways, etc.;
6. The approximate location and sizing of existing and proposed utility systems;
7. Any land area intended to remain in open space and means of permanent preservation, and
8. Such other information, maps and plans as the Village Council may request.

(Ord. No. 316, 5-19-2008)

Section 13.07 - Approval of Preliminary PUD Development Plan.

Procedures for the approval of a Preliminary PUD Development Plan are as follows:

- A. Public Hearing for Rezoning to PUD Zoning District. Upon submission of a complete application for approval of a Preliminary PUD Development Plan, the Village Council shall, conduct a public hearing with public notice provided as required for rezoning pursuant to Article XXIV, Section 24.02, subparagraph 3.
- B. Approval of Rezoning to PUD Zoning (overlay) District. Upon the completion of the public hearing and within a reasonable time period not to exceed sixty (60) days from the date of the public hearing, the Village Council shall consider a decision regarding approval or denial of the request.
- C. Grant Approval/Denial of the Preliminary PUD Development Plan. Upon the completion of the public hearing, hearing and within a reasonable time period not to exceed sixty (60) days from the date of the public hearing, the Village Council shall consider a decision regarding approval or denial of the Preliminary PUD Development Plan submitted by the applicant. The motion may consider that the rezoning and plan:
 1. Be granted approval as submitted,
 2. Be granted approval subject to specific conditions, or
 3. Be denied approval.
- D. *Form of PUD Development Plan Approval or Denial Action.* The grant or denial of an approval shall be in the form of a written statement and shall include findings of fact and such other factual findings that set forth the reasons for the approval or denial of the applicants request for rezoning and approval of the PUD Development Plan pursuant to Standards for PUD Approval, Article XIII, Section 13.12.

(Ord. No. 316, 5-19-2008)

Section 13.08 - Zoning Map Designation.

Upon approval of the rezoning to Planned Unit Development (overlay) District pursuant to this Article, the Village Clerk shall indicate the subject property on the Official Zoning Map as a Planned Unit Development (overlay) District by designating the property "PD" and including the date of the rezoning approval in the record of Map amendments.

(Ord. No. 316, 5-19-2008)

Section 13.09 - Status of Preliminary PUD Development Plan After Approval.

Procedures for the notification of the applicant and status of the approval of a rezoning and Preliminary PUD Development Plan are as follows:

- A. *Notification of Applicant.* Within five days after the approval of the rezoning of the subject property and upon approval of the rezoning and Preliminary PUD Development Plan by the Village Council notice of approval of rezoning ordinance and approval of the Preliminary PUD Development Plan shall be mailed via first class postage to the applicant by the Zoning Administrator.
- B. *Status of Preliminary PUD Development Plan.* Approval (or approval with conditions or denial) of a Preliminary PUD Development Plan shall not qualify as a Land Division Act plat of subdivision or Condominium Act plan of subdivision for the purposes of recording with the Berrien County Register of Deeds. A PUD Development Plan which has been given tentative approval as submitted or which has been given tentative approval subject to conditions that the applicant agrees to comply, shall not be modified or revoked or otherwise impaired by action of the Village pending an application or applications for final approval without the express consent of the applicant; provided an application for final approval is filed, or in the case of staged development, provided applications are filed within the time or times specified in the action granting approval or tentative approval of the Preliminary PUD Development Plan by the Village Council.
- C. *Abandonment of Preliminary PUD Development Plan by Applicant.* In the event that a Preliminary PUD Development Plan is given approval and thereafter, but prior to final approval, the applicant shall choose to abandon said Preliminary PUD Development Plan or shall fail to submit an application or application for final approval within the required time period, the approval or tentative approval shall be deemed revoked, and such action shall be noted in the record of the Village Clerk. Upon abandonment, the Village Council may consider action recommending rezoning of the subject property from PUD Planned Unit (overlay) Development to its prior zoning district classification.

(Ord. No. 316, 5-19-2008)

Section 13.10 - Approval of Final PUD Development Plan.

Procedures for the approval of a Final PUD Development Plan are as follows:

- A. *Submission Deadline and Extension.* Within a reasonable time after the approval of the rezoning and Preliminary PUD Development Plan, but not more than six (6) months thereafter, the applicant shall file with the Village Council a Final PUD Development Plan containing in final detailed form the information required as herein after provided. At its discretion and for good cause, the Village Council may extend for six (6) months the period for filing the Final PUD Development Plan. Contents of the Final PUD Development Plan shall include a land division (subdivision) plat or condominium (Exhibit E) plan prepared in conformance with the specification required for recording a plat under the terms of the State of Michigan Land Division Act, P.A. 87 of 1997, as amended (formally Subdivision Control Act) or the Condominium Act. P.A. 59 of 1978, as amended, signed and sealed by a State of Michigan Registered Surveyor. Water and sewer system engineering drawings with accompanying State

of Michigan Department of Public Health or State of Michigan Department of Environmental Quality system extension permits signed and sealed by a State of Michigan Licensed Professional Civil Engineer shall accompany the PUD Development Plan submission. Also to be submitted by the applicant for approval by the Village Engineer are a storm water drainage system management plan and plans and specifications for all streets prepared in conformance with the Village of Berrien Springs development standards, which from time-to-time maybe adopted by the Village Council prepared, signed and sealed by a State of Michigan Licensed Professional Civil Engineer. In addition, the Village Council may require other maps and/or drawings as deemed necessary to render a decision concerning the approval of a Final PUD Development Plan.

- B. *Optional Public Hearing.* The Village Council at its discretion may give notice and provide an opportunity for the public to comment on the proposed Final PUD Development Plan.
- C. *Approval or Denial of Final PUD Development Plan.* The Village Council shall review the proposed Final PUD Development Plan, and shall approve the Final PUD Development Plan if it is in substantial compliance with the Preliminary PUD Development Plan and contains, in final detailed form, the information herein set forth.
- D. *Application of Conditions and Restrictions.* Prior to the approval of any Final PUD Development Plan, the Village Council may recommend the adoption of such covenants, conditions, and restrictions upon the establishment, location, constructions, maintenance, and operation of the Planned Unit Development as the Village Council deems necessary for the purposes of the public interest and to secure compliance with the criteria specified in this Ordinance.
- E. *Status of Final Approval of PUD Development Plan.* After approval has been given, the use of land and the construction, modification or alteration of any building or structures within the Planned Unit Development will be governed by the approved Final PUD Development Plan rather than by any other provision of this Ordinance.
- F. *Minor Changes to Final PUD Development Plan.* Any minor extensions, alternations, or modification of existing buildings or structures may be authorized by the Village Council if they are consistent with the purposes and intent of the Final PUD Development Plan.
- G. *Major Changes to Final PUD Development Plan.* Any major change to a Final PUD Development Plan, as determined by the Village Council shall made by the Village Council after processing an amendment to the Final PUD Development Plan pursuant to the approval process for both the Preliminary and Final PUD Development Plan approval.
- H. *Rescinding/Abandonment of Final PUD Development Plan Approval.* In any case where construction has not yet begun on an approved Planned Unit Development within one (1) year after the date of Final Approval of a PUD Development Plan, or after a one (1) year extension thereof by the Village Council upon showing of cause or upon written notification by the applicant that the proposed Planned Unit Development will not be constructed, the Village Council may rescind the Final PUD Development Plan approval and take such other action to rezone the subject property back to its original zoning district classification.

(Ord. No. 316, 5-19-2008)

Section 13.11 - Standards and Criteria For Planned Unit Developments.

The PUD Development Plan of the Planned Unit Development shall be consistent with the following standards for use of land, the use of, type and mass, design and location of buildings, the density, common open space and public facilities servicing the site:

1. *Variety of Building Types and Layout Design.* The PUD Development Plan may increase the residential (or commercial or industrial building area) density of the underlying zoning district classification in accordance with

the bonus density provision for the CD Cluster Development (overlay) District (Article VII, Section 7.07), where a variety of housing or building types including clustered housing, buildings sharing common walls, etc. are incorporated in a unique design meeting the open space requirements of CD Cluster Development (overlay) District.

2. *Building Lot Coverage.* The building coverage ratio may be increased for the number of allowed residential units (or the total commercial or industrial building area) in accordance with the bonus density provisions of the CD Cluster Development (overlay) District (Article XII, Section 7.07), when a proposed development meets the requirements of paragraph one (1) above.
3. *Height Restrictions.* The PUD Development Plan must conform to the height requirements of the underlying zoning district in which the subject property is located.
4. *Mixture of Uses Permitted.* A mixture of uses is permitted in any PUD Development Plan, amount and location subject to approval by the Village Council.
5. *Perimeter Setback Requirement.* Where ever possible, the applicant shall provide perimeter setbacks to abutting properties at the same dimensions as required of the underlying zoning district classification in which the property is located subject to approval of the Village Council which may require greater setback distances when in the opinion of the Village Council the proposed Planned Unit Development will have a detrimental effect on abutting land uses.
6. *Conveyance of Open Spaces and/or Common Elements.* Any area designated as open space or common elements (included limited common elements), shall be conveyed to an appropriate public body or private owners' association, as required by law.
7. *Off-Street Parking and Loading.* Off-street parking and loading shall be in conformance with the minimum specifications of Article XVII for the land uses proposed within the Planned Unit Development.
8. *Utilities.* The proposed PUD Development Plan shall provide for installation of public water, sanitary sewer and storm drainage meeting the standards of the Village of Berrien Springs and/or the Berrien County Drain Commissioner.
9. *Landscaping and Screening.* Landscaping and screening shall be in conformance with the minimum specifications of this ordinance as they pertain to the specific uses proposed within the Planned Unit Development. The Village Council may require additional landscaping and screening when in the opinion of the Village Council the proposed Planned Unit Development will have a detrimental effect on abutting land uses.
10. *Pedestrian Pathways and Sidewalks.* Pedestrian pathways and sidewalks shall be in conformance with the minimum specifications of this ordinance and the development standards of the Village, as they pertain to the specific uses proposed within the Planned Unit Development. The Village Council may require additional pathways and sidewalks when in the opinion of the Village Council the intensity of development requires additional pathways and sidewalks to safely move pedestrian traffic throughout the Planned Unit Development.
11. *Signs.* Signs in the Planned Unit Development District shall conform with the provisions of Article XVIII.

(Ord. No. 316, 5-19-2008)

Section 13.12 - Standards for PUD Approval.

Approval of a Preliminary PUD or Final PUD shall only be granted by Village Council if the PUD Plan complies with all of the following standards:

1. The PUD conforms with the policies, goals, guidelines and recommendations contained in the Master Land Use

Plan concerning land use, density, vehicular access and circulation, pedestrian circulation, building placement, character and design, landscaping, signage and amenities.

2. The PUD is consistent with and promote the intent of this Article and this Ordinance, and complies with all applicable standards for site plan approval contained in Article XXI.
3. If the PUD contains more than one type of use, the uses are arranged in a manner, and buffers are provided as necessary and appropriate, so as to prevent adverse impacts of one use upon another, and so as to create a logical relationship of one use to another.
4. The PUD is compatible with surrounding uses of land and the character of the surrounding area. The design and placement of buildings and other structures, parking, lighting, signs, refuse storage, landscaping and other elements of the proposed PUD ensures compatibility with surrounding properties and properties within the PUD, and ensures that the development, when viewed from public rights-of-way, contributes to the desired character of the surrounding area.
5. The PUD is designed to have minimal adverse effect on the environment and to preserve and maintain to the maximum extent feasible the quality of surface and ground water resources and the natural topography, vegetation and other natural features of the site.
6. The PUD will not place demands on public services and facilities in excess of their capacity.
7. Safe and efficient ingress and egress has been provided to the property, especially with regard to pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency. The amount and type of traffic generated by the PUD shall not exceed the capacity of existing and proposed streets as determined by the Village Engineer.
8. The design of public streets or private streets including curbs, gutters and sidewalks shall comply with the standards established by the Village Engineer and approved by the Village Council.
9. The PUD shall be designed so that the additional traffic generated by the PUD will not create a substantial detrimental effect on neighboring properties or on the health, safety and welfare of Village residents, including the residents of the proposed PUD.
10. The PUD is otherwise consistent with the public health, safety and welfare of the Village.

(Ord. No. 316, 5-19-2008)

ARTICLE XIV - FP FLOODPLAIN DISTRICT

Footnotes:

--- (6) ---

State Law reference— *Soil erosion and sedimentation control, MCL 324.9101 et seq.; soil conservation districts law, MCL 324.9301 et seq.; building and construction in floodplain, MCL 324.3108; subdivision within or abutting floodplain, MCL 560.138; subdivision within floodplain, conditions for approval, MCL 560.194.*

Section 14.01 - Intent.

It is the intent of this Article to significantly reduce hazards to persons and damage to property as a result of flood conditions and to comply with the provisions of the National Flood Insurance Program, as constituted in accordance with the National Flood Insurance Act of 1968, and subsequent enactments and the rules and regulations promulgated in furtherance of the program by the Federal Emergency Management Agency.

(Ord. No. 316, 5-19-2008)

Section 14.02 - Delineation of Flood Hazard (Overlay) Zoning District.

- A. *Boundary Designated on Zoning Map.* The flood hazard zone shall overlay existing zoning districts delineated on the Official Zoning Map of the Village of Berrien Springs, subject to verification by the Michigan Department Environmental Quality and/or the Federal Flood Management Administration. The boundaries of the flood hazard zone shall coincide with the boundaries of the area established by the Federal Flood Management Administration as shown in the Map numbers 26021CO253C and 26021CO254C available for viewing on the Federal Flood Management Administration web site www.fema.gov/business/nfip/.
- B. *Final Determination of Flood Hazard Boundary Line.* It shall be the responsibility of any property owner or any other person with a dispute as to the exact location of the flood hazard area zone boundary on a specific property to determine the exact location of the boundary through application for a determination of a flood hazard boundary with the Michigan Department of Environmental Quality.
- C. *Suspension of Village Action Until Final Determination Is Made.* The Village shall suspend and hold in abeyance the processing of any application for a zoning or building permit until a final determination is made by the Michigan Department of Environmental Quality and such documentation is filed with the Zoning Administrator.
- D. *Application of Other Laws and Requirements.* In addition to other requirements of this Ordinance, applicable to development in the underlying zoning district, compliance with the requirements of this Article shall be necessary for all developments occurring within the flood hazard area zone. Conflicts between the requirements of this Article and other requirements of this Ordinance or any other State or Federal law or regulation shall be resolved in favor of the most stringent requirements and the most stringent regulation shall apply.

(Ord. No. 316, 5-19-2008)

Section 14.03 - MEDQ Permit Required Prior to Issuance of Building Permit.

Development, including the erection of structures of any type within a flood hazard area shall not occur except upon issuance of a building permit in accordance with the requirements of this Ordinance and the Village Construction Code and only upon presentation of a permit issued by the Michigan Department of Environmental Quality (MDEQ).

- A. *Applicable Standards.* All construction shall meet the following standards:
 1. The requirements of this Article;
 2. The requirements of the underlying zoning districts and applicable general and special provision of this Ordinance; and
 3. All applicable state and federal laws and regulations.
- B. *Certificate of Compliance.* Compliance with the standards of this Section shall be certified by a Michigan Licensed Professional Civil Engineer. A copy of said certification shall be furnished to the Zoning Administrator prior to the issuance of a building permit.
- C. *Construction Standards.* Any new construction and any alteration to existing building, structures and infrastructure connections servicing any building and structure shall conform to the following standards:
 1. Be designed and anchored to prevent flotation, collapse, or lateral movement of the structure;
 2. Be constructed with materials and utility equipment resistant to flood damage;
 3. Be constructed by methods and practices that minimize flood damage;
 4. New and replacement water and sewer systems shall minimize or eliminate infiltration of flood waters into

the system and on-site waste disposal systems shall be located to avoid impairment to the system due to flooding;

5. The flood carrying capacity of any water course or floodway shall be maintained unless such construction is permitted by the Michigan Department of Environmental Quality subject to adequate volume compensation as required by the Michigan Department of Environmental Quality.
6. The first habitable floor (including basements) is no less than one (1) foot higher than the based flood elevation as determined by the Michigan Department of Environment Quality.

(Ord. No. 316, 5-19-2008)

Section 14.04 - Land Division Requirements.

Land shall not be divided in any manner by any means creating lot or parcel which cannot be used in conformance with the requirements of this Article.

(Ord. No. 316, 5-19-2008)

ARTICLE XV - GENERAL PROVISIONS

Section 15.01 - Scope of Regulations Use of Land, Buildings and Structures.

No building or land shall be used and no building shall be hereafter erected, structurally altered, or relocated except for one or more of the uses herein permitted within the district in which such building, structure, or land is located or for a use similar to and harmonious with such permitted uses, except as provided in Article XXII, Section.22.01 and Article XXIII, Section 23.03 of this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 15.02 - Property Division Requirements.

No lot or parcel of land located in the Village of Berrien Springs shall be further partitioned or divided unless such partition or division is first approved, pursuant to provisions of any "lot split" or land division ordinance enacted by the Village Council.

(Ord. No. 316, 5-19-2008)

Section 15.03 - Prohibition of Private Roads.

No division or partition of an unplatted parcel of real estate shall be approved which results in the creation of a private road, right-of-way or other means of access.

The Zoning Board of Appeals may waive this requirement upon the finding that access to the property cannot be provided via a public street or road or upon application for a Cluster Development or Planned Unit Development where ingress/egress to the proposed development is provided by a public street or road and all interior streets remain under ownership of the property owner, condominium association or other owners' association who shall have filed with the Village legally binding documents describing the ownership and financial means for maintenance and repair.

(Ord. No. 316, 5-19-2008)

Section 15.04 - Dumping of Rubbish Recycling Centers.

No person, firm or corporation shall operate a recycling center/operation, store, dump, or cause to be dumped, any garbage, tin cans, papers, automobile vehicles or truck bodies or parts, machinery, stoves refrigerators, junk, movable structures, or waste materials of any kind on any land, private or public, situated in the Village of Berrien Springs unless such place has been expressly designated as a public dumping ground to receive such materials by the Village Council.

Residential trash receptacles or other trash bins for use by homeowners is not considered dumping or storage under the terms of this section of the ordinance and is expressly permitted.

(Ord. No. 316, 5-19-2008)

State Law reference— Garbage disposal act, MCL 123.361 et seq.; solid waste facilities, MCL 324.4301 et seq.; hazardous waste management act, MCL 324.11101 et seq.; hazardous materials transportation act, MCL 29.47 et seq.; solid waste management act, MCL 324.11501 et seq.; waste reduction assistance act, MCL 324.14501 et seq.; clean Michigan fund act, MCL 324.19101 et seq.; low-level radioactive waste authority act, MCL 333.2620 et seq.

Section 15.05 - Open Burning Prohibited.

Open burning, not otherwise regulated or allowed by Ordinance, is prohibited in any district within the Village of Berrien Springs.

(Ord. No. 316, 5-19-2008)

State Law reference— State fire prevention code, MCL 29.1 et seq.; open burning of leaves and grass clippings, MCL 324.11522; prevention and suppression of forest fires, MCL 324.51501 et seq. ; crimes related to fires, MCL 750.240 et seq.

Section 15.06 - Hunting, Trapping and Use of Similar Type Equipment Prohibited.

Hunting, trapping and other forms of sport hunting activity are expressly prohibited from all zoning districts, including the discharge of firearms, discharge of arrows, setting of any animal traps and siting or weapon siting activity for hunting equipment or any other practices related to the sport.

(Ord. No. 316, 5-19-2008)

State Law reference— Hunting area control, MCL 324.41901 et seq.; local ordinances, MCL 324.41902.

Section 15.07 - Junk or Inoperable Cars, Trucks or Vehicles.

No property owner in any district may maintain, or allow to be maintained, any junk or inoperable cars, trucks, trailers, motorcycles, watercraft, recreational vehicles, machinery or other similar equipment or vehicles on the premises unless it is parked or stored in a completely enclosed building. Any vehicle not bearing a valid vehicle registration license plate shall be considered inoperable under the terms of this article.

(Ord. No. 316, 5-19-2008; Ord. No. 324, § 7, 5-2-2011)

State Law reference— Abandoned vehicles, MCL 257.252 et seq.

Section 15.08 - Height Exceptions.

The height requirements of all zones, except the Industrial Districts may be exceeded by parapet walls not over four (4) feet in height, chimneys, roof mounted television and radio antennas (excluding cell towers and other communications towers), cupolas, spires or other ornamental projections, or water towers. In the industrial districts, chimneys, cooling and communication towers (when permitted pursuant to Article XVI, Section 16.03 or when permitted pursuant to Article XXIII, Section 23.03, subparagraph 3) and other necessary appurtenances are permitted above the height limitations provided they are located the same distance as their height from any adjoining property line.

(Ord. No. 316, 5-19-2008)

Section 15.09 - Each Principal Building Must Conform to District Requirements.

Each principal building on a lot must conform to the requirements of the Ordinance which would be applicable if each were located on a separate lot in the same district.

(Ord. No. 316, 5-19-2008)

Section 15.10 - Corner Lots.

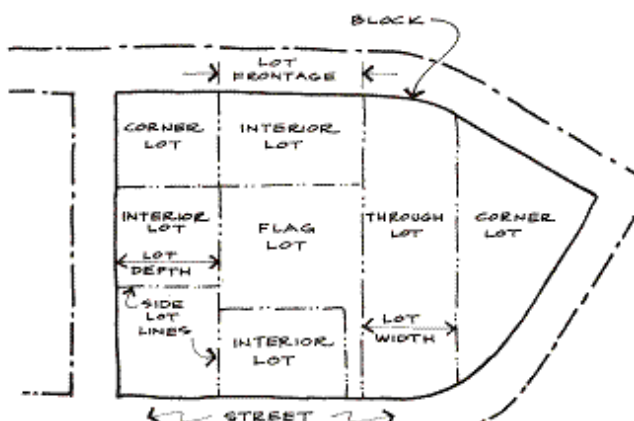
No obstruction to vision (other than an existing building, post, column, grade, or tree) exceeding thirty-six (36) inches in height shall be erected or maintained on any lot within the triangle formed by the street intersection and a line drawn between points along two streets lines thirty (30) feet from the intersection.

(Ord. No. 316, 5-19-2008)

Section 15.11 - Through Lots.

Where a through lot under single individual ownership extends from one street to another parallel or nearby parallel street or alley, the widest street shall be deemed the street upon which the property fronts. No principal building may be erected on the rear lot.

(Ord. No. 316, 5-19-2008)



Section 15.12 - Travel Trailers.

The occupancy of travel trailers for more than seventy-two (72) hours as a temporary dwelling is prohibited in any zoning district in the Village of Berrien Springs.

(Ord. No. 316, 5-19-2008)

Section 15.13 - Storage of Recreation Vehicles.

- A. Recreational vehicles of any kind or type, boats, boat trailers, jet skis and the like, without current registration plates or stickers shall not be parked, located or stored on any residentially owned property or property used primarily for residential purposes, other than in a completely enclosed building.
- B. No person shall occupy as a dwelling, any recreational vehicle anywhere in the Village, unless located within a state licensed park. Emergency parking of a recreational vehicle in any street, alley or highway will be permitted for a period not to exceed twenty-four (24) hours, subject to any other regulations or ordinances for that street, alley or highway.
- C. No more than one (1) unoccupied recreational vehicle, one (1) boat, one (1) jet ski, one (1) snowmobile or similar vehicle (hereinafter "sports vehicle") which bears current registration plates or stickers shall be stored or parked on anyone piece of property at anytime. The sports vehicle must be located in either the side or rear yard of a dwelling, behind the front building line, provided it is located not less than five (5) feet from any other structures or side or rear property line, and where it must be screened by a fence and/or vegetative landscaping meeting the maximum height requirements for fences allowed within the zoning district in which the property is located, to screen the sports vehicle from neighboring property.
- D. In all cases a sports vehicle must be owned by the owner of the dwelling unit.

(Ord. No. 316, 5-19-2008)

Section 15.14 - Fences.

All fences hereinafter constructed in the Village of Berrien Springs shall conform to the following standards:

1. Construction of a fence shall require issuance of a zoning compliance permit issued by the Building Inspector, prior to construction or erection of the fence.
2. All fences shall be constructed to present a finished outside fence appearance to adjacent property and public right-of-ways by either:
 - A. Symmetrical construction having identical inside and outside face appearance including main anchor posts and frame members.
 - B. Offset construction with main anchor posts and horizontal and vertical frame members visible on inside face only and vertical and horizontal face members or materials mounted on outside surface of frame and anchor post members.
4. Fences shall not exceed four (4) feet in height in the front yard, the area between the front property line and the front building line, and fences located in the side or rear yard behind the front building line of the principal structure shall not exceed six (6) feet in height.
5. Any form of electrified and/or barbed wire, barbwire, or single strand wire fence or barrier is prohibited in all Residential Districts.
6. Barbed wire, barbwire or any form of single strand wire fence or barrier is prohibited in any Commercial or Industrial District except for the installation as cap wires on industrial grade cyclone type fence having a minimum height from ground level of six (6) feet.
7. No fence shall inhibit corner vision requirements of Article XV, Section 15.10.
8. Any fence maintained in violation of this section shall be deemed a hazard to public health and welfare and shall constitute a violation of this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 15.15 - Parking of Certain Vehicles Prohibited in Residential Districts.

Motor vehicles, specifically trucks having with a weight limit in excess of twelve thousand (12,000) pounds gross vehicle weight (GVW) and being greater than eighty (80) inches in height, semi-tractors, tractor trailer combinations or trailers of any kind or type (which shall be operable in accordance with Village ordinance provisions) shall not be parked or stored in any residential zoning district other than in a completely enclosed building.

(Ord. No. 316, 5-19-2008)

Section 15.16 - Residential Garages, Covered Parking, Parking Pad Required.

After the date of adoption of comprehensive zoning ordinance amendment, all residential subdivisions and lot divisions created within any residential zoning district shall provide a minimum of a one car parking enclosure, covered parking space or garage, location of which shall be limited to the side or rear yard, if not incorporated as part of the principal permitted use structure, with adequate on-site access and street ingress as approved by the Zoning Administrator.

(Ord. No. 316, 5-19-2008)

Section 15.17 - Prohibition of Portable Car Canopies/Portable Car Ports.

No temporary structure or structure constructed of aluminum, metal, plastic, wood or other manmade or natural materials may be affixed to the ground or any other foundation to be use as a car canopy or vehicle parking garage.

A portable car canopy or portable carport is defined as a prefabricated canopy which has no walls and is usually constructed of light weight aluminum. These structures are prohibited regardless of the manner they are affixed (or not affixed) to the ground and regardless of what they are storing.

(Ord. No. 316, 5-19-2008)

Section 15.18 - Duplicate Building Types.

Not more than one (1) dwelling of any standardized plan shall be erected in the Village of Berrien Springs unless approved by the Village Council.

A standardized plan is defined as follows:

- A. Where the plan of a house is standardized and remains constant as to width and length.
- B. Where the volume of the house remains practically the same; changes made to a standardized plan where the width and length of the plan and the volume of the house are not substantially changed; shall not be sufficient change to grant a permit.
- C. The adding to or subtracting from a standardized plan of small units such as porches, bay windows, terraces, and other appurtenances, or the changing or varying the slope or type of roof, or location or size of door and window openings, or changing or varying the style or design, or changing or varying the finish color of the exterior walls, shall not be sufficient change to a standardized plan to warrant the granting of a permit for its erection in the Village.

(Ord. No. 316, 5-19-2008)

Section 15.19 - Standards For All Exterior Lighting in All Districts.

The construction or installation of all new lighting or the replacement, refurbishment or repair of all existing lighting in all zoning districts shall conform to the following standards:

- A. No pole light or wall mounted light shall be installed greater than 17 feet above the ground surface immediately below the bottom surface of the light nor have a maximum light output of 2,300 lumens (100 watt light bulb).
- B. The light fixture shall totally encase the light source (specifically the light bulb, whether incandescent or other) so as to visually shield the light source from view when observed from the property line of the property on which the light is located.
- C. All lighting fixtures shall have downward light directing shields preventing the light source from transmitting no more than one (1) foot candle of light onto adjacent property.

(Ord. No. 316, 5-19-2008)

Section 15.20 - Placement and Removal of Trash/Garbage Receptacles.

No residential or business operation or activity shall cause to be placed alongside the street any trash, garbage, recycling container, bin or any other receptacle used for the disposal of any matter prior to the evening of the day before a scheduled trash/garbage pick-up.

All trash, garbage or recycling containers, bins or any other receptacle used for the disposal of any matter shall be retrieved from the side of the street or place by sundown on the day of the scheduled garbage/trash pick-up.

(Ord. No. 316, 5-19-2008)

Section 15.21 - Electric Wind Generators.

For the purposes of this ordinance, any wind energy conversion system consisting of a turbine, motor, pedestal, tower and any other such equipment intended to service only the energy needs of the occupants on the zoning lot is permitted when such installation is approved by the terms of this ordinance as a special use pursuant to Article XVI.

(Ord. No. 316, 5-19-2008)

ARTICLE XVI - SPECIAL PROVISIONS

Section 16.01 - Bed and Breakfast Operations.

Because many older, single family homes are larger and represent sizeable maintenance and energy costs for a single family, it is feared that restriction to only single family use may foster inadequate maintenance or even abandonment.

The possible consequences may be a general appearance of blight which, if allowed to proceed in a downward trend, could erode the social stability of a neighborhood. Based upon the above, some areas are regarded as conducive for limited use for bed and breakfast purposes; but only when certain conditions as may be required by the Village Council in order to preserve the character, as well as health, safety and welfare of the neighborhood are met.

1. Bed and breakfast operation shall be subject to the following special provisions:
 - A. A residential structure shall not have or be converted to more rental rooms than the number of bedrooms which exist at the time of enactment of this Ordinance and adequate living space must be preserved for

manager or owner's quarters. A common room for guest relaxation is required in these facilities. Unless owner occupied, the manager must reside on and have more than a nominal equity interest in the premises.

- B. Off street parking for one vehicle for each bedroom to be rented must be available in addition to requirements for residential family vehicles.
 - C. Bathrooms must be furnished for guestrooms One bathroom not to serve over four guestrooms.
 - D. No separate cooking facilities are required for bed and breakfast operation if continental breakfast is served.
 - E. One sign, in residential areas shall be permitted. Size, location and design to be authorized by Village Council pursuant to Article XVIII.
 - F. Inspection and approval by the Zoning Administrator is required prior to occupancy of bed and breakfast facilities. Berrien County Health Department approval is required if other than continental breakfast is planned.
 - G. The letting of bed and breakfast rooms shall be limited to short term occupancy not to exceed thirty (30) continuous days.
2. A residence must contain a minimum of two thousand four hundred (2,400) square feet of liveable floor space to be converted into a bed and breakfast facility.

(Ord. No. 316, 5-19-2008)

State Law reference— Treatment of bed and breakfasts under the state construction code, MCL 125.1504b.

Section 16.02 - Communication and Other Towers.

1. *Intent To Provide for Wireless Communication Services.* It is the intent of this section to allow communication and other similar towers to serve the ever changing technology in the field of personal and business communications for wireless communications as defined in the Telecommunications Act of 1996 which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term tower shall include all communication towers, other antenna support structures, antennas, buildings/facilities and any similar structures necessary for the provision of wireless communication services.
2. *Policy of Collocation of Antenna and Antenna Arrays on Existing Structures.* It is the policy of the Village to encourage the collocation of antenna and antenna arrays on existing Village owned structures including existing water towers, communications towers and location of any new tower upon land owned by the Village; specifically at the Public Works facility. Location of an antenna /antenna array and related equipment shall be permitted as a special use pursuant to the provisions of this Ordinance. A proposal for the location of a new tower or communication structure for the purpose of collocation of wireless communication antenna/antenna arrays which meets the locational requirements and construction standards set forth in paragraph 4, below, may be permitted as a special use issued by the Village Council only on land owned by the Village as prescribed above or as prescribed in the following subsections.
3. *Restriction Upon the Location of New Towers Unless Standards Are Met.* It is a policy of the Village to prohibit the location of any additional towers or other communication support structures within Village limits unless the applicant can demonstrate to the reasonable satisfaction of the Zoning Board of Appeals and the Village Council that the following conditions exists and the location of the proposed tower or other communication support structure meets the locational requirements and construction standards as set forth in paragraph 4, below:

- A. There is no existing tower or other communication support structure located within the Village limits for which the proposed antenna or antenna array can be attached which meets the applicant's engineering requirements.
 - B. There is no existing tower or other support structure located within the Village having sufficient height to meet the applicant's engineering requirements.
 - C. There is no existing tower or other support structure located within the Village having sufficient structural strength to support the applicant's proposed antenna or antenna array.
4. *Location Requirements, Construction Standards and Other Conditions.* All newly constructed towers, communication support structures and any related equipment shall conform to the following locational requirements, constructions standards and other conditions as follows:
- A. Towers, not otherwise permitted in section 2 above, shall be allowed as a special use in industrial zoning districts.
 - B. The minimum lot size shall be one (0.5) acre of land area. All lots shall have a minimum of one hundred twenty five (125 feet) of road or street frontage.
 - C. The base of the tower or other communication structure shall be of the self-supporting pole type and not be of the construction which require cable support of any type.
 - D. The tower must be setback from all property lines a distance equal to its height, unless engineering plans and specifications have been verified by the Village Engineer that the structural integrity of the tower will withstand the maximum high wind velocity for the area, as reported by a nationally recognized weather service or Village Construction Code specifications, and associated impacts, and the likelihood of a tower failure is minimal.
 - E. Accessory structures are limited to uses associated with the operation of the tower and may not be located any closer to any property line than forty (40) feet.
 - F. Accessory structures shall not exceed six hundred (600) square feet of gross building area.
 - G. All other requirements of the zoning district in which the tower is located shall be enforced.
 - H. Security to prevent unauthorized access shall be provided for all fence and building enclosures. A written agreement with the Fire Department concerning access for fire safety shall be provided to the Village prior to approval of the special use.
 - I. Engineering plans and specification for the tower, prepared by a State of Michigan Registered Engineer specializing in structural engineering, shall be provided with the application for the special use.
 - J. Engineering plans and specifications for the tower mounting foundation and the foundation for any structure shall be prepared by a State of Michigan Registered Engineer. These shall accompany the application for the special use. Engineering plans shall including soil boring information for the site of the tower mounting foundation and any other foundation in excess of four (4) feet in depth. The applicant shall provide a statement signed by a State of Michigan Registered Professional Engineer that soil conditions have been determined suitable for the tower mount foundation.
 - K. The applicant shall provide inspection and verification that the installation of the tower, mount and foundation have been installed in compliance with the plans and specification and all applicable codes and standards. A statement, include the date of the physical inspection, from a State of Michigan Registered Professional Engineer shall be provided to the Village Building Inspector prior to the issuance of a Certificate of occupancy for use of the tower indicating that the tower has been installed in compliance with all applicable codes and standards.
 - L. All towers shall meet the standards of the Federal Aviation Administration, Federal Communications Commission and any other applicable regulatory State of Michigan or Federal Agency.
 - M. Communication towers in excess of one hundred (100) feet in height above grade level shall be prohibited within

a two (2) mile radius of a public or private airport or helipad.

- N. No part of any tower shall be constructed, located or maintained at any time, permanently or temporarily, on or upon any required setback area for the district in which the tower will be located. In no case shall a tower be located within forty (40) feet of a property line.
- O. Metal towers shall be constructed of, or treated with, corrosive resistant material acceptable to the Village.
- P. Towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes, regulations and standards.
- Q. All attachments to any tower shall be designed to withstand the maximum uniform wind loading as prescribed in the Village Construction Code. A statement signed by a State of Michigan Registered Professional Engineer shall be provided to the Village Building Inspector certifying that the tower has been designed in conformance with applicable Village Construction Code wind load requirements.
- R. All signals and remote control conductors extending substantially horizontally above the ground between the tower and a structure, or between towers, shall be at least eight (8) feet above the ground at all points, unless buried underground.
- S. Towers shall be located so there is room for vehicles doing maintenance to maneuver on the property owned or leased by the applicant, including fire safety equipment.
- T. The base of the tower shall occupy no more than five hundred (500) square feet of area.
- U. Minimum spacing between tower locations shall be one-half (½) mile in order to prevent a concentration of towers in one area.
- V. Height of the tower shall not exceed three hundred (300) feet and no tower located within five hundred (500) feet of any residential area shall exceed one-hundred-seventy-five (175) feet in height from grade.
- W. Towers shall not be artificially lighted unless required by the Federal Aviation Administration.
- X. Existing on-site vegetation shall be preserved to the maximum extent possible.
- Y. There shall not be displayed advertising or identification of any kind intended to be visible from the ground mounted on the tower or other structures, except for emergency purposes.
- Z. Any attachments to the tower shall be painted to match the exterior treatment of the tower. The chosen paint scheme should be designed to minimize off-site visibility of the tower as determined by the Village Zoning Administrator.
- AA. All structures shall be subject to any state and federal regulations concerning non-ionizing electromagnetic radiation. If more restrictive state or federal standards are adopted in the future, the tower shall be made to conform to the extent required by such standards or the special use approval will be subject to revocation by the Village Council. Costs for testing and verification of compliance shall be born by the owner of the tower.
- BB. There shall be no employees located on the site on a permanent basis to service or maintain the tower or attachments, unless specifically approved as part of the special use approval. Occasional or temporary repair and service activities are excluded from this restriction.
- CC. All parking and drive areas must be paved with material meeting the standards of the Village.
- DD. A vegetative buffer shall be required where the property adjoins any residentially zoned property or land use. The tower owner shall plant and maintain two (2) alternating rows of evergreen trees with a minimum height of five (5) feet on twenty (20) foot centers along the entire perimeter, and twenty (20) feet beyond but not further

than the property line, of the tower and structure, to provide a visual sight barrier from the adjoining residential zoned properties and the tower and structures. In no case shall the evergreens be any closer than ten (10) feet to the tower or structure.

5. *Process for Obtaining Approval for Location of New Towers.* Applicants seeking approval for the location of a new tower are required to submit a special use request twenty (20) days prior to the next scheduled Village Council meeting through the Zoning Administrator who will review the application for completeness, then transmit the application to the Village Council. The Village Council shall review the application, hold any required public hearings, issue findings and shall approve or deny the application based on compliance with location and construction requirements of section 16.02(4) and special use standards of section 19.03.
6. *Additional Requirements.*
 - 1) The tower shall be removed by the property owner or property lessee within six months of being abandoned.
 - 2) The notice of the abandonment of the tower shall be provided to the Village ninety (90) days prior to abandonment.
 - 3) The applicant shall reimburse the Village of Berrien Springs all cost associated with the Village review of the application for the special use, including, but not limited to engineering, legal and other expert assistance required by the Village to review and process that application.
 - 4) The applicant shall provide a performance bond or irrevocable letter of credit, in such form as approved by the Village Attorney, in an amount equal to the estimated cost to remove the tower, but in no case less than \$50,000, to be used by the Village to remove the tower if said tower is abandoned and not removed in accordance with the terms of this ordinance, by the applicant, successors and/or property owner.
 - 5) Upon approval or upon meeting all of the standards and qualifications set forth above, the applicant shall provide to the Village or the owner of the proposed and approved site a lease agreement or other suitable legal document setting forth the terms and conditions for the use of the site. If Village-owned property is involved, the lease shall be reviewed by the Village Attorney. Applicants shall reimburse the Village for its legal expense. The terms and conditions of any agreement with respect to owned property shall be approved by the Village Council. In the case of privately-held property, it shall be the responsibility of the applicant to obtain an agreement with the property owner with respect to the use of the proposed site. The applicant is required to file any such agreement with the Village Clerk.

(Ord. No. 316, 5-19-2008)

Section 16.03 - Commercial/Industrial Minimum Landscaping Regulations and Standards.

In the C-1 Commercial and I-1 Industrial Zoning districts, a minimum of fifteen (15) percent of the total lot area shall be landscaped containing one (1) shrub for every 1,000 square feet or portion thereof, plus one (1) tree for every 1,500 square feet of landscaped area or portion thereof. (Plant materials existing on the site prior to the development may be included as part of the requirement) Ground cover is required in all landscaped areas. Landscaping of adjacent rights-of-way area shall be included in satisfying the minimum on-site requirement if it is maintained by the abutting property owner. A minimum of thirty-three (33) percent of required landscape area shall be located between any building and the street.

(Ord. No. 316, 5-19-2008)

Section 16.04 - Storage and Screening Required in Commercial and Industrial Districts.

In addition to other provisions of this Ordinance every application for a building permit in the C-Commercial and I-1 Industrial zoning districts shall provide a plan for outdoor material storage and screening so as to eliminate unsightly open storage of material equipment and supplies. Each application for a permit shall also provide for appropriate landscaping and planting so as to improve and preserve the physical appearance of the district. Any landscaped area required shall thereafter be preserved, as far as it is practicable to do so, and used maintained and reserved for grass, trees, shrubs and similar ornamental landscaping.

All screening shall comply with the following standards:

1. Adequate screening shall consist of a four (4) to six (6) feet high solid fence, or similar visual screen of suitable shrubs, spaced at intervals of not more than four feet, maintained within fifteen (15) feet of the property line separating the uses.
2. All fences, hedges, walls, and shrubs must be maintained in good condition. No advertising shall be permitted on fences adjoining residential districts.
3. Fences, walls, and hedges under six (6) feet may be located in any yard or court, except as regulated by Article XV, Section 15.10.

(Ord. No. 316, 5-19-2008)

Section 16.05 - Display of Goods and Merchandise in C-1 and C-2 Commercial Districts.

All merchants and businesses located within the C-1 and C-2 Commercial districts shall maintain a five (5) foot width of continuous free and clear passage for safe pedestrian traffic from the backside of the curb, and at no time shall any merchant or other person be allowed to occupy more than fifty (50) percent of the sidewalk for displaying goods, wares and merchandise.

(Ord. No. 316, 5-19-2008)

Section 16.06 - Encroachment into Required Front, Side and Rear Yards.

No portion of the building or any appurtenance shall encroach into a required front, side or rear yard, including steps, porches, covered walkways, ramps, gutters, awnings, signs, roof overhangs, structural or nonstructural cantilevers, or any permanent or temporary, fixture attached to any principal use building or accessory use structure. The Zoning Board of Appeals may vary the terms of this requirement upon finding that 1) compliance with the strict terms of this provision applies an undo hardship upon the property owner and that such hardship is specific and unique to the subject property, 2) that the variance is required to use the subject property in a similar fashion as other properties in the immediate area, and 3) that the requested variances is determined to be the minimum variance from the strict terms of the ordinance necessary to provide equal use of the subject property when compared to the properties in the immediate area.

A variance may be granted from the strict terms of this section for an applicant to provide a ramp necessary to access any principal residential or other structure to comply with the Americans with Disabilities Act requirements. Standards for granting a variance shall include a first preference for installation of such ramps in the rear or side yards. Granting a variance for installation of a ramp in the front yards shall only be considered in cases where no side or rear access can be obtained in compliance with accessible ramp construction requirements.

(Ord. No. 316, 5-19-2008)

Section 16.07 - Berrien Springs/Oronoko Township (BSOT) Joint Place Based Code Overlay District for the M-139 Corridor.

[At the direction of the village, the provisions of Ord. No. 357, § 1, adopted September 8, 2015, have been treated as enacting Section 16.07, but not included herein. Said provisions are on file with, and available from, the village clerk.]

(Ord. No. 357, § 1, 9-8-2015)

ARTICLE XVII - OFF-STREET PARKING AND LOADING

Section 17.01 - Scope of Regulations.

Wherever a new building or structure is constructed or the use of an existing building or structure hereafter changed to a new use, parking and loading facilities shall be provided as required as provided within this Article. However, if the said building or structure was erected prior to the effective date of this Ordinance, additional parking or loading facilities are mandatory only in the amount by which the requirements for the new use would exceed those for the existing use if the latter were subject to the current parking and loading provisions of the Ordinance.

(Ord. No. 316, 5-19-2008)

Section 17.02 - Existing Parking and Loading Facilities.

Accessory off-street parking or loading facilities which are located on the same lot as the building or use served and which were in existence on the effective date of this Ordinance or were provided voluntarily after such effective date shall not hereafter be reduced below or, if already less than, shall not further be reduced below the requirements of this Ordinance for a similar new building or use.

(Ord. No. 316, 5-19-2008)

Section 17.03 - Parking Requirements and Standards.

Off-street parking facilities must be provided and permanently maintained by the owners and/or occupants, except in the C-2 Central Business District, in accordance with the following provisions:

1. *Use of Parking Facilities.* Off-street parking facilities accessory to residential uses shall be used solely for the parking of noncommercial passenger vehicles owned by occupants of the dwelling structures to which such facilities are accessory or by guests of said occupants. Under no circumstances shall the required parking facilities, accessory to residential structures, be used for the storage of commercial vehicles or for the parking of automobiles belonging to the employees, owners tenants, visitors, or customers of business or industrial establishments, except as provided in the following section.
2. *Parking in tree lawns and yards in residential districts.*
 - A. The parking of any vehicle in any front yard, that being the area beginning at the front building line of the principal permitted residential structure and the front property line abutting the street right-of-way line is prohibited except for designated driveways and approved parking areas. If there is no hard surface drive and parking surface or other evidence of a clearly used drive and parking area on a zoning lot, the zoning administrator shall be empowered to determine and designate the driveway and parking area.
 - B. Parking on any tree lawn may only take place provided said parking area is improved with pavement having an asphalt or Portland cement binder, or, shall be crushed stone and shall be graded and surfaced for it to permit drainage and disposal of surface water and/or snow accumulating within the confines of the parcel.

Tree lawn shall mean the unimproved portion of the street between the edge of the paved roadway and the edge of the sidewalk.

- C. The parking of any vehicle on any portion of the side yard which is behind the front building line of the principal permitted residential structure is prohibited.
 - D. The parking of any vehicle in the rear yard is prohibited, except on designated driveways and approved parking areas.
3. *Parking of Commercial Vehicles in Residential Districts.* A licensed commercial vehicle owned by, or assigned to, a licensed vehicle operator who is a permanent resident shall be permitted. For the terms of this section, a permitted vehicle shall be limited to passenger cars, vans, pickup trucks and other similar vehicles. Trucks having a gross cargo capacity of over four tons and tractors or tractor-trailer combinations shall not be considered vehicles under this section and are specifically excluded from parking in residential zoning districts. No more commercial vehicles than licensed vehicle drivers residing on the premises shall be allowed to park on a zoning lot in residential districts.
 4. *Joint Parking Facilities.* Off-street parking facilities for different buildings, structures or uses, or for mixed uses, may be provided collectively in any zoning district in which separate parking facilities for each constituted use would be permitted, provided that the total number of spaces so located together shall not be less than the sum of the separate requirements for each use.
 5. *Calculation of Required Parking Spaces.* When determination of the number of off-street parking spaces required by this Ordinance result in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half shall be counted as one parking space.
 6. *Minimum Size of Parking Space.* A required off-street parking space shall be at least nine (9) feet in width and at least twenty (20) feet in length, exclusive of access drives or aisles. All parking spaces shall have a vertical clearance of at least seven (7) feet. Aisle widths shall be not less than the following: perpendicular parking, twenty (20) feet; angle parking two-way traffic, sixteen (16) feet; angle parking one-way traffic, twelve (12) feet.
 7. *Minimum Number of Parking Spaces for a Parking Area.* Except in the case of parking required for single family dwellings, no parking areas may contain less than three (3) parking spaces.
 8. *Location of Off-Site Facilities.* Off-site facilities must be located within four hundred (400) feet of the use to which they are accessory; measured from the nearest point to the nearest point, provided that they conform to all district regulations.
 9. *Access to Public Street or Roadway.* Each required off-street parking area or space shall open directly upon an aisle or driveway of such width and design as to provide such parking space. All off-street parking facilities shall be designed with appropriate means of ingress and egress which least interferes with traffic movements. No driveway across public property nor curb cut shall exceed a width of forty (40) feet.
 10. *Driveways.*
 - A. *Driveways in residential districts.* Driveways may be located no closer than four feet to the side yard line unless the driveway abuts the driveway located on the adjoining property.
 - B. *Driveways in industrial and commercial districts.* Off-street parking uses in industrial or commercial districts may be located in a required front, rear or side yard, except the ten feet adjacent to the rear or side lot line adjacent to a residential district.
 11. *Parking in Street Parkways.* No person, firm or corporation shall park, deposit, leave or store any motor vehicle, vehicle or tangible personal property of any type or description at any time between the sidewalk line and curb line at any place within the Village, unless elsewhere provided in this Ordinance or within designated parking

areas established by the Village Council.

12. *Design and Maintenance Standards.* All parking spaces and areas herein after constructed in conformance with the Ordinance shall comply with the following standards:
 - A. *Screening and Landscaping.* All open vehicle parking areas containing more than three (3) parking spaces shall be effectively screened on each side adjoining or fronting on any property situated in a residence district by a wall, fence or densely planted compact hedge no less than four (4) feet nor more than six (6) feet in height. Such required screening shall conform with the front yard requirements of the district in which the parking is located.
 - B. *Pavement and Surfacing.* All open off-street parking areas shall be of concrete or asphalt paving material according to standards established by the Village Engineer.
 - C. *Lighting.* Any lighting used to illuminate off-street parking areas shall be directed away from residential properties in such a way as not to create a nuisance (see Section 15.02).
 - D. *Signs.* Accessory signs as permitted in zone districts.
13. *Use of Parking Spaces for Vehicle Repair and Service.* No motor vehicle repair work of any kind shall be permitted in conjunction with accessory open off-street parking facilities provided in a residential district.
14. *Overlapping lines.* No person shall park a vehicle in such a manner as to straddle or overlap the limit lines of the parking spaces marked upon the street.
15. *Truck/tractor trailer.* No person shall park or leave any truck tractor, trailer, semi-trailer detached from its tractor on any street, alley or public place or in any public parking lot within the village except in cases of emergency, in which case the owner/operator shall notify the Berrien Springs/Oronoko Police Department.
16. *Interference.* No person shall interfere with or hinder the enforcement of the parking, standing or stopping regulations of the village by removing, erasing, altering, concealing or in any manner modifying tags, stickers, chalk or other marks or symbols placed on a vehicle by a parking control officer or police officer or by any other act designed or intended to prevent such enforcement.
17. *Designated parking spaces.* The public works superintendent with approval of the village council, shall have the authority to lay out and designate use of parking spaces on publicly-owned or operated parking lots, and all persons parking any vehicles therein shall park the same within such designated limit lines and spaces, no person shall park any vehicle in any driveway or other portion of such lot where parking is forbidden by signs duly posted or by any traffic control order of the Berrien Springs/Oronoko Police Department.
18. *Parking time limits—Public lots.* The public works superintendent with consent of the village council, shall have authority to limit the period within which vehicles may be parked in any publicly-owned or operating parking lots and no person shall park or leave any vehicles therein for a period longer than that established by the public works superintendent and posted in such parking lot by signs giving notice of such limited parking regulations.
19. *Liability.* All parking in any publicly-owned lot shall be at the owner's risk and the village shall not be responsible for the theft of or damage to any vehicle or the loss of any articles left in any vehicle while parked in any publicly-owned or operated parking lot.
20. *Overnight parking.* No person shall park or leave any motor vehicle overnight in any public parking lot.
21. *Use for repair or sale of vehicles or for trailer business prohibited.* No person shall use any public parking lot to sell or repair vehicles or to carry on any trade or business therein.
22. *Handicapped parking space.* No person shall park in any parking space designated by a control device directed by the village as being reserved for handicappers, unless the person is a handicapper as described in MCL 257.19(a) or unless the person is parking the vehicle for the benefit of such a handicapper. A certificate of

identification issued under MCL 257.675(5) to a handicapper shall be displayed in the lower left corner of the front windshield or a special registration plate issued under section MCL 257.803(d) to a handicapper shall be displayed on any vehicle parked in such parking space.

23. *Hazardous materials.* No vehicle used in the transportation of inflammable or explosive materials or substances shall be parked within the limits of any village street or public place; provided, however, that this restriction shall not apply to the incidental stopping or parking of such vehicle in the carrying-out of loading or unloading operations or in the performance of errands incidental to the business use of such vehicles if such vehicle is lighted with at least two white headlights and two red rear lights so constructed and placed as to be observed under the ordinary atmospheric conditions at a distance of not less than 500 feet.
24. *No vehicle maintenance.* No automobile, truck or other vehicle shall be parked within the limits of any street or other public place for the purpose of repairing, remodeling or otherwise working upon said vehicle.
25. *No parking near fire hydrants.* No automobile, truck or other vehicle other than fire trucks, ambulances or vehicles of law enforcement agencies during the performance of their respective duties, shall be parked or permitted to stand within 15 feet of any fire hydrant, nor nearer than 25 feet from the nearest street line of any intersecting street, nor in front of any crosswalks or in any passenger bus loading zones.
26. *No parking—Fire scene.* No automobiles, trucks or other vehicles shall be parked or permitted to stand within the boundaries of any street and within 500 feet of any building on fire, or at a greater distance as directed by the Berrien Springs/Oronoko Police Department or the Berrien Springs/Oronoko Fire Department official.
27. *Parking limits/prohibition.* No automobiles, trucks or other vehicles shall be parked further than two feet from the curb line if there is one, and if there is no curb, they shall not be parked within the main traveled portion of the street or highway.
28. *Parking brake set/attendance.* No automobile, truck or other vehicle shall be parked or permitted to stand unless the brakes thereon are in good working order and properly set, nor shall such vehicle be parked or permitted to stand with its motor running, unless a competent operator is in charge and at the controls thereof.
29. *No parking.* When signs have been erected by a competent authority designating a no parking zone, the parking by any automobile, truck or other vehicle contrary thereto shall be a violation of this article.

(Ord. No. 316, 5-19-2008; Ord. No. 324, §§ 8—10, 5-2-2011; Ord. No. 332, § 1, 5-21-2012)

Section 17.04 - Schedule of Parking Requirements.

Whenever a building, the use of which requires the provision of off-street parking, the owner of such building shall provide off-street parking in the minimum number as required by the following standards:

- A. *Parking Spaces Required in the R-1A, R-1B and R-1C Residential Districts.*
 1. *Single-Family Dwellings.* Two (2) parking spaces shall be provided per dwelling.
 2. *Bed and Breakfast Operations.* Parking shall be provided according to the following formula; 2 spaces, plus 1 space for each guest room, plus 1 space for each employee on duty at any one time.
 3. *Other Permitted Uses.* Parking shall be provided in the amount and in accordance with the specifications found in subparagraphs B, C and D for the uses which are permitted within applicable residential District.
- B. *Parking Spaces Required in the R-2, R-3, R-4 and R-4 Residential Districts.*
 1. *Single-Family Dwellings.* Two (2) parking spaces shall be provided for each dwelling unit.
 2. *Bed and Breakfast Operations.* Parking shall be provided according to the following formula; 2 spaces, plus 1 space for each guest room, plus 1 space for each employee on duty at any one time.

3. *Multiple-Family Dwellings and Group Homes.* One and one-half (1½) spaces per dwelling unit shall be provided for each dwelling unit to provide for efficiency and one (1) bedroom unit. Two (2) spaces per dwelling unit shall be provided for each dwelling unit containing two or more bedrooms.
4. *Churches and Schools.* One (1) parking space shall be provided for each three (3) auditorium seats. Adequate space shall also be provided for buses used in connection with the activities of the institution, and all loading and unloading of passengers shall take place upon the premises.
5. *Libraries and Other Public Buildings.* One (1) parking space shall be provided for each five hundred (500) square feet of gross floor area.
6. *Recreation and Other Religious and Similar Facilities.* Parking space shall be provided for each four hundred (400) square feet of floor space.

C. *Parking Spaces Required in the C-1 Commercial District.*

1. *Churches and Schools.* One (1) parking space shall be provided for each three (3) auditorium seats. Adequate space shall also be provided for buses used in connection with the activities of the institution, and all loading and unloading of passengers shall take place upon the premises.
2. *Libraries and Other Public Buildings.* One (1) parking space shall be provided for each five hundred (500) square feet of gross floor area.
3. *Parks and Other Places of Assembly.* Parks, recreation and assembly facilities including stadiums, arenas, auditoriums (other than church, college or institutional schools), convention halls exhibition halls and other similar places of assembly shall provide parking spaces equal in number to fifty (50%) percent of the capacity in persons shall be provided.
4. *Religious Facilities.* One (1) parking space shall be provided for each employee, plus one (1) space for each four hundred (400) square feet of floor space.
5. *Hospitals and Similar Uses.* One (1) parking space shall be provided for each two (2) -hospital beds, plus one (1) parking space for each two (2) employees, other than the staff doctors, plus one (1) parking space for each doctor assigned to the staff.
6. *Clinics, Medical Centers, and Similar Uses.* One (1) parking space shall be provided for each employee and doctor, plus one (1) space for each four hundred (400) square feet of floor space.
7. *Retail Store Uses.* Retail stores including fabrication of merchandise for sale on premises shall provide one (1) parking space for each four hundred (400) square feet of floor area as defined in this Ordinance (See definition of floor area, off-street parking and loading).
8. *Wholesale Uses.* Wholesale establishment including open air and farmers markets (but not including warehouses and storage buildings other than accessory buildings) shall provide one (1) parking space shall provide for each six hundred (600) square feet of floor area.
9. *Personal Service Uses.* Personal service establishments such as barber shops, beauty parlors, shoe repair shops, laundry and dry-cleaning shops. And similar uses shall provide one (1) parking space shall for each four hundred (400) square feet of floor area.
10. *Food Service Uses.* Restaurants, delicatessens, and other dispensaries of food at retail shall provide one (1) parking space for each four hundred (400) square feet of floor area.
11. *Office Space Uses.* Professional and business offices shall provide one (1) parking space for each four hundred (400) square feet of floor area.
12. *Financial Institution Uses.* Banks, savings and loan associations shall provide one (1) parking space for each

four hundred (400) square feet of floor area. Drive-in banks or other similar drive-in establishments shall provide three stacking spaces per teller or customer service window.

13. *Miscellaneous Uses.* Theaters, amusements and recreational buildings, showrooms and workshops of plumbers, electricians, painters, decorators and similar trade, photograph supply shops, workrooms and studios, laboratories, and public utility buildings and structures.
 - a. Theaters (indoor). One (1) parking space shall be provided for each three (3) seats.
 - b. Showrooms, Workshops and Studios. One (1) parking space shall be provided for each four hundred (400) square feet of floor area.
 - c. Public Utility Buildings and Structures. One (1) parking space shall be provided for each employee, plus one (1) space for each vehicle used in the conduct of the enterprise.
14. *Building, Home Supply and Similar Uses.* Building supply stores, ice storage and sales, plumbing and heating supplies, farmers' exchange or co-op shall supply one (1) parking space shall be provided for each six (600) hundred square feet of floor area.
15. *Automotive Service and Similar Uses.* Garages and filling stations, provided that all gasoline storage tanks must be underground, tire sale and repair shops, automobile sales and service, automotive parts and supply stores, and bicycle sales and repair establishments. One (1) parking space shall be provided for each six-hundred (600) square feet of floor area, plus one (1) parking space shall be provided for each employee.
16. *Drinking Establishments and Similar Uses.* Taverns, cocktail lounges and night clubs. One (1) parking space shall be provided for each four hundred (400) square feet of floor area.
17. *Printing and Similar Job Shops.* Printing and other similar job shops shall provide one (1) parking space for each employee, based upon greatest number of employees on any one shift, plus one (1) parking space shall be provided for each four hundred (400) square feet of floor area.
18. *Funeral Homes.* Twenty (20) parking spaces shall be provided for each chapel or parlor, plus one (1) parking space for each funeral vehicle kept on the premises; in addition there shall be provided stacking space for not less than ten (10) automobiles for funeral procession assembly.
19. *Clubs and Similar Uses.* Private clubs operated not for profit and for the benefit of members only shall provide one (1) parking space for each four hundred (400) square feet of floor area.
20. *Miscellaneous and Uses Not Herein Defined.* Any commercial use or establishment parking not herein specifically permitted shall first be approved as a special use by the Village Council pursuant to Article XIX. The following shall serve as general guidelines for Village Council consideration:
 - a. Tourist courts, tourist homes, motels, and hotels. One (1) parking space shall be provided for the manager and each employee, plus parking as required herein for other ancillary uses such as restaurants and meeting rooms.
 - b. Hotels, transient. One (1) parking space shall be provided for each dwelling unit and one (1) parking space for each two (2) lodging rooms shall be provided.
 - c. Automobile laundry. Ten (10) spaces shall be provided to queue automobiles waiting for access into each wash rack, plus one (1) parking space for each employee working on the site.
 - d. Furniture and appliance stores, household equipment or furniture repair shops. One off-street (1) parking space shall be provided for each six hundred (600) square feet of floor area.
 - e. Motor vehicle sales and machinery sales. One (1) parking space shall be provided for each four hundred (400) square feet of floor area.

- f. Establishments engaged in production, processing, cleaning, servicing, testing or repair of materials, goods or services. One (1) parking space shall be provided for each employee, based upon greatest number of employees on any one shift, plus one (1) parking space shall be provided for each vehicle used in the conduct of the enterprise.
- g. Colleges, universities and business, professional and trade schools. One (1) parking space shall be provided for each three employees and one (1) parking space for each four (4) students based on the maximum number of students attending classes on the premises at any one time during any twenty-four-hour (24) period.
- h. Sanitariums, convalescent homes or institutions for aged or for children, including rest homes, nursing homes and other group homes. One (1) parking space shall be provided for each four beds, plus one (1) parking space shall be provided for each two (2) employees (other than staff doctors) plus one (1) parking space for each doctor assigned to the staff.

D. *Parking Spaces Required in the I-1 Industrial District.*

1. *Wholesale Sales and Storage.*

- a. Wholesale Establishments (but not including warehouses and storage buildings other than accessory). One (1) parking space shall be provided for each six hundred (600) square feet of floor area.
- b. Warehouses and Storage Buildings. One (1) parking space shall be provided for each employee, based upon greatest number of employees on any one shift, plus one (1) parking space for each vehicle used in the conduct of the enterprise.
- c. Industrial or Manufacturing Use. One (1) parking space shall be provided for each employee, based upon greatest number of employees on any one shift, plus one (1) parking space shall be provided for each vehicle used in the conduct of the enterprise.

E. *Parking Spaces Required for Planned Unit or Other Mixed Use Developments.* When two (2) or more uses are located on the same zoning lot within the same buildings, parking spaces equal in number to the sum of the separate requirements for each use shall be provided. No parking space or portion thereof shall serve as a required space for more than one use unless otherwise authorized by the Village Council.

F. *Parking Spaces Required for Other Uses Herein Not Defined.* For uses not listed heretofore in this schedule of parking requirements, parking spaces shall be provided on the same basis as required for the most similar listed use, or as determined by the Zoning Administrator and approved by the Village Council.

(Ord. No. 316, 5-19-2008)

Section 17.05 - Loading Requirements and Standards.

Off-street loading facilities must be provided and permanently maintained by the owners and/or occupants, in C-1 Commercial and I-1 Industrial districts the accordance with the following provisions:

- 1. *Location of Loading Space.* All required loading berths shall be located on the same zoning lot as the use served. No loading berth for vehicles over two tons capacity shall be closer than fifty (50) feet to any property in a residential district unless completely enclosed by building walls, or a uniformly painted solid fence or wall, or any combination thereof, no less than six (6) feet in height. No permitted or required loading berth shall be located within twenty-five (25) feet of the nearest point of intersection of any two streets.
- 2. *Size of Loading Space.* Unless otherwise specified, a required loading berth shall be at least ten (10) feet in width and at least twenty-five (25) feet in length, exclusive of aisles and maneuvering space, and shall have a vertical clearance of the least fourteen (14) feet. The length of the berth shall be increased to a minimum of fifty-five (55)

feet, if intended to serve semi-tractors and trailers.

3. *Access to Public Street or Road.* Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movements.
4. *Pavement and Surfacing.* All open off-street loading berths shall be concrete or asphalt according to standards established by the Village Engineer.
5. *Use of Loading Space for Vehicle Repair and Servicing.* No motor vehicle repair work or service of any kind shall be permitted in conjunction with loading facilities provided in any residence or business district.
6. *Loading Space Cannot Serve as Off-Street Parking.* Space allocated to any off-street loading area shall not, while so allocated, be used to satisfy the space requirements for any off-street parking facilities or portions thereof.
7. *Loading Space Requirement for Special Uses Not Herein Defined.* For special uses other than prescribed hereinafter, loading berths adequate in number and size to serve such uses, as determined by the Zoning Administrator and approved by the Village Council shall be provided.
8. *Requirements in the C-1 Commercial District and Nonconforming Conditions.* Uses for which off-street loading facilities are required herein but which are located in buildings of less floor area than the minimum prescribed for such required facilities, the building shall be provided with adequate receiving facilities off an adjacent alley, service drive or open space on the same lot which is accessible by motor vehicle.
9. *Schedule of Required Loading Spaces.* For the uses listed herein, loading berths shall be provided on the basis of gross floor area of buildings or portions thereof devoted to such uses in the minimum amounts shown herein:
 - A. *Retail Stores.* One (1) berth for each ten thousand (10,000) square feet of store area and fraction thereof of additional floor space.
 - B. *Hospitals, Group Homes, Hotels, Clubs, and Similar Uses.* One (1) parking berth for the first twenty thousand (20,000) square feet of floor area, one additional berth for the next one hundred thirty thousand (130,000) square feet of floor area and an additional berth for each one hundred fifty thousand (150,000) square feet of floor area or fraction thereof additional floor space.
 - C. *Eating and Drinking Establishments.* One (1) parking berth for the first twenty-five thousand (25,000) square feet of floor area and an additional berth for each twenty-five thousand (25,000) square feet of floor area or fraction thereof of additional floor space.
 - D. *Wholesale, Industrial and Manufacturing Establishments.* One (1) parking berth for the first twenty thousand (20,000) square feet of floor area, one additional berth for the next one hundred thirty thousand (130,000) square feet of floor area and an additional berth for each one hundred fifty thousand (150,000) square feet of floor area or fraction thereof of additional floor space.
 - E. *Loading Spaces Required for Other Uses Herein Not Defined.* For uses not listed heretofore in this schedule of loading requirements, loading berths spaces shall be provided on the same basis as required for the most similar listed use, or as determined by the Zoning Administrator and approved by the Village Council.

(Ord. No. 316, 5-19-2008)

ARTICLE XVIII - SIGNS

Footnotes:

--- (7) ---

Cross reference— *Signs, ch. 32.*

State Law reference— *Highway advertising act of 1972, MCL 252.301 et seq.*

Section 18.01 - Description and Purpose.

It is the intent of this Ordinance to regulate the erection, construction repair, alteration and removal of a all signs within the Village pursuant to the Village of Berrien Springs Sign Ordinance, Ordinance Number 260, adopted December 12, 1993, as from time to time may be amended.

(Ord. No. 316, 5-19-2008)

Section 18.02 - Signs Permitted in all Districts.

The following signs shall be permitted in all districts:

- A. *Highway Directional Signs and Markers.* Highway directional signs and markers are permitted, which shall be made and installed in accordance with the specifications of the village and the state, announcing the location of or directing traffic to a given location which include, but are not limited to, the following:
1. Service areas including automobile, food, lodging.
 2. Public and quasi public information signs.
 3. Commercial districts.
- B. *For Rent, For Sale and Open House.* Signs advertising a premises as for rent or sale or that announce an open house at a premises are allowed subject to the following restrictions:
1. For rent, for sale, and open house signs shall be placed only on the property which is being advertised, but shall not be placed within the right-of-way of any street, highway or road. In residential districts, such signs shall not be larger than three feet by three feet, including signposts.
 2. However, a sign advertising an open house may be placed on property other than the property which is being advertised if the sign is placed not earlier than 12:00 noon of the day prior to the open house and is removed immediately upon the conclusion of the open house. Open house sign on other property are subject to the size limitation and right-of-way exclusions set forth in subsection B(1) of the section.
 3. Signs are further regulated by Village of Berrien Springs Ordinance, Number 307.

(Ord. No. 316, 5-19-2008)

Section 18.03 - Enforcement.

The Zoning Administrator shall after the adoption of this Ordinance, enforce the Village of Berrien Springs Sign Ordinance, and shall require all signs hereinafter installed to be properly erected and maintained pursuant a permit issued as required by the provisions of Section 4 of the Village of Berrien Springs Sign Ordinance.

(Ord. No. 316, 5-19-2008)

Section 18.04 - Signs in the Cluster Development and Planned Unit Development Districts.

In the Cluster Development and Planned Unit Development overlay districts, signs shall be regulated according to the provisions of the original zoning district classification or most nearly appropriate to the uses proposed within the Cluster Development or Planned Unit Development as deemed appropriate by the Village Council.

(Ord. No. 316, 5-19-2008)

ARTICLE XIX - SPECIAL USES

Footnotes:

--- (8) ---

State Law reference— *Special land uses, MCL 125.3502 et seq.*

Section 19.01 - Purpose.

Special uses are those uses of land which are not essentially incompatible with the uses permitted in a zoning district, but has characteristics or locational qualities which require individual review and discretion in order to avoid incompatibility with the character of the surrounding area, public services and facilities, and adjacent uses of land. The purpose of this chapter is to establish equitable procedures and criteria which shall be applied in the determination of request to establish special uses. The criteria for decision and requirements provided for under the provision of the chapter shall be in addition to those required elsewhere in this Ordinance which are applicable to the special use under consideration.

(Ord. No. 316, 5-19-2008)

Section 19.02 - Application Procedures.

An application for permission to establish a special use shall be submitted and acted upon in accordance with the following procedures:

1. *Application.* Applications for a special use are requested to be submitted twenty (20) days prior to the next scheduled Village Council meeting through the Zoning Administrator who will review the application for completeness, then transmit the application to the Village Council. Each application shall be accompanied by the payment of a fee in accordance with the schedule of fees adopted by the Village Council to cover the costs of processing the application. No part of this fee shall be refundable.
2. *Required Information.* An application for a Special Use Permit shall be accompanied by the following documents and information:
 - A. An application form, supplied by the Zoning Administrator, which has been completed in full by applicant.
 - B. A site plan, as specified in Article XXI.
3. *Public Hearings.* Upon receipt of an application for a special land use which requires a decision of the Village Council, a notice that a request for special land use approval has been received and that a public hearing will be held with notice provided pursuant to Article XXIV, Section 24.02, subparagraph 3.
4. *Village Council Review and Approval.* Within thirty (30) days following the public hearing, the Village Council shall review the application for a special use, comments received at the public hearing, the site plan, and other materials submitted in relation to the application, and deny application, approve the application, or approve the application with conditions. The decision on a special land use shall be incorporated in a statement of conclusions relative to the special land use under consideration. The decision shall specify the basis for the decision, and any conditions imposed. The decision of the Village Council on the special use application shall be made in accordance with the criteria for approval stated in Article XIX, Section 19.03 with conditions by the Village Council the applicant may apply for a building permit.

(Ord. No. 316, 5-19-2008)

Section 19.03 - Basis of Determination

Prior to approval of a special use application, the Village Council shall insure that standards specified in this Article, as well as applicable standards established elsewhere in this ordinance, shall be satisfied by the completion and operation of the special use under consideration.

1. *General Standards.* The Village Council shall review the particular circumstances of the special use application under consideration in terms of the special use standards, and shall approve a special use only upon a finding in compliance with each of the following standards, as well as applicable standards established elsewhere in this ordinance.
 - A. The special use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
 - B. The special use shall not change the essential use of the surrounding area.
 - C. The special use shall not be hazardous to adjacent property, or involve uses, activities, materials, or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes or glare.
 - D. The special use shall not place demands on public services and facilities in excess of current capacity.
 - E. The special use is in compliance with the Village of Berrien Springs Master Plan.
2. *Conditions.* The Village Council may require reasonable conditions in conjunction with approval of a special land use. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure the compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desired manner. Conditions imposed shall do all the following:
 - A. Be designed to protect natural resources, the health, safety and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - B. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
 - C. Be necessary to meet the intent and purpose of the zoning regulations: be related to the standards established in the Ordinance for the land use or activity under consideration; and be necessary to insure compliance with those standards.
 - D. The conditions imposed with respect to the approval of a land use or activity shall be recorded in the public record of the approval action and remain unchanged except upon the mutual consent of the Village Council and the landowners.
3. *Termination.* If any special use is not put into effect within six (6) months of the date of approval by the Village Council is discontinued through vacancy of the premises, lack of operation or otherwise for a continuous period of six (6) months, then the special use shall lapse and be null and void. Future use of said property shall conform in its entirety to the provisions of this Ordinance; however, the Village Council for good cause, may grant an extension for time to comply or to continue the special use if, in its judgement, such extension is necessary in order to avoid injustice or undue hardship to the owners of the property.

(Ord. No. 316, 5-19-2008)

Footnotes:

--- (9) ---

State Law reference— *Single-family residence; instruction in craft or fine art as home occupation, MCL 125.3204.*

Section 20.01 - Intent.

It is the intent of this Article to recognize that certain commercial activities can be operated within a residential dwelling with no or minimal adverse impact upon surrounding neighbors.

Such minor home occupations may be carried out within a principal permitted use in a residential district when specifically listed as an accessory permitted use for the district in which the property is located. Minor home occupations are characterized as computer and telephone-based businesses where there is no or limited customer or client traffic into the home occupation. Examples of minor home occupations include, but are not limited to, real estate agent, insurance sales agents, consultants, financial planners, stockbrokers, etc.

It is also recognized that the conduct of other business operations as home occupations are desirable to selected occupants of dwellings in residential districts, however, such business activities may cause increased traffic, noise, outdoor storage requirements, etc., in the neighborhood but if controlled, may be compatible with residents of the neighborhood. Major home occupations are characterized as those businesses which provide customer or client services on preestablished or published schedule of store or services hours or provide such services on a regular scheduled basis in the home occupation. Example businesses include the sales of any goods or the provision of services and includes, but are not limited, to sales of health products and vitamins, cookware, novelty items (typically made by the resident of the home occupation), barber and beauty shops, massage and physical therapy centers, doctor and dentist offices, offices of lawyers and similar professions, and other similar business. Where allowed as special uses approved by the Village Council reasonable conditions may be placed on the business operation to assure compatibility of the business operation with neighborhood residential needs.

(Ord. No. 316, 5-19-2008)

Section 20.02 - Minor Home Occupation Permitted By Right.

A minor home occupation meeting the definition and standards of this ordinance shall be permitted by right only in those districts where stated.

The standards are as follows:

1. Minor Home occupations shall be allowed only in principal use single-family dwellings.
2. No person other than members of the family residing on the premises shall be engaged in such occupation.
3. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit shall be used in conducting the home occupation.
4. There shall be no change in the outside appearance of the building or premises or other visible evidence of the conducting of such home occupation other than one (1) sign, not exceeding four (4) square foot in area, non-illuminated, and mounted flat against the wall of the principal building.
5. No traffic shall be generated by such home occupation in greater volumes than would be normally expected in a residential neighborhood, and any need for parking generated by the conducting of such home occupation shall not exceed normal single family parking requirements.

6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises that causes fluctuations in line voltage off the premises.

(Ord. No. 316, 5-19-2008)

Section 20.03 - Special Land Use Permit Required for Major Home Occupations.

A major home occupation meeting the definition and standards of this ordinance shall be permitted upon issuance of Special Land Use Permit by the Village Council in only those districts where stated.

The standards are as follows:

1. No person other than members of the family residing on the premises and one (1) non related person living elsewhere shall be engaged in such occupation.
2. The use of the dwelling unit and/or accessory use building for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and the use of the residence shall not occupy more than twenty-five (25) percent of the floor area of the dwelling unit, and any accessory use shall not be greater than fifty (50) percent of the floor area of the residence.
3. There shall be no change in the outside appearance of the building or accessory use structure or other visible evidence of the conducting of such home occupation other than one (1) sign, not exceeding four (4) square foot in area, non-illuminated, and mounted flat against the wall of the principal or accessory use building.
4. No traffic shall be generated by such home occupation of a volume that would disrupt the residential neighborhood, and any need for parking generated by the conducting of such home occupation shall be met by the provision of off-street parking in an amount prescribed in Article XVII for the commercial business activity to be conducted as the home occupation in the side or rear yard located to the rear of the front building line of the residential building or in accordance with any Special Land Use permit issued by the Village Council.
5. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises that causes a change of transmission voltage off premises.
6. Major home occupations include, but are not limited to:
 - A. Day Care Centers, when operated as a home occupation,
 - B. Bed & Breakfast Operation exceeding the requirements of Article XVI, Section 16.02, when operated as a home occupation,
 - C. Sale, manufacture and assembly of craft goods made on premise.

Automobile repair and other related services are not considered home occupations under the terms of this section of the Ordinance.

(Ord. No. 316, 5-19-2008)

Section 20.04 - Prohibition of Ammunition and Ammunition Materials.

Use, storage or sale of ammunition or the materials necessary for the manufacture of ammunition is prohibited in a minor or major home occupation.

(Ord. No. 316, 5-19-2008)

ARTICLE XXI - SITE AND BUILDING FACADE PLAN REVIEW

Footnotes:

--- (10) ---

State Law reference— *Submission and approval of site plan, MCL 125.3501.*

Section 21.01 - Purpose.

The intent of this Section is to provide for consultation and cooperation between the applicant and the Village Council in order that the applicant may accomplish his objectives in the utilization of land within the regulations of this Ordinance and with minimum adverse effect on the use of adjacent streets and highways, and on existing and future uses in the immediate area and vicinity.

(Ord. No. 316, 5-19-2008)

Section 21.02 - When A Site Plan Is Required.

New Development. The Zoning Administrator or the Building Inspector shall not issue a statement of zoning compliance or issue a building permit for any proposed development in the R-3 and R-4 Residential, REC Parks, Recreation and Open Space, C-1 Commercial, C-2 Central Business, I-1 Industrial districts for any use requiring more than four (4) parking spaces in the R-1A, R-1B, R-1C, R-2, and Residential districts except a single-family dwelling proposed for construction as an allowable use in these districts or as otherwise required in this Ordinance until a site plan has been reviewed and approved by the Village Council.

Existing Development. The Zoning Administrator, upon review of a site plan for the addition to, modification of, or the demolition of any part of a legally conforming existing building or structure and upon finding the modification, addition to, modification of, or the demolition thereof conforms with the specifications of the district in which the property is located, shall issue a statement of zoning compliance or building permit, provided the proposed action is in compliance with all other applicable laws and ordinances.

(Ord. No. 316, 5-19-2008)

Section 21.03 - When A Building Facade Plan Is required.

The Zoning Administrator shall not issue any statement of zoning compliance or building permit for any proposed development in the C-2 Central Business Districts until a building facade plan has been reviewed and approved by the Village Council.

(Ord. No. 316, 5-19-2008)

Section 21.04 - Application Procedures.

An application for site (and building facade plan, when required) plan review shall be submitted twenty (20) days prior to the next scheduled Village Council meeting through the Zoning Administrator, who will review the application and plans for completeness, then transmit the application and site plan to the Village Council.

(Ord. No. 316, 5-19-2008)

Section 21.05 - Preliminary Site and Building Facade Plan Review.

Preliminary sketches of proposed site and other development plans, including building facade plans, when required, may be submitted for review to the Village Council prior to final site plan submission. The purpose of such procedure is to allow discussion between the applicant and the Village Council and if formed the Downtown Development Authority or other special committee appointed by the Village Council to serve in this capacity to better inform the applicant of the acceptability of his proposed plans prior to incurring extensive engineering and other costs which might be necessary for a final site plan.

Site plans shall include, as a minimum, the following:

1. Legal description of the property.
2. Small scale sketch of properties, streets, and uses of land of all properties abutting or across the street from the subject property,
3. A generalized map, schematic plans and building sketches showing any existing or proposed arrangement of:
 - A. Streets and lots;
 - B. Access points and other transportation arrangements;
 - C. Buffer strips, fences, wall and screening;
 - D. Natural characteristics including, but not limited to, open space, stands of trees, brooks, ponds, floodplain, hills, and similar natural assets;
 - E. Signs - location and lighting;
 - F. Buildings and other structures;
 - G. Architectural style, exterior surface materials, and the exterior surface color of all building facades that are viewable from a public street or right-of-way; and
 - H. A Hazardous Material Report form for site plan review and state and/or County environmental permit checklist, as required by any applicable ground water protection ordinance adopted by the Village.
4. A narrative declaration including:
 - A. The overall objectives of the proposed development;
 - B. Number of acres (or square feet) allocated to each proposed use and gross area in building, structures, parking, public and/or private streets and drives, and open space;
 - C. Dwelling unit densities by type;
 - D. Proposed method of providing sewer and water service as well as other public and private utilities; and
 - E. Proposed method of providing storm drainage.

Facade plans shall include, as a minimum, the following:

1. A generalized map, schematic plans and building sketches showing the existing proposed changes to the architectural style, exterior surface materials and exterior surface color of all building facades viewable from a public street.

(Ord. No. 316, 5-19-2008)

Section 21.06 - Village Council Review of Preliminary Site Plan.

The Village Council shall review the preliminary site plan and make recommendations to the applicant at the regular Village Council meeting based on the purposes, objectives, and requirements of this Ordinance and specifically the following considerations, when applicable:

1. Ingress and egress to property and proposed structures thereon, with particular reference to motor vehicle and pedestrian safety and convenience, traffic flow and control, and access in cases of fire, catastrophe or emergency.
2. Off-street parking and loading areas, when required, with particular attention to noise, glare and odor effects of each use in the plan on adjoining properties and properties in the proposed development.
3. Sewer, water, and storm drainage, with reference to location, availability and capacity.
4. Screening and buffering with reference to type, dimensions, and character.
5. Signs, if any, and their proposed lighting relative to glare, traffic safety, economic effect, and compatibility and harmony with adjoining properties.
6. Required yards.
7. General compatibility with adjacent properties.
8. The purpose and intent of this Ordinance and the goals, objectives and policies of the Village of Berrien Springs Master Plan.

(Ord. No. 316, 5-19-2008)

Section 21.07 - Village Council Review of Facade Plan.

The Village Council shall review the building facade plan and make recommendations based on the duly approved Central Business District Appearance Plan and/or Design and Appearance Standards and Guidelines.

(Ord. No. 316, 5-19-2008)

Section 21.08 - Final Site Plan Review.

The site final plan shall include the following information and such any other information as may be required by the Village Council from its review of the preliminary site plan.

1. Legal description of the property.
2. A small scaled sketch of the properties, streets, and use of land of all abutting properties area abutting or across the street (or alley) of the subject property.
3. A map at a scale not to exceed one (1) inch equals one hundred (100) feet (1" = 100'). The following items shall be shown on the map:
 - A. Date site plan was prepared;
 - B. Name and address of preparer;
 - C. Topography of the site and its relationship to adjoining land;
 - D. Existing man-made features;
 - E. Dimensions of setbacks, locations, heights, and size of buildings and structures;
 - F. Street right-of-ways, indicating proposed access routes, internal circulation; and relationship to existing right-of-ways;
 - G. Proposed grading;
 - H. Location and type of drainage, sanitary sewers, storm sewers, and other utilities;
 - I. Location and type of fences, landscaping, buffer strips, and screening;
 - J. Location and type of signs and on-site lighting;
 - K. Proposed parking facilities and drives. Parking lots (public and private) shall be designed with lines showing

individual spaces and shall conform with the provisions of Article XVII, Section 17.03.

- L. Easements, if any;
- M. Dimensions and number of proposed lots;
- N. A narrative describing the items indicated in Section 21.05.

(Ord. No. 316, 5-19-2008)

Section 21.09 - Village Council Review of Final Site Plan.

The Village Council shall review the final site plan and either approve, deny or approve with conditions the final site plan based on the purposes, objectives and requirements of this Ordinance, and specifically the considerations listed in Section 21.06.

1. To insure compliance with the final site plan and any conditions imposed under the ordinance, the Village Council may require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the Village Council and Village Attorney covering the estimated cost of improvements associated with a project for which zoning approval is sought, be deposited with the Village Clerk to insure faithful completion of the improvements. The performance guarantee shall be filed with the Village Clerk prior to the issuance of a building permit by the Building Inspector for any portion of the project.
2. Each development shall be under construction within one (1) year after the date of final approval by the Village Council. If said applicant does not fulfill this provision, the Village Council may grant a sixty (60) day extension provided the applicant presents reasonable evidence to the effect that said development has encountered unforeseen difficulties but is ready to proceed. Should neither of the aforementioned provisions be fulfilled or a sixty (60) day extension has expired, without commencement of construction, the site development plan shall be null and void.
3. The Village Council shall undertake and complete all site plan reviews within sixty (60) days of submission of all required information by the applicant. Upon approval of said plan, the President of the Village Council shall sign three (3) copies thereof. One (1) signed copy shall be made a part of the Village Council's files and one (1) shall be forwarded to the Zoning Administrator for issuance of a building permit. The third copy shall be returned to the applicant. In the case of any dispute, the signed copy of copy retained by the Village Council shall serve as final evidence of the decision of the Village Council.
4. This review process and site plan requirement shall apply to all Cluster Development and Planned Unit Development applications including plats submitted for consideration pursuant to the Land Division Act or Condominium Act of the State of Michigan.

(Ord. No. 316, 5-19-2008)

Section 21.10 - Right to Accept Reduced Site and Building Facade Information.

The Village Council recognizes that not all applications to be submitted for consideration under the terms of this Article will require full compliance with the submission requirements. An applicant may propose or the Zoning Administrator may accept an application not fulfilling all of the submission requirements when in the opinion of the Zoning Administrator that the submission materials are sufficient for the Village Council to render a decision on the applicants request. Upon submission of an application, the Village Council may request and the applicant shall provide such additional information as deemed necessary to fulfill the review and approval responsibilities of this Article.

(Ord. No. 316, 5-19-2008)

Section 21.11 - Fees and Expenses to be Born by Applicant.

The applicant shall reimburse the Village of Berrien Springs all cost associated with the Village review of the application for a site plan or building facade plan review, including, but not limited to engineering, legal and other expert assistance required by the Village to review and process that application.

(Ord. No. 316, 5-19-2008)

ARTICLE XXII - NONCONFORMING USES, BUILDINGS AND LOTS

Footnotes:

--- (11) ---

State Law reference— *Nonconforming uses or structures, MCL 125.3208.*

Section 22.01 - Continuation of Use.

A lawful use of land, structure or a lawful use of land and structure in combination exactly as such existed before the date of adoption of this amendment may be continued, as hereinafter provided, as a nonconforming use or a nonconforming structure, although the use of the land or structure of the structure itself does not conform with the provisions of this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 22.02 - Repair and Alternation of Nonconforming Uses.

Maintenance and repairs of a building or other structure continuing a nonconforming use are permitted provided that such repairs do not extend the area or volume of space occupied by the nonconforming use, except as provided in Sections 22.03 to 22.06.

(Ord. No. 316, 5-19-2008)

Section 22.03 - Nonconforming Residential Dwelling Alteration Permitted.

A building or other structure containing residential nonconforming uses may be altered in any way to improve its livability provided that no such alternation may be made which will increase the number of dwelling units or volume of the building.

(Ord. No. 316, 5-19-2008)

Section 22.04 - Change of Use.

A nonconforming use may be changed only to a conforming use. A nonconforming use may not be extended to displace a conforming use, nor may a building or structure regardless of the conformity or ownership, be combined with another building or structure, for the purpose of extending an existing nonconforming use or creating a different nonconforming use.

(Ord. No. 316, 5-19-2008)

Section 22.05 - Enlargement.

A nonconforming use, building or structure may be enlarged up to but no more than twenty-five (25) percent of its floor area as it existed at the date of adoption of the Ordinance amendment. Any such enlargement(s) must conform to all other ordinance and/or regulations governing the district in which it is situated. This provision may be employed any number of times provided that the total enlargement(s) of the building or structure does not exceed the twenty-five (25) percent limitation as herein set forth. A "Notice of Zoning Nonconformance" shall be issued to show the size of such enlargement(s) at the date construction commenced and for each amendment thereto approved pursuant to this section, by the Zoning Administrator.

(Ord. No. 316, 5-19-2008)

Section 22.06 - Restoration of Nonconforming Use.

A nonconforming use, building or structure damaged by fire, casualty, or act of God may be restored, reconstructed and use as before provided that the volume of such use, building or structure may not exceed, subject to the provision of this Article, the volume which existed prior to such damage and that any such restoration or reconstruction be substantially completed within one year of the occurrence of the damage.

(Ord. No. 316, 5-19-2008)

Section 22.07 - Time of Termination.

A nonconforming use shall be deemed to be permanently discontinued when such use has been discontinued or such building has been vacant for a period of one (1) year.

(Ord. No. 316, 5-19-2008)

Section 22.08 - Nonconforming Lots In Residential Districts.

A single-family detached dwelling may be erected on a vacant lot located in a residentially zoned district allowing the construction of a single-family dwelling, provided the dwelling conforms to the yard setback requirements:

- A. *Front Yard:* The front yard shall conform to front yard setback requirement of the district in which the lot is located.
- B. *Side Yard:* There shall be a side yard of no less than five (5) feet.
Side Yard Street Frontage: The side yard shall be not less than twenty (20) feet.
- C. *Rear Yard:* There shall be a rear yard no less than five (5) feet.

(Ord. No. 316, 5-19-2008)

ARTICLE XXIII - BOARD OF APPEALS

Footnotes:

--- (12) ---

State Law reference— *Zoning board of appeals, MCL 125.3601 et seq.*

Section 23.01 - Creation and Rules of Procedure.

There is hereby created a five-member Zoning Board of Appeals, hereinafter referred to as the Board of Appeals, which shall perform its duties and exercise its powers and jurisdiction according to the provisions of this Ordinance to the end that the objectives of this Ordinance are observed, public safety and general welfare secured, and substantial justice done. The Board of Appeals shall fix rules and regulations to govern its procedures.

(Ord. No. 316, 5-19-2008)

Section 23.02 - Membership.

Members of the Board of Appeals shall be appointed by the President of the Village of Berrien Springs subject to confirmation by the Village Council. The membership shall serve at the pleasure of the Village Council for three-year terms. The Village Council may appoint two alternate members who shall serve in the absence of any member(s) or serve in the instance that a member must be recused from any matter before the Board.

(Ord. No. 316, 5-19-2008)

Section 23.03 - Jurisdiction.

In addition to the duties and powers prescribed in other sections of this Ordinance, the Board of Appeals shall hear and decide on all matters relating to the following:

1. *Appeals From Administrative Decisions.* The Board of Appeals shall hear and decide appeals from, and review any order, requirement, decision or determination made by Zoning Administrator (or Building Inspector) and shall act upon all questions as they may arise in the administration of this Ordinance.
2. *Interpretation of Zoning District Boundaries.* The Board of Appeals shall interpret the boundary of any zoning ordinance district as depicted on the Official Zoning Map should a question of interpretation arise.
3. *Issue Variances From the Strict Terms of the Ordinance.* The Board of Appeals shall upon written application in specific cases may issue a variance from the terms of this Ordinance or vary the strict interpretation of the terms of this Ordinance as shall not be contrary to the public interest owing to special conditions where a literal enforcement of the provision of this Ordinance would result in hardship to the applicant.
4. *Issue Variances From the Strict Terms of Yard Setback Requirements.* The Board of Appeals shall upon written application in specific cases vary from the strict interpretation issue a variance from the terms of this Ordinance as shall not be contrary to the public interest owing to special conditions, a literal enforcement of the provision of lot and yard setback requirements.

(Ord. No. 316, 5-19-2008)

Section 23.04 - Public Notification and Public Hearing Requirements.

Whenever the approval of an application is required by the Board of Appeals under the provisions of this Ordinance, the Zoning Administrator in consultation with the Chair of the Zoning Board of Appeals shall set a date for public hearing on such and provide notification to each property and resident of abutting properties as set forth in Article XXIV, Section 24.02, subparagraph 3. Any person who is interested in such application or the determination thereof may appear before the Board of Appeals in person or by attorney and shall be permitted to state the reasons for approval or disapproval of such application.

(Ord. No. 316, 5-19-2008)

Section 23.05 - Standards for Approvals.

1. *General Standards for Approval.* In reaching its determination on an application or appeal, the Board of Appeals shall consider the following:
 - A. Whether the location, use, nature, intensity of operation, and congestion and density of population will be in conflict with the principal permitted uses of the district or with the purposes of this Ordinance.
 - B. Whether the available sewage disposal and water supply facilities will be adequate and safe.
 - C. Whether the lot size and yard area will be in harmony with the orderly and proper development of the district.
 - D. Whether adequate access to the building or use will be provided by either existing roads (public or private) or other roads to be constructed.
 - E. Whether the building or use will be objectionable to nearby properties and their owners by reason of traffic, noise, vibration, dust, blowing sand and erosion, disposal of waste or sewage, fumes, smoke, air pollution, fire hazard, or bright flashing lights.
 - F. Whether the building or use will discourage or hinder the appropriate development and use of lands and buildings in the general vicinity.
2. *Standards for Zoning Boundary Interpretation.* When the exact boundary of a district is uncertain and upon the filing of an application for an interpretation is filed, the Board of Appeals shall first consider the boundary location based on the scale of the zoning map and secondly the intended purpose of the Village Council in placing the boundary in a location not within a property line, geographic feature or other easily identifiable geographic identifier.
3. *Standards for Approval of Variances.* In approving a variance the Board of Appeals shall consider the following standards with respect to the application:
 - A. That the application demonstrated special conditions and circumstances which exist that are particular to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - B. That the literal interpretation of the provisions of this Ordinance would deprive the applicant of right commonly enjoyed by other proprietries in the same district under the terms of this Ordinance;
 - C. That the special conditions and circumstances do not result from the actions of the applicant;
 - D. That issuance of a variance would grant or permit the use of an existing nonconforming of building, structure or use land through removal of the nonconforming status as it currently exists.
 - E. That the variance requested is the minimum variance which would make possible reasonable use of the land, buildings or structures;
 - F. That the Board of Appeals can issue a statement of positive findings that the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - G. The Board of Appeals has established such appropriate conditions and safeguards to assure conformity with the terms of this Ordinance which shall be attached as conditions of the variance.

(Ord. No. 316, 5-19-2008)

Section 23.06 - Abandonment or Recision of a Board of Appeals Action.

If any appeal or variance is not put into effect within six (6) months of the date of approval by the Board, is discontinued through vacancy of the premises, lack of operation or otherwise for a continuous period of six (6) months, then the special permit or variance shall lapse and be null and void. Future use of said property shall conform in its entirety to the provisions of

this Ordinance; however, the Board of Appeals, for good cause, may grant an extension of time, not to exceed six (6) months, to comply or to continue such special permit or variance if, in its judgment, such extension is necessary in order to avoid injustice or undue hardship to the owners of the property.

(Ord. No. 316, 5-19-2008)

Section 23.07 - Procedure of Appeals, Meetings and Public Notice.

The following rules of procedure will govern the operation and decision making of the Zoning Board of Appeals:

1. Any party subject to a decision, order, requirement, determination or decision of the Zoning Administrator may appeal the decision by the filing with the Village Clerk and with the Board of Appeals, a notice of appeal specifying the grounds thereof.. Any such appeal shall be submitted no less than thirty (30) days following the date of which written certification of the action taken has been mailed to the applicant via US Postal Service first class mail service. The Village Clerk upon receipt of an appeal, shall notify the Zoning Administrator who shall forthwith transmit to the Chair of the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
2. Upon receiving any such appeal, the Chair Board of Appeals shall fix a reasonable time not less than sixty (60) days from the date of receipt of the notice of appeal is received from the Village Clerk, for a hearing and give notice as required by law as set forth in Article XXIV, Section 24.02, subparagraph 3.
3. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Zoning Administrator by a concurring vote of a simple majority of the entire Board of Appeals.
4. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of the rules, regulations or provisions relating to the construction, erection or alteration of buildings or structures so that the spirit of this Ordinance shall be observed, public health and safety secured, and substantial justice is accomplished.

(Ord. No. 316, 5-19-2008)

Section 23.08 - Appeals From the Board of Appeals.

In the event the Board of Appeals fails to reach a decision on any matter within thirty (30) days after the hearing thereon the applicant may appeal to the Berrien County Circuit Court as provided by the Michigan Zoning Enabling Act. An aggrieved party by appeal a decision of the Zoning Board of Appeals to the Berrien County Circuit Court within thirty (30) day following the certification its decision in writing or approval of the minutes of its decision as set forth in Section 606 of the Michigan Zoning Enabling Act (MCL 125.3606).

(Ord. No. 316, 5-19-2008)

ARTICLE XXIV - AMENDMENTS

Footnotes:

--- (13) ---

State Law reference— Zoning adoption, MCL 125.3401 et seq.

Section 24.01 - Initiation.

Amendments to this Ordinance may be initiated by the Village Council or may be proposed for consideration by the petition of the owners of property which would be involved or affected by such change or amendment. All proposed amendments not originating with the Village Council shall first be referred to the Village Council for study, review and recommendation.

(Ord. No. 316, 5-19-2008)

Section 24.02 - Village Council Procedures.

Amendments to this Ordinance, after review and recommendation of the Village Council may be adopted and enacted by the Village Council. The procedures to be followed in the enactment of an amendment to this Ordinance are those prescribed by the Village for the enactment of any other kind of ordinance and the Michigan Zoning Enabling Act, P.A. 110 of 2006.

1. *Application for Amending the Zoning Ordinance.* An applicant, the Village Council upon its own action, may initiate an application for amending the zoning ordinance text or map. An application (on a form provide by the Village) shall be filed with the Zoning Administrator who shall immediately transmit the application to the Village Council.
2. *Public Hearing Required.* Upon receipt of a application for a zoning amendment a public hearing shall be scheduled a with notification of the public hearing shall be provided in accord with subparagraph 3, below.
3. *Public Hearing Notification.* Upon notification of the date of the public hearing provided by the Zoning Administrator, the Village Clerk shall publish a notice in a newspaper of general circulation within Village, according to the following:
 - A. Publication will be done in a newspaper of general circulation in the Village not less than 15 days before the date of the public hearing.
 - B. Notice will be sent by mail or personal delivery to the owners of property for which the matter of the public hearing in being held.
 - C. Notice will be sent by mail to all persons to whom real property is assessed within 300 feet of the property subject of the public hearing matter.
 - D. Notice will be by mail or personal delivery to all occupants of all structures within 300 feet of the property subject to the public hearing matter.
4. *Contents of the Public Notice.* The public notices will include:
 - A. A description of the nature of the request.
 - B. The description of the property that is subject to the request, including the street address or addresses if more than one property and if no addresses are assigned another means of identification.
 - C. The date, time and location of the hearing.
 - D. The time for submission of written comments and location where they will be accepted.
4. *Publication of Adopted Amendments to the Ordinance.* The Village Clerk shall take action to publish notice of adoption in a newspaper of general circulation in the Village of Berrien Springs.

(Ord. No. 316, 5-19-2008)

Section 24.03 - Village Council Public Hearing and Approval/Disapproval.

Within thirty (30) days following the submission of complete application action shall be taken to schedule a public hearing and on the matter. Prior to consideration of an action to approve or deny a request to amend the Ordinance, the Village Council shall consider all public input. The Village Council may approve the amendment by a simple majority vote unless a protest petition is presented meeting the provisions of the Michigan Zoning Enabling Act, P.A. 110 of 2006 is presented to the Village Council. A minimum two-thirds (?) majority vote by the Village Council is required to approve an amendment upon the filing of a valid protest petition.

(Ord. No. 316, 5-19-2008)

ARTICLE XXV - CONDITIONAL REZONING

Footnotes:

--- (14) ---

State Law reference— *Use and development of land as condition to rezoning, MCL 125.3405.*

Section 25.01 - Intent.

It is recognized that there are certain instances where it would be in the best interests of the Village, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning.

It is the intent of this Section to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act, P.A. 110 of 2006, by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

(Ord. No. 316, 5-19-2008)

Section 25.02 - Application and Offer of Conditions.

1. An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.
2. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
3. The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested new zoning district.
4. The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which rezoning is requested.
5. Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
6. Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.

7. Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
8. The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the Village Council provided that, if such withdrawal occurs subsequent to the public hearing held on the original rezoning request, then a new public hearing with appropriate notice shall be held.

(Ord. No. 316, 5-19-2008)

Section 25.03 - Village Council Review.

After holding the required public hearing, the Village Council shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request.

The Village Council's deliberations shall include, but not be limited to a consideration of the factors for rezoning set forth in this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 25.05 - Approval.

1. If the Village Council finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming in form to the provisions of this Section. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the Village Council to accomplish the requested rezoning.
2. The Statement of Conditions shall:
 - a. Be in a form recordable with the Berrien County Register of Deeds or, in the alternative, be accompanied by a recordable Affidavit or Memorandum prepared and signed by the owner giving notice of the Statement of Conditions in a manner acceptable to the Village Council.
 - b. Contain a legal description of the land to which it pertains.
 - c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.
 - d. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.
 - e. Contain a statement acknowledging that the Statement of Conditions or an Affidavit or Memorandum giving notice thereof may be recorded by the Village with the Register of Deeds.
 - f. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.
3. Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The Village Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.
4. The approved Statement of Conditions or an Affidavit or Memorandum giving notice thereof shall be filed by the

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

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

(Ord. No. 316, 5-19-2008)

Section 25.06 - Compliance with Conditions.

1. Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of the Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement and/or specific performance as provided by law.
2. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

(Ord. No. 316, 5-19-2008)

Section 25.07 - Time Period for Establishing Development or Use.

Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within six (6) months after the rezoning took effect and thereafter proceed diligently to completion.

This time limitation may upon written request be extended by the Village Council if (1) it is demonstrated to the Village Council's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and (2) the Village Council finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

(Ord. No. 316, 5-19-2008)

Section 25.08 - Reversion of Zoning.

If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection 25.07 above, then the land shall revert to its former zoning classification.

The reversion process shall be initiated by the Village Council which will proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

(Ord. No. 316, 5-19-2008)

Section 25.09 - Subsequent Rezoning of Land.

When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Subsection 25.07 above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect.

Upon the owner's written request, the Village Clerk shall record with the Register of Deeds a notice that the Statement of Conditions is no longer in effect.

(Ord. No. 316, 5-19-2008)

Section 25.10 - Amendment of Conditions.

1. During the time period for commencement of an approved development or use or during any extension thereof granted by the Village Council the Village shall not add to or alter the conditions in the Statement of Conditions.
2. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

(Ord. No. 316, 5-19-2008)

Section 25.11 - Village Right to Rezone.

Nothing in the Statement of Conditions nor in the provisions of this Section shall be deemed to prohibit the Village from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification.

Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act, P.A. 110 of 2006.

(Ord. No. 316, 5-19-2008)

Section 25.12 - Failure to Offer Conditions.

The Village shall not require an owner to offer conditions as a requirement for rezoning.

The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 25.13 - Standards and Basis for Approval or Denial.

In reviewing an application for the rezoning of land, whether the application be made with or without an offer of conditions, factors that should be considered by the Village Council include, but are not limited to, the following:

1. Whether the rezoning is consistent with the policies and uses proposed for that area in the Village's Land Use Plan;
2. Whether all of the uses allowed under the proposed rezoning would be compatible with other zones and uses in the surrounding area;
3. Whether any public services and facilities would be significantly adversely impacted by a development or use allowed under the requested rezoning; and
4. Whether the uses allowed under the proposed rezoning would be equally or better suited to the area than uses allowed under the current zoning of the land.

(Ord. No. 316, 5-19-2008)

ARTICLE XXVI - ADMINISTRATION, FEES AND VIOLATIONS

Footnotes:

--- (15) ---

Cross reference— *Administration, ch. 2.*

Section 26.01 - Zoning Administrator.

The provisions of this Ordinance shall be administered by the Zoning Administrator appointed by the Village Council as assigned to the Ordinance Enforcement Office from time to time. Said Zoning Administrator's duties shall be the administration of this Ordinance as prescribed by this Ordinance, including issuance of all zoning compliance statements whether individual statement or as part of the issuance of a building permit pursuant to the Village Construction Code, acceptance of any and all applications required in the administration of the Ordinance any other duties assigned or delegated to the Zoning Administrator by the Village Council or any other law regulation or Ordinance of the State of Michigan or the Village of Berrien Springs.

(Ord. No. 316, 5-19-2008)

Section 26.02 - Enforcement Officer.

The enforcement of this ordinance shall be administered and enforced by the Zoning Administrator and the Ordinance Enforcement Officer designated by and responsible to the Village Council. Duties of the Ordinance Enforcement Officer shall include those set forth in Section 26.03 as well as other prescribed duties set forth in Section III of Ordinance Number 312.

(Ord. No. 316, 5-19-2008)

Section 26.03 - Duties and Powers—Zoning Administrator and Ordinance Enforcement Officer.

The Zoning Administrator and Enforcement Officer shall have the following powers in addition to those set forth in Section 26.01 and 26.02 above:

1. *Form of Application, Permits and Certificates.* The Zoning Administrator may prescribe the form of all applications, permits (including a zoning compliance permit when required by the terms of this Ordinance), and certificates required under the terms of the Ordinance. If no form is prescribed, a written document in the form of a letter requesting permission, in the case of an application stating precisely what permission is requested, or granting permission, in the case of a permit, stating precisely what permission is granted will suffice.
2. *Receive Applications.* The Zoning Administrator will receive and examine and certify completeness of all applications for permits, certificates, variances, and all other applications required under the terms of this ordinance.
3. *Refer Applications to the Board of Appeals.* The Zoning Administrator shall upon a finding that an application is complete must refer all applications for permits, certificates, variances, special use permits and any other applications to the appropriate body within twenty (20) days upon making determination that the submission is complete.
4. *Issue or Refuse Permits.* The Zoning Administrator must issue permits for constructions, alternation, and occupancy of those uses which comply with the requirements of this Ordinance, within thirty (30) days after the

- receipt of the application. The refusal of permit must be in writing and shall state the reasons for the denial.
5. *Issue Notice of Violation.* The Zoning Administrator or Enforcement Officer must issue a written notice of violation to each violator of this Ordinance, stating the nature of the violations. Duplicate copies of the notice must be sent to the Village Council.
 6. *Serve Appearance Tickets.* Serve notice and serve appearance tickets for violation of the terms of this ordinance as set forth in Chapter 4 of public Act 175 of 1927, as amended
 7. *Appear in Court.* Appear in court or other judicial proceedings to assist in the prosecution of ordinance violators, and as such other ordinance enforcing duties as may be delegated by the Village Attorney or assigned by the Village Attorney.
 8. *Make Recommendations.* The Zoning Administrator or Enforcement Officer may make recommendations to the Village Council and/or Board of Appeals for any action deemed necessary.
 9. *Records.* The Zoning Administrator must keep records of applications, permits, or certificates issued, of variances and special use permits granted, inspections made, any report issued and notices or orders issued.
 10. *Additional Duties and Powers.* The Zoning Administrator or Enforcement Officer must perform all other duties, and may exercise all other powers and privileges, as may be provided or made necessary by the terms of this Ordinance.
 11. *Scheduling of Public Hearing on All Required Matters.* The Zoning Administrator upon submission of any application requiring a public hearing pursuant to the provisions of this ordinance, and determination by the Zoning Administrator that said application meets the requirements of subparagraph 2 above, shall take such action to schedule a public hearing at the next regular meeting of the Village Council or Zoning Board of Appeals (as applicable) or at a special meeting of the Village Council or Zoning Board of Appeals for which the date and time has been approved by the Chair.
 12. *Administration of Fee and Expense Reimbursement Policy.* The Zoning Administrator shall be responsible to administer the fee and expense reimburse program the Village of Berrien Springs concerning all cost associated with the Village review of the application for a site plan or building facade plan review, including, but not limited to engineering, legal and other expert assistance required by the Village to review and process at application, through informing all applicants of this policy and monitoring their required payments.

(Ord. No. 316, 5-19-2008)

Section 26.04 - Fees.

A schedule of fees necessary for the administration of the Ordinance shall, from time-to-time, be established by resolution of the Village Council.

(Ord. No. 316, 5-19-2008)

Section 26.05 - Violations and Penalties.

Except as specifically provided by state law or Village ordinance, all violations of this Ordinance are misdemeanors. Except as otherwise provided by law, a person convicted of a violation of this Ordinance that is a misdemeanor shall be punished by a fine not to exceed five hundred (\$500.00) dollars and costs of prosecution or by imprisonment for a period of not more than ninety (90) days or by both such fine and imprisonment. However, unless otherwise provided by law, a person convicted of a violation of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum

period of imprisonment is ninety-three (93) days shall be punished by a fine not to exceed five hundred (\$500.00) dollars and costs of prosecution or by imprisonment for a period of not more than ninety-three (93) days or by both such fine and imprisonment.

The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Ordinance, whether or not such penalty is reenacted in the amendatory ordinance.

The penalty shall be in addition to the abatement of the violating condition, any injunctive relief, and/or a revocation of any permit or license.

This section shall not apply to the failure of village officers and employees to perform municipal duties required by this Ordinance.

(Ord. No. 316, 5-19-2008)

State Law reference— Limitation on penalties, MCL 66.2.

ARTICLE XXVII - DEFINITIONS AND USE OF TERMS

Section 27.01 - Definitions.

For the purpose of this ordinance, certain terms, phrases and words shall, whenever used in this Ordinance, have the meaning assigned in this Section. Terms not herein defined shall have the meaning customarily assigned to them.

Accessory Building or Structure. A supplemental building or structure (including garages, tool sheds, greenhouses/garden sheds, swimming pools, gazebos, barbeques/outdoor eating facilities and other similar structures) on the same lot with, and where the use is of a nature which is customarily incidental and subordinate to, the principal use or structure; but not including residential or other living quarters.

Accessory Use. A use naturally and normally incidental to, subordinate to, and devoted exclusively to, the main use of the land or building.

Accessory Use Rear Yard. An unoccupied and unobstructed (from the ground upward) open space lying between a accessory use building or structure and the rear lot line measured from the further most edge (eve line) of the accessory use building or structure perpendicular to the nearest point of the rear property line.

Adult Foster Care Facility. A dwelling or establishment in which is provided supervision, assistance, protection, or personal care, in addition to room and board, to an adult, not to include a licensed home for the aged, a licensed nursing home, or a licensed mental hospital.

Adult Foster Care Resident. An adult who resides in a adult foster care facility and receives supervision assistance, protection, or personal care, in addition to room and board.

Amusement Enterprise. Any building or structure used for one or more of the following uses; billiards, pool, bowling, shooting gallery, roller rink, dance hall, mechanical and electronic games, and similar uses as determined by the Village Council.

Auxiliary Building. A building which is incidental to another use or structure on the same lot (See accessory building or structure).

Bed and Breakfast Operation. A use which is subordinate to the principal use as a single family dwelling and a use in which a sleeping room and breakfast are provided in return for payment.

Building. A structure erected on-site, a mobile home or mobile structure, a pre-manufactured or pre-cut structure, above or below ground, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.

Building Area. The maximum projected area of a building and its accessory buildings, excluding steps, open porches, terraces and cornices.

Building Coverage. The area on a zoning lot occupied by buildings and structures, including accessory buildings.

Building Height. The vertical distance measured from the average level of the highest point and the lowest point of the building site covered by the building to: (1) if the roof is flat, the highest point; (2) if a gable, hip, gambrel or mansard roof, the average height measured between the eave and the highest point of the roof; (3) where no roof beams exist, or there are structures partly or wholly above the roof, the highest point of the building.

Building, Principal. The building which contains the principal building use of the parcel of property on which it is situated. In a residential district a dwelling is the principal building on a parcel of property.

Building Width. The minimum width of a building used for residential purposes shall be thirty (30) feet measured perpendicular at the foundation line running not less than thirty-three (33) percent of the length of the longest wall.

Car Canopies, Portable. Portable car canopies within the Village of Berrien Springs are strictly prohibited, regardless of what they are storing and regardless of the construction materials and means of construction and connection with the ground. They are defined as a prefabricated structure to shelter a motor vehicle which has no walls, and is usually constructed of light weight aluminum.

Certificate of Occupancy. A certificate issued by the Village Building Official or Inspector pursuant to the Village Construction Code authorizing an occupancy and/or use of land and/or a building or structure pursuant to the Village Construction Code and the terms of this Ordinance.

Cluster Development. A form of residential development where the total number of residential dwelling units may, with approval of the Village Council be constructed on eighty (80) percent of the total site area (or less), provided that twenty (20) percent, or more, of the total land area remains in open space protected from development through a permanent easement or other form of dedication acceptable to the Village Council.

Common Open Space. A parcel or parcels of land (including areas designated as common or limited common elements as recorded pursuant to the Michigan Condominium Act, P.A. 59 of 1978, as amended) or an area of water, or a combination of land and water within an area for Planned Unit Development and designed and intended for the use and enjoyment of residents or occupants of the Planned Unit Development. Common open space may contain such contemporary structures and improvements as are necessary and appropriate for the benefit and enjoyment of all residents of the Planned Unit Development but shall not include area reserved for the exclusive use or benefit of any individual tenant or owner, including any dedicated street or other public right-of-way; driveway, parking area, loading and storage area, and area reserved for non residential related use.

Condominium Act. The Michigan Condominium Act, P.A. 59 of 1978, as amended.

Council. The Village Council of the Village of Berrien Springs, Berrien County, Michigan.

Density - Planned Unit Development. The relationship of the total number of dwelling units contained in the Planned Unit Development to the Gross Acreage of the Planned Unit Development; dwelling units per gross acre.

Development Plan - Planned Unit Development. The application and any site, facade, or other engineering drawings including a property survey map and drawing necessary for submission, review and approval of a Planned Unit Development in accord with Article XIII.

District. A portion of the territory of the Village of Berrien Springs within which certain uniform regulations and requirements apply under the provisions of this Ordinance.

Downtown Development Authority. The body appointed by the Village Council pursuant to The Downtown Development Authority Act, P.A. 197 of 1975, as amended and assigned certain powers to review facade development and redevelopment plans pursuant to the terms of this Ordinance.

Dwelling. Any building or portion thereof designed or used exclusively for a residence or sleeping place or one or more persons.

Dwelling, Single-Family. A building having accommodations for, and occupied exclusively by, one-family, complying with the following standards:

1. It complies with the minimum square footage requirements of this Ordinance for the zone in which it is located.
2. It has minimum front building dimension measured at the foundation line of thirty (30) feet, measured perpendicular at the foundation line running not less than thirty-three (33) percent of the length of the longest wall, and complies in all respects with the Village Construction Code, including minimum heights for habitable rooms. Where a dwelling is required by law to comply with any federal or state standards or regulations for construction and where such standards or regulations for construction are different than those imposed by the construction code adopted by the Village, then and in that event such federal or state standard or regulation shall apply.
3. It is firmly attached to a permanent foundation constructed on the site in accordance with the Construction Code and shall have a wall of the same perimeter dimensions of the dwelling and constructed of such materials and type as required in the applicable construction code for single-family dwellings. In the event that the dwelling is a mobile home, defined herein, such dwellings shall be installed pursuant to the manufacturers setup instructions and shall be secured to the premises by an anchoring system or device complying with the rules and regulations of the Michigan Mobile Home Commission and shall have a perimeter wall as required above.
4. In the event that a dwelling is a mobile home as defined herein, each mobile home shall be installed with the wheels removed. Additionally, no dwelling shall have any exposed towing mechanism, undercarriage or chassis.
5. The dwelling is connected to a public sewer and water supply or to such private facilities approved by the Berrien County Health Department.
6. The dwelling contains a storage capability area in a basement located under the dwelling, in an attic area, in closed areas, or in a separate structure of standard construction similar to or of better quality than the principal dwelling, which storage area shall be equal to 10% of the square footage of the dwellings or 120 square feet, whichever shall be less.
7. The dwelling unit shall contain a garage or covered parking as required by this Ordinance.
8. The dwelling is aesthetically compatible in design and appearance with other residences in the vicinity, with either a roof overhang of not less than six inches on all sides, or alternatively with window sills or roof drainage systems concentrating roof drainage at collection points along the sides of the dwelling; has not less than two exterior doors with the second one being in either the rear or side of the dwelling unit; and has steps connected to each exterior door area or to porches connected to said door areas where a difference in elevation requires the same. Compatibility of design and appearance shall be determined by the Village Zoning Administrator upon review of the plans submitted for a particular dwelling. The decision of the Zoning Administrators may be appealed to the Zoning Board of Appeals by an aggrieved party. Any determination of compatibility shall be based upon the standards set forth in this definition of "dwelling" as well as the character, design, and

appearance of the majority of residential dwelling located outside of mobile home parks within 1,200 feet of the subject dwelling where such area is developed with dwellings to the extent of not less than 20% of the lots situated within said area; or, where said area is not so developed, by the character, design and appearance of one or more residential dwellings located outside of mobile home parks throughout the Village. The foregoing shall not be construed to prohibit innovative design concepts involving such matters as solar energy, view, unique land contour or relief from the common or standard designed home.

9. The dwelling contains no additions or rooms or other areas which are not constructed with similar quality workmanship as the original structure, including permanent attachment to the principal structure and construction of a foundation as required herein.
10. The dwelling complies with all pertinent building and fire codes. In the case of a mobile home, all construction and all plumbing, electrical apparatus and insulation within and connected to said mobile home shall be of a type and quality conforming to the "Mobile Home Construction and Safety Standards" as promulgated by the United States Department of Housing and Urban Development, being 24 CFR 3280, and as from time to time such standards may be amended. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements.
11. The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in the ordinance of the Village pertaining to such parks.
12. All construction required herein shall be commenced only after a building permit has been obtained in accordance with the applicable Village Construction Code provisions and requirements.
13. All construction shall conform with health, safety, and welfare specifications of the adopted construction code for emergency egress, rescue windows and smoke detectors.

Dwelling, Two-Family. A building containing not more than two separate dwelling units designed for residential use and conforming in all other respects to the standards set forth for single family dwellings.

Dwelling, Multiple-Family. A building containing three or more dwelling units designed for residential use and are conforming in all other respects to the standards set forth for single family dwellings.

Dwelling, Senior Multiple Family. Multiple dwelling units, rental apartments and other forms of residential dwelling units of not over three bedrooms per dwelling unit where all occupants of the unit is 55 years or older and the developer/owner of said development has elected to operate said development pursuant to Department of Housing and Development Regulations designed for senior housing with age restrictions as provided by law.

Dwelling Unit. One or more rooms, including a kitchen or kitchenette and sanitary facilities, in a building, designed as a unit for occupancy by not more than one family.

Enforcement Officer. The person charged with the enforcement of this Ordinance or his designee.

An Essential Service. The construction, alteration or maintenance by public utilities or government agencies of gas, electrical, steam, or water transmissions of distribution systems, and communications (except cell towers elsewhere regulated in this Ordinance), collection, supply or disposal systems. These include such equipment such as poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals (and signs) hydrants, and other similar equipment. Buildings and transmission facilities which do not provide direct service to local distribution systems are not included.

Event. See Festival.

Facade Plan. A sketch or other illustration showing the exterior surface of a building including all architectural features, surface materials and color or colors of all surface materials submitted pursuant to the requirements of Article XXI.

Family. A family means:

- (1) A person or persons related by blood, marriage, or adoption living as a single housekeeping unit in a dwelling unit; or
- (2) A group of not more than four (4) persons, unrelated by blood, marriage, or adoption, living as a single housekeeping unit in a dwelling unit (excluded from this definition is any society, club, fraternity, sorority, association, lodge, organization or group of students or other individuals where the common living arrangement or basis for the establishment of the housekeeping unit is temporary; or
- (3) A functional family, as defined in this section, living as a single housekeeping unit in a dwelling unit.

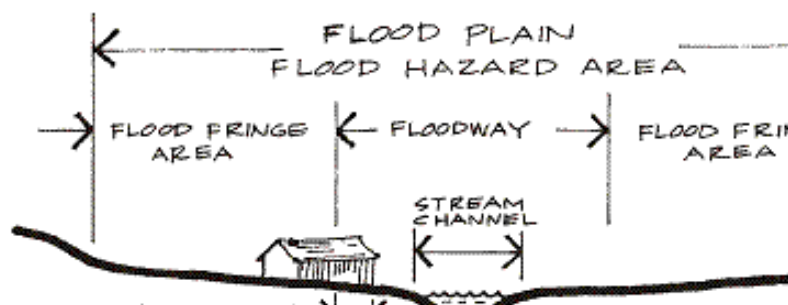
Family, Functional. A group of no more than six (6) people plus their offspring having a relationship which is functionally equivalent to a family. The relationship must be of a permanent and distinct character with demonstrable and recognizable bond characteristics of a cohesive unit. Functional family does not include any society, club, fraternity, sorority, association, lodge, organization or group of students or other individuals where the common living arrangement or basis for the establishment of the housekeeping unit is temporary.

Festival, Event, Gatherings. A festival, event or gathering is any fair, festival, or gathering of individuals or similar organized or unorganized activity where patrons watch or participate in entertainment, including but not limited to, music, shows, concerts, revivals, circuses, carnivals, art shows, antiques fairs, street dances, and sporting events not related to a scheduled school athletic event.

Flooding. A general and temporary condition of partial or complete inundation of normal dry-land area from: 1) the overflow of inland waters or 2) unusual and rapid accumulation of run-off of surface waters from any source.

Flood Hazard Area, Boundary Map. The land in the floodplain in any community which is subject to a one (1) percent or greater chance of flooding in any given year as defined as an area of special flood hazard designated Zone A on the Flood Insurance Rate Map issued for the Village by the Federal Emergency Management Administration or in lieu thereof, the area designated as floodplain on the Official Zoning Map.

Floodplain. Any land area susceptible to being inundated from water from any source (See flooding).



Floor Area. The sum of the gross horizontal areas of each floor of the principal building, measured from the exterior walls or from the center line of party walls, including the floor area of accessory buildings and structures. The term does not include area exclusively used for the parking of vehicles.

Floor Area, Off Street Parking and Loading Requirements. For the purposes of applying the requirements for off-street parking and loading. "Floor Area" means the gross floor area used by tenants or for the service to the public, including but not limited to, areas occupied by fixtures and indoor display equipment. It does not include areas used principally for non-public

purposes such as storage, incidental repair, processing or packaging of merchandise, shop windows, offices incidental to the management or maintenance of stores or buildings, toilet or rest rooms, utilities, dressing rooms or fitting or alternation rooms.

A major fraction of additional floor area requiring a parking or loading space shall require an additional parking or loading spaces, except when otherwise stated.

Garage/Storage Enclosure. See Fabric Structures (Portable Garage/Storage Enclosure).

Gross Acreage—Planned Unit Development. Shall include all land area occupied by the Planned Unit Development and any portions of said Planned Unit Development lying within an existing public right-of-way or highway.

Group Home. Is a dwelling unit or other structure designed to house a business intending to provide supervise care for (1) or more children or adults on a 24-hour basis, except as exempted by law that being adult foster care of family day-care of other group day-care facilities which provide services to less than six (6) persons.

Home Occupation—Major. An occupation, profession, activity, or use that is clearly a customary, incidental, and secondary use of a permitted, accessory or appurtenant structure of a residential dwelling unit which does not alter the exterior of the property or adversely affect the general residential use or character of the neighborhood. Major Home Occupations are evidenced by an increased amount of customer traffic, delivery or other vendor traffic, or other commercial activity which is not normally intended as a permitted use of the property, but which by their low level of activity or use do not adversely affect others.

Example businesses included the sales of any goods or the provision of services and includes, but not limited, to sales of health products and vitamins, cookware, novelty items (typically made by the resident of the home occupation), barber and beauty shops, massage and physical therapy centers, doctors and dentist offices, offices of lawyers and similar professions, and other similar business. In such cases these major home occupations, where allowed as special uses approved by the Village Council at which time appropriate conditions may be placed on the business operation to assure compatibility of the business operations with neighborhood residential needs.

Home Occupation—Minor. An occupation, profession, activity, or use that is clearly a customary, incidental, and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Minor home occupations are characterized as computer and telephone based businesses where there is no or limited customer or client traffic into the home occupation. Examples of a minor home occupations included, but not limited to, real estate agent, insurance sales agents, consultants, financial planner, stockbrokers, etc.

Household Pets. Household pets include any pets not specifically prohibited by the terms of this Ordinance and any other Village ordinance. Household pets do not include horses, donkeys, pigs (of any type), rabbits, chickens, goats or other farm animals or livestock, including miniature farm animals of any type. For the terms of this Ordinance, more than four dogs, cats or other household pets shall constitute a commercial kennel, or where such pets are boarded for compensation or offered for sale.

Land Division. The act of creating a lot or parcel of land defined by a metes and bounds description pursuant to the provisions of the Michigan Land Division Act, P.A. 87 of 1997, as amended (formerly the Michigan Subdivision Control Act) or the act of creating a condominium plat pursuant to the provisions of the Condominium Act, P.A., 59 of 1978, as amended, for the purpose of recording same with the Register of Deeds of Berrien County. (See: Land Division Act and Condominium Act.). For the purpose of this Ordinance any and all Land Division and Condominium plats will be considered a Planned Unit Development and submitted for approval according to the procedure of the Village of Berrien Springs Land Division Ordinance.

Land Division Act. The Michigan Land Division Act, P.A. 87 of 1997, as amended (formerly the Michigan Subdivision Control Act) and any ordinance adopted by the Village of Berrien Springs in furtherance of Village duties required of the act.

Landowner or Applicant—Planned Unit Development. The legal or beneficiary owner or owners of the land proposed to be included in a Planned Unit Development or the holder of an option or contract to purchase the land subject to the proposed Planned Unit Development.

Lodging House. See Bed and Breakfast operation.

Lot. A parcel of land of at least sufficient size to meet the minimum requirements hereof for use, coverage and area, and providing such yards and other open spaces as herein required. Such parcel shall have frontage on an improved public street and may consist of (see types of lot illustrations in Article XV):

- (1) A single lot of record;
- (2) A portion of a lot of record; or
- (3) Any combination of (1) or (2) above.

Lot Frontage—Front Lot Line. Lot frontage - the front lot line shall be that boundary of a lot which is along an existing or dedicated public street or where no public street exists, is along a private street approved as part of a recorded land division or condominium development by the Village Council.

Lot (or Parcel) of Record. The recorded legal description of any lot, condominium unit, or parcel of land in the office of the Register of Deeds of Berrien County, State of Michigan, or as a part of an unrecorded plat, development plan, condominium, subdivision, or by metes and bounds.

Mobile Home. A structure, transportable in one or more section, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure. Mobile home does not include a recreational vehicle.

Mobile Home Park. A parcel of land under the control of a person upon which contains three (3) or more mobile homes developed in accord with the specification constrained in or promulgated pursuant to P.A. 96 of 1987, as amended and approved by the Michigan Mobile Home Park Commission pursuant to procedures set forth in P.A. 96 of 1987, as amended; the Mobile Home Commission Act.

Modular Unit or Prefabricated Dwelling. A prefabricated structure designed for permanent occupancy as a single or two-family dwelling and transported to the site on a flat bed or other type truck or trailer for erection on a permanent foundation, either in sections or modular units that have been prefabricated at the factory, complete with the plumbing and electrical facilities for connection to outside systems. Such modular units or prefabricated dwellings as defined herein are designed to be used and occupied as a permanent dwelling, requiring assembly at the site more than simply unpacking and are not ordinarily equipped with furniture and furnishing.

Nonconforming Use. The use of a building, structure, lot or parcel of land conflicting with the provisions of this Ordinance at the time of its enactment.

Nuisance—Public. Any activity harmful to the public health, creates an interference in a way of travel, affects public morals or prevents the public from the peaceful use of their land and public streets.

Nuisance—Private. An activity which either is harmful or interferes with property rights or health of persons either owners or occupants of the land.

Overlay Zoning District. An overlay zone is a separate zoning district that is placed over an existing zoning district that adds new regulations to those of the underlying zoning district.

Planned Unit Development. An area of minimum contiguous size, as specified by this Ordinance, to be planned and developed as a single entity containing one or more residential, commercial or industrial clusters of buildings in compliance with density requirements of the underlying zoning designation(s) except as modified pursuant to the terms of the planned unit development regulations contained in this Ordinance. As used in this Ordinance, planned unit development is an overlay zoning district that relaxes the specific terms of the underlying zoning district regulations to provide flexibility in the development and incentive density bonuses as provided by the decision of the Village Council.

Plat. The required drawing required, and prepared in accordance with the specification of either the Land Division Act or Condominium Act signed by a Michigan Registered Surveyor which is approved by the Village Council to be filed with the Register of Deeds of Berrien County for the conveyance of real property.

Portable Car Canopies. See dedications - Vehicle Storage Structure and Car Canopies, Portable.

Recreational Vehicle. A vehicle primarily designed and used as temporary living quarters for recreational, camping, or travel purposes, including a vehicle having its own motor power or a vehicle mounted on to drawn by another vehicle.

Restaurant. A business located in a building where, in consideration of the payment of money, meals are habitually prepared, sold, and served to persons for consumption on or off the premises; having suitable kitchen facilities connected therewith containing conveniences for cooking an assortment of foods which may be required for ordinary meals, and deriving the major portion of its receipts from the sale of food.

Retail Commercial Establishment. A store, market or shop in which commodities are sold or offered for sale in small or large quantities to the retail trade. Grocery and general stores, meat markets, public garages and automobile services stations are included in this classification.

Setback. The minimum required distance between a structure and a property line measured perpendicular from the property line. A front yard setback is measured perpendicular from the property line defining the subject property and the Village street right-of-way. A side yard setback is measured perpendicular from the side yard property line. A rear yard setback is measured from the rear property line, either the rear line of another property or the Village alley right-of-way line. (See definition of yard and illustration of front, side and rear yards).

Signs and Billboards. See Ordinance 307 for definitions.

Structure. Any production or piece of work artificially built up or composed of parts joined together in some definite manner; any construction including dwellings, garages, buildings, signboards and fences, except public utility communication towers and electrical transmission lines, underground gas distribution lines, and equipment and facilities supporting the same and/or incidental thereto.

Site Plan. A sketch or other illustration containing information required for the submission, review and approval of a zoning matter where a site plan is required pursuant to the requirements of Article XXI.

Storage, Residential Out-door. Any land used for, or occupied for, the purpose of storing recreational vehicles boats, trailers, recreational equipment, material, trash receptacles and other personal property commonly used by homeowners but not licensed vehicles used for daily transportation and parked in a clearly defined driveway or other parking area, accessory structures, lawn furniture, child playground equipment, lawn ornaments and other similar personal property normal and typically used as part of the daily occupancy of a residential dwelling unit.

Vehicle Storage Enclosure. See Fabric Structures (Portable Garage/Storage Enclosure).

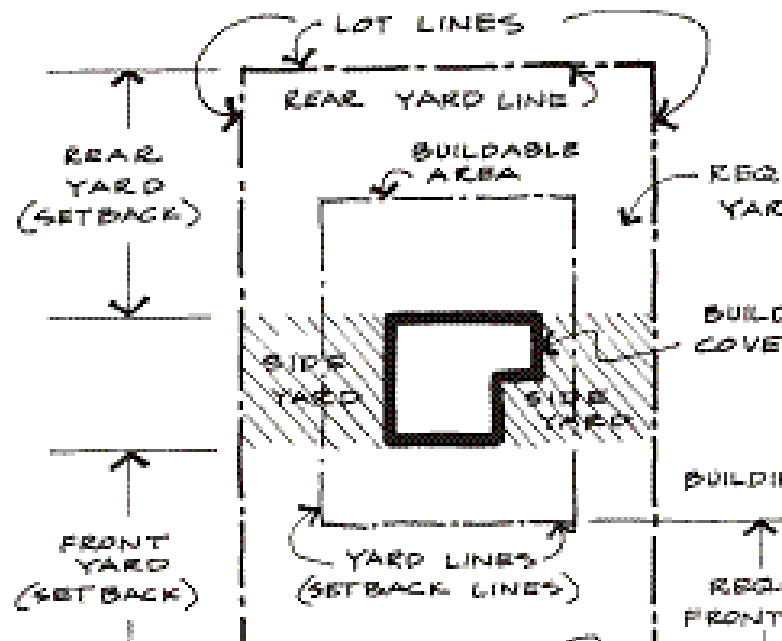
Subdivision. For the purposes of this Ordinance the term subdivision included any act which is taken to record the division of a lot or parcel of land pursuant to the provisions of the Michigan Land Division Act or Condominium Act.

Unit, Condominium. The descriptor for a lot or specific unit for occupancy in a condominium plat designed to be conveyed under single ownership and having a individual property tax code identification number (in a land division (subdivision) plat a lot is equivalent to a condominium unit).

Village Clerk. The Clerk of the Village of Berrien Springs, Berrien County, Michigan.

Yard. An open space lying between a building (or group of buildings) on the same lot and the nearest lot line. It is unoccupied and unobstructed from the ground upward, except as otherwise permitted herein.

- (1) *Yard, Front.* An open space between the front line of a building and the front lot line.
- (2) *Yard, Rear.* An open space between the rear line of a building and the rear lot line.
- (3) *Yard, Side.* An open space between a building and the nearest side lot line, extending the full length of the lot between the front and rear lot line.



Zoning Administrator. The person charged with the administration of the Ordinance or designee.

Zoning Ordinance. The Zoning Ordinance of the Village of Berrien Springs, Berrien County, Michigan.

(Ord. No. 316, 5-19-2008)

Section 27.02 - Terms Used in This Ordinance.

For the purposes of this Ordinance, certain terms are used herein. When not inconsistent with the context:

- (1) Words used in the present tense include the future tense, the singular number includes the plural, and the plural number includes the singular;
- (2) Words "must" and "shall" are mandatory, and the word "may" is permissive;
- (3) Words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."

(Ord. No. 316, 5-19-2008)

ARTICLE XXVIII - SEVERABILITY, EFFECTIVE DATE AND ADOPTION

Section 28.01 - Severability and Validity.

This Ordinance and the various parts, sections, subsections and clauses thereof, are (hereby) declared to be severable. If any part, sentence, paragraph, subsection, section or clause is adjudged unconstitutional or invalid, (it is hereby proposed that) the remainder of the ordinance shall not be affected thereby. If any part, sentence, paragraph, subsection, or clause is adjudged unconstitutional or invalid as applied to a particular property, building or other structure, (it is hereby provided that) the application of such portion of the Ordinance to the property, building or structures shall not be affected thereby. Whenever any condition or limitation is included in an order authorizing a Cluster Development, Planned Unit Development or any variance, special use, nonconforming use, compliance permit, occupancy permit, site plan approval, or certificate of nonconformance, it shall be conclusively presumed that the authorizing officer or body considered such condition of limitation necessary to carry out the spirit and purpose of this Ordinance or the requirement of some provision hereof, to protect the public health, safety and welfare and that the officer or board would not have granted the authorization to which the condition or limitation pertains except in the belief that the condition or limitation was lawful.

(Ord. No. 316, 5-19-2008)

Section 28.02 - Conflicting Ordinances.

Ordinance No. 195 as amended, entitled "*Zoning Ordinance of the Village of Berrien Springs*" is expressly amended in its entirety and all other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent they conflict with this Ordinance.

(Ord. No. 316, 5-19-2008)

Section 28.03 - Effective Date.

This ordinance shall become effective on the 7th day of following the publication of the notice of adoption.

(Ord. No. 316, 5-19-2008)

Section 28.04 - Adoption.

Public Hearing having been duly held on April 28, 2008, by the Village Council this Comprehensive Zoning Ordinance Amendment was duly adopted at a regular meeting of the Village Council of the Village of Berrien Springs, Berrien County, Michigan on May 19, 2008.

(Ord. No. 316, 5-19-2008)