

ZONING ORDINANCE TOWN OF BERNE NEW YORK

The Town Board of the Town of Berne does hereby ordain and enact:

SECTION I TITLE AND SCOPE

A. Scope

An ordinance regulating and restricting the location, construction, alteration, occupancy and use of buildings and structures and the use of land in the Town of Berne and for said purposes dividing the Town into zoning districts.

B. Title

The Ordinance shall be known and may be cited as "The Zoning Ordinance of the Town of Berne, Albany County, New York." The short title shall be "Berne Zoning Ordinance."

C. Enactment Clause and Purposes

This Ordinance is enacted pursuant to Article 16 of the Town Law of the State of New York, to protect and promote public health, safety, morals, comfort, convenience, economy, esthetics, and the general welfare, and for the following additional purposes:

1. To promote and effectuate the orderly physical development of the Town of Berne in accordance with its Development Plan.
2. To encourage the most appropriate use of land in the community in order to conserve and enhance the value of property.
3. To control commercial growth along highways and provide for more adequate and suitably-located commercial facilities and consequently eliminate many road-side hazards and add to community attractiveness.
4. To create a suitable system of open spaces and recreation areas, and to protect and enhance existing wooded areas, scenic areas, and waterways.
5. To regulate building densities in order to assure access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, to lessen congestion on streets and highways, and to provide efficient municipal utility services.
6. To improve transportation facilities and traffic circulation, and to provide adequate off-street parking and loading facilities.
7. To realize a development plan designed to conserve the use of land and the cost of municipal services.
8. To promote privacy for residents and freedom from nuisances and things harmful to the senses.
9. To protect the community against unsightly, obtrusive, and noisome land uses and operations.
10. To enhance the esthetic aspects throughout the entire community.
11. To preserve historic sites, areas, buildings and landmarks located in the Town.

**SECTION
ESTABLISHMENT OF DISTRICTS**

A. Names of Zoning Districts

In order to fulfill the purpose of this Ordinance, the Town of Berne establishes and is hereby divided into the following eight zoning districts:

RAF Residence /Agriculture/Forestry: One family dwelling per five (5) acres; two-family dwellings per five (5) acres if new construction; conversion of one family dwellings to attached two family dwellings per five (5) acres with a special use permit; multi-family with a special use permit and site plan approval.

MDR Medium Density Residence: One family per one and one-half acres, single family.

NC Neighborhood Commercial.

GC General Commercial.

IND Industrial.

H Historic.

TN/MU1 Traditional Neighborhood Mixed Use
TN/MU2 **Traditional Neighborhood Mixed Use**

B. Zoning Map

1. Designation - The location and boundaries of said zoning districts are shown on the map designated "Official Zoning Map of the Town of Berne" adopted on May 1, 1974 and certified by the Town Clerk. Said map together with everything shown thereon and all amendments thereto is hereby adopted and is declared to be an appurtenant part of this Ordinance. No amendment to this Ordinance, which involves matters portrayed on the Official Zoning Map, shall become effective until such change and entry has been made on said map and has been attested by the Town Clerk. Any new zoning map reflecting amendments to the previous Official Zoning Map shall bear a statement which explains that it supersedes the prior map and gives the date of adoption of both the prior map and the new zoning map.

2. Copies of Zoning Map - Regardless of the existence of other printed copies of the zoning map which from time to time may be made or published, the Official Zoning Map which shall be on file with the Town Clerk shall be the official determinant of the current zoning status of the land and water areas, buildings, and other structures in the Town.

C. Interpretation of District Boundaries

Where uncertainty exists with respect to any boundary of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

1. Where district boundaries are indicated as approximately following the centerlines or right-of-way lines of streets, highways, public utility easements, or watercourses, said boundaries shall be construed to be coincident with such lines. Such boundaries shall be deemed to be automatically moved if a centerline or right-of-way line of such street, highway, public utility or watercourse is moved a maximum of 50 feet.

2. Where district boundaries are indicated as approximately following the Town boundary line, property lines, lot lines, or projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.

3. Where district boundaries are so indicated that they are approximately parallel to the Town boundary line, property lines, lot lines, right-of-way lines, easements, watercourses, or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances there from as indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.

4. Where a district boundary line divides a lot in a single ownership or joint ownership of record at the time such line is established, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion.

5. In all other cases, where not dimensioned, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon, but in no instance will a district be less than the specified minimum lot depth shown for each district in the Density Control Schedule.

**SECTION
USE REGULATIONS**

III

A. Permitted Uses

No building or premises shall be erected, altered, or used except for one or more of the uses designated for its district and in accordance with Section VII, subsection A, of this Ordinance.

Symbols:

(P) Designates a use permitted by right.

(X) Designates a conditional use contingent upon securing a special use permit from the Zoning Board of Appeals in accordance with Section VIII, subsection E. In the case of Home Occupations, special use permits shall be granted by the Planning Board.

+ designates a use subject to site plan approval by the Planning Board in accordance with Section VII, subsection A.

. designates a prohibited use.

B. Prohibited Uses

In the Industrial district, where manufacturing or light industry is permitted, no manufacturing use, nor any trade, or industry use or purpose that is noxious or offensive by reason of the emission of odor, dust, smoke, toxic or noisome fumes, radiation, gas, noise, vibration, or excessive light, or any combination of the above, which is dangerous and prejudicial to the public health, safety and general welfare shall be permitted, and this includes specifically, but is not limited to, the following such uses:

- Acetylene gas manufacture for commercial purpose
- Ammonia, chlorine or bleaching powder manufacture
- Arsenal
- Asphalt manufacture or refining
- Auto junk yard
- Blast furnaces, not including cupola or converter furnaces used in foundries and in which no wood is used as fuel
- Boiler shops, structural steel fabricating shops, metal working shops, which operate reciprocating hammers or chisels or other noise-producing electric or pneumatic tools within 100 feet of any boundary line of the premises and outside of any masonry buildings
- Brewing or distilling of liquors
- Bronze and aluminum powder manufacture
- Carbon, lampblack, shoe blacking, graphite, or stove polish manufacture

- Celluloid and other cellulose products manufacture
- Cement manufacture
- Coal tar products manufacture
- Disinfectant and insecticide manufacture
- Distillation of coal, wood, or bones
- Dump, unless operated or controlled by the Town.
- Excelsior and fibre manufacture
- Explosives, fireworks or match manufacture, assembling, or storage in bulk, except the manufacture, assembling and storage in bulk of safety matches in book form
- Fat rendering
- Fertilizer manufacture or potash refining
- Fish smoking or curing
- Glue, size or gelatin manufacture or processing involving recovery from fish or animal offal
- Incinerator, unless operated by the town
- Junk yard
- Lime, gypsum, cement, plaster, or plaster of paris manufacture, except the mixing of plaster
- Linoleum or oil cloth manufacture
- Ore reduction or the smelting of iron, copper, tin zinc or lead
- Paint, oil varnish, turpentine, shellac, or enamel manufacture, except the mixing of wet paints
- Perfume and extract manufacture
- Petroleum refining
- Poisons manufacture: fumigates, carbon disulfide, hydrocyanic acid, ethyl, stomach poisons, arsenate of lead, arsenate of calcium hellebore and paris green, contact insecticides, lime, sulphur, nicotine, kerosene emulsions
- Printing ink manufacture
- Radium extraction
- Storage, coloring, curing, dressing, or tanning of raw or green salted hides or skins
- Rubber, caoutchouc or gutta-percha manufacture from crude or scrap material, except in connection with a rubber products manufacturing plant
- Salt works
- Sand paper and emery cloth manufacture
- Slaughtering of animals, except for immediate consumption on premises or immediate retail sale
- Soap, soda ash, or washing compound manufacture, except products not containing caustic soda
- Starch, glucose, or dextrine manufacture
- Stock yards
- Sulphurous, sulphuric, nitric, picric or hydrochloric acid or other corrosive or offensive acid manufacture, or their use or storage, except on a limited scale as accessory to a permitted industry
- Tallow, grease, lard or candle manufacture or refining
- Tar distillation or manufacture, except where the tar or asphalt is treated at a temperature under 100 degrees Fahrenheit
- Tobacco processing
- Vinegar, pickle, or sauerkraut manufacture in bulk
- Wool pulling or scouring, except in connection with a woolen mill
- Yeast Manufacture

Schedule of Uses

| ZONING DISTRICT | RAF | MDR | NC | GC | IND | TN/MU1 | TN/MU2 |
|--|-----|-----|----|----|-----|--------|--------|
| Residential Uses | | | | | | | |
| Detached one or two-family dwellings | P | P | P | . | . | P | P |
| Residential use combined with commercial use | . | . | X+ | X+ | . | X+ | X+ |
| Multi-Family (Three or more units) | . | . | . | . | . | . | . |
| Manufactured Home | P | P | . | . | . | P | P |
| Senior Citizen Housing | | | | | | X+ | X+ |
| Conversion of Seasonal Residence to year-round residence | X | X | X | . | . | X | X |
| Assisted Living Center/Adult Care | | | | | | . | . |
| General Uses | | | | | | | |
| Agriculture not including the keeping of fowl or farm animals (Section V-A-13) | P | . | . | P | . | P | P |
| Agriculture including the keeping of fowl and farm animals (Section V-A-13) | P | . | . | X+ | . | . | . |
| Cemetery (Section V-I-2-d) | X | X | X+ | X+ | . | . | . |
| Church, other places of worship or religious instruction | X+ | X+ | X+ | X+ | . | X+ | X+ |
| Cultural facility (art gallery, museum, community building) (Section V-I-2-l) | P+ | P+ | P+ | P+ | . | X+ | X+ |
| Forestry | P | P | . | . | . | . | . |
| Golf course, country club, athletic field | P+ | P+ | . | . | . | . | . |
| Hospital, nursing or convalescent home, sanitarium(Section V-I-2-j) | X+ | X+ | . | . | . | . | . |
| Municipal buildings, public libraries, and fire stations | P | P | P | P | . | P+ | P+ |
| Private and membership clubs (Section V-I-2-l) | X+ | X+ | X+ | X+ | . | X+ | X+ |
| Public recreation buildings and grounds | P | P | P | P | . | . | . |
| Public utility buildings servicing neighborhood excluding offices and storage | X+ | X+ | X+ | X+ | X+ | X+ | X+ |
| Public, Parochial or not-for-profit private schools | X+ | X+ | X+ | X+ | . | X+ | X+ |
| Trailer Park (Section V-I-2-m) | . | . | . | X+ | . | . | . |
| Trailer Sales Lot (Section V-I-2-m) | . | . | . | X+ | . | . | . |
| Recreational Trailer Park(Section V-I-2-m) | . | . | . | X+ | . | . | . |
| University, college, seminary, convent | X+ | . | . | X+ | . | . | . |
| Accessory Uses | | | | | | | |
| Home occupation, in compliance with Section V-(l)(2)(i) | X+ | X+ | X+ | X+ | . | P | P |
| Home Occupation, Low Impact | | | | | | P | P |
| Home Occupation, Major | | | | | | X+ | X+ |
| Accessory use customarily incidental to any of the uses mentioned herein and on the same lot | P | P | P | P | P | p | p |
| Accessory use customarily incidental to any of the uses mentioned herein and not on the same lot | P | . | P+ | P | P | . | . |
| Structures for farm animals for non-commercial purposes | P | . | . | X+ | . | . | . |

| ZONING DISTRICT | RAF | MDR | NC | GC | IND | TN/MU1 | TN/MU2 |
|---|-----|-----|----|----|-----|--------|--------|
| Swimming pool (Section V-I-2-q) | P+ | P+ | P+ | P+ | . | P+ | P+ |
| Business Uses | | | | | | | |
| Aircraft Landing Field | X+ | . | . | . | . | . | . |
| Airport (Section V-I-2-b) | . | . | . | . | . | . | . |
| Amusement operated for profit | . | . | X+ | X+ | . | . | . |
| Antique sales | | | | | | X+ | X+ |
| Artist Studio | | | | | | X+ | X+ |
| Auctions | X+ | . | . | P+ | . | . | . |
| Automobile sales and service | . | . | P+ | P+ | . | . | . |
| Automobile wreckers | . | . | X+ | X+ | P+ | . | . |
| Banks, general & professional offices, studios | . | . | P+ | P+ | . | X+ | X+ |
| Bar or nightclub | . | . | X+ | X+ | . | . | . |
| Bed and Breakfast Inn | | | | | | P+ | P+ |
| Bowling alley | . | . | X+ | X+ | . | . | . |
| Car washing station | . | . | . | P+ | . | . | . |
| Commercial parking lot Section V-B and V-F-8 | . | . | X+ | X+ | . | X+ | X+ |
| Convenience store | | | | | | X+ | X+ |
| Conversion of existing structure to new Business Use (including only permitted uses listed in this section (*)) | | | | | | P | P |
| Day Care Center | | | | | | X+ | X+ |
| Skating rink, billiard hall | . | . | X+ | X+ | . | . | . |
| Shopping center | . | . | X+ | X+ | . | . | . |
| Equipment rental/sale | X+ | . | P+ | P+ | P+ | . | . |
| Florist | | | | | | X+ | X+ |
| Funeral Home | . | . | P+ | P+ | . | X+ | X+ |
| Gasoline filling station(Section V-I-2-h) | . | . | X+ | X+ | X+ | . | X+ |
| Greenhouse, nursery | P | . | P | P | P | . | . |
| Motel (Section V-I-2-n) | . | . | P+ | P+ | . | . | . |
| Newspaper office, printing shop | . | . | P+ | P+ | . | X+ | X+ |
| Personal service (barber, beauty salon, shoe repair) | . | . | P+ | P+ | . | X+ | X+ |
| Public garage | . | . | P+ | P+ | . | . | . |
| Radio, Television, and other electrical transmission stations and towers | . | . | . | . | X+ | . | . |
| Radio television and other electrical transmission stations and towers when they share use of an existing structure | | | | | | X+ | X+ |
| Recreational Business | . | . | X+ | X+ | . | . | . |
| Restaurant, café with no drive-through | X+ | . | P+ | P+ | . | X+ | X+ |
| Restaurant, café with drive-through | | | | | | . | . |
| Retail stores, shop located in converted residential structure | | | | | | X+ | X+ |
| Retail stores, shop located in new structure | . | . | P+ | P+ | . | X+ | X+ |
| Retail business or service, not specifically mentioned herein | . | . | X+ | X+ | X+ | . | . |
| Riding academy, stables Section V-I-2-o | X+ | . | . | . | . | . | . |
| School conducted for profit | X+ | . | X+ | X+ | . | X+ | X+ |
| Self service laundry | . | . | P+ | P+ | . | . | . |
| Theater, public assembly | . | . | P+ | P+ | . | X+ | X+ |
| Veterinarian office/animal hospital | X+ | . | P+ | P+ | . | . | . |

| ZONING DISTRICT | RAF | MDR | NC | GC | IND | TN/MU1 | TN/MU2 |
|--|------------|------------|-----------|-----------|------------|---------------|---------------|
| Kennel | X+ | . | X+ | X+ | . | . | . |
| Wholesale business or service not specifically mentioned herein | . | . | X+ | X+ | X+ | . | . |
| | | | | | | | |
| Industrial Uses | | | | | | | |
| | | | | | | | |
| Soil extractive operations, soil mining (Section V-I) | X+ | . | . | . | . | . | . |
| Fuel, gasoline, oil storage | X+ | . | . | X+ | . | . | . |
| Manufacturing, fabrication, extraction, assembly, warehousing and other handling of materials(Section V-I) | . | . | . | X+ | P+ | . | . |
| Research, development or engineering laboratories | . | . | . | X+ | P+ | . | . |

(*) Conversions of existing structures are permitted. However, a special use permit and site plan review may also be required if the new use requires such processes.

**SECTION IV
AREA AND BULK
REGULATIONS - DENSITY
CONTROL**

A. Purpose

In order to provide adequate open spaces for access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, to maintain the traditional character and integrity of the Town of Berne, and to lessen congestion on streets, no building or structure or premises shall be erected, altered, or used except in accordance with the standards set forth in this Section.

**B. Density Control Schedule
(Area and Bulk Schedule)**

The attached schedule of density control regulations (Area and Bulk Schedule and Density Control Schedule) is hereby adopted and declared to be a part of this Law.

C. Corner Lots

Wherever a side or rear yard is adjacent to a street, the standards for front yards shall apply.

D. Projections into Required Yards

The following projections into required yards may be permitted:

- Open fire escapes: four feet into side or rear yards
- Awnings or moveable canopies: six feet into any yard
- Cornices, eaves and other similar architectural features: three feet into any yard

| Zoning District | Minimum Lot Size (c) | | | | Minimum Yard Dimensions (feet) | | | | Lot coverage (Max) (including accessory buildings) | Building Footprint (Max) | Building Height (Max) |
|-----------------|---|-------------------------------|-------------------|--|---------------------------------|--------|--------|------|--|--------------------------|-----------------------|
| | Residential | | Non-residential | | Front | Side 1 | Side 2 | Rear | | | |
| | Area (acres) | Width at Building Line (Min.) | Area (acres) | Width at Building Line (Min) and (Max) | Feet | Feet | Feet | Feet | Percent Coverage | Square Feet | Feet Stories |
| TN/MU1 | .25 With Sewer * (1) 1.5 Without Sewer * (1) | 75 | .5 or 1.5 Min (2) | 75' min | 15' minimum and 30' maximum (4) | 20 | 20 | 50 | 25% Residential 65% Commercial | 2,000 | 35/2.5 |
| TN/MU2 | .25 With Sewer * (1) 1.5 Without Sewer * (1) | 75 | .5 or 1.5 Min (2) | 75' min | 15' minimum and 50' maximum (4) | 20 | 20 | 50 | 25% Residential 65% Commercial | 3,000 | 35/2.5 |
| RAF | 5 | 300 | 8 | 400 | 70 | 100 | 75 | 100 | 15% | | 35/2.5 |
| MDR | 1.5 | 200 | 1.5 | 250 | 40 (see b) | 50 | 50 | 100 | 20% | | 35/2.5 |
| NC | 1.5 | 100 | 1.5 | 250 | 40 (see b) | 20 | 20 | 50 | 45% | | 35/2.5 |
| GC (see a) | 1.5 | 100 | 1.5 | 250 | 70 | 40 | 20 | 50 | 30% | | 35/3 |
| IND | No residential uses Permitted | 10 | 1000 | 150 | 300 | 200 | 100 | 20% | | | 35/3 |

a) For mobile home parks see Section V-I-2-m)

b) Add 100 feet for non-residential uses

c) A minimum horizontal separation distance of 25 ft. shall be maintained between wastewater treatment and disposal systems and the property line. See Section V, subsection A (3).

* The minimum required road frontage shall be the same as the width at the building line indicated herein.

(1) Rear or side yard garage or parking is required.

(2) Non-residential uses that utilize an existing building shall have a minimum acreage of the existing lot. Non-residential uses that utilize a new building shall have a minimum acreage of 1.5 acre.

(3) No maximum building footprint is established for residential structures

(4) Accessory structure setback must be equal to or further back than the principal building.

Density Control Schedule for the TN/MU District

| District | Total District-wide Permitted Business Density | Total District-wide Permitted Convenience Retail Density | Total District-wide Permitted Office/Service Density | Total District-wide Permitted Density for all other business uses (See schedule of permitted uses) |
|----------|--|--|--|--|
| TN/MU1 | 11,000 square feet (*) | 2,000 square feet | 4,000 square feet | 5,000 square feet |
| TN/MU2 | 17,500 square feet (*) | 3,000 square feet | 6,500 square feet | 8,000 square feet |

Calculation of total density shall include existing business uses in the TN/MU district as of the adoption date of this law (*) and does not include existing schools, churches or municipal buildings.

•Any open or enclosed porch or carport shall be considered a part of the building in the determination of size of the required yard or lot coverage.

Accessory uses not enclosed in a building may be located in a rear yard in accordance with Section V, subsection A, paragraph 8, herein.

E. Height Exceptions

The height limitations of this Ordinance shall not apply to:

1. Churches, schools, hospitals, water towers and other public and semi-public buildings provided that for each foot by which the height permitted in the district is exceeded, the side, front, and rear yards required in the district shall be each increased an additional foot.
2. Farm silos, church spires, belfries, cupolas and domes not for human occupancy, monuments, observation towers, transmission towers, chimneys, smokestacks, derricks, flag poles, radio towers, masts and aerials, ventilators, skylights, water tanks and necessary appurtenances usually carried above roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve.

F. Compliance with Minimum Average Residential Density

A residential lot of required or larger than required size as set forth in this Ordinance shall not be reduced in size for transfer of ownership if such lot so subdivided will form two or more lots which shall not be in compliance with the requirements for the minimum average residential density for the district in which such lot or lots are situated.

G. Distance between Principal Buildings on Same Lot

No detached principal building shall be closer to any other principal building on the same lot than the average heights of said buildings.

H. Measurement of Yard Dimensions

1. Notwithstanding provisions for front yards elsewhere in these regulations, on streets with less than 50 foot rights-of-way or where the right of way line is not known, the front yard requirement shall be measured from the center line of the existing roadway and 25 feet shall be added to the front yard requirement.
2. Measurements of minimum yard dimensions shall be taken from the foundation.

SECTION V SUPPLEMENTARY REGULATIONS

A. General Provisions

1. Storage of Boats, Trailers, Trucks and Unregistered Vehicles. - No boat, trailer, truck or unregistered vehicle shall be stored in the front yard of any district, provided that the keeping of such a chattel in a front yard for 45 days or longer shall be deemed to be "storage" for the purpose of this subsection.
2. Excavations - Any proposed excavation adversely affecting natural drainage or structural safety of adjoining buildings or lands shall be prohibited. Excavation shall not create any noxious or injurious substance or condition, or cause public hazard.

In any district, excavation relating to the construction, on the same lot, of a building or structure for which a building permit has been issued shall be permitted. In the event that construction of a building or structure is stopped prior to completion, and the building permit is allowed to expire, the premises shall immediately be cleared of any rubbish, or building materials, and any excavation with a depth greater than two feet below existing grade shall immediately be filled in and the topsoil replaced, or all such excavations shall be entirely surrounded by a substantial fence at least six feet high that will effectively block access to the area in which the excavation is located.

Any area of land, having an area of more than one acre from which topsoil has been removed shall be filled or covered over, and such area shall be seeded to provide an effective cover crop within the first growing season following the start of said operation.

For excavation for soil mining, see subsection I of this Section.

3. Sanitary Disposal and Water Supply - No person shall undertake to construct any new building or structure in the Town of Berne without first meeting the requirements for a system, or facilities for the separate treatment and disposal of waterborne sewage and other wastes and obtaining an approved water supply in accordance with applicable regulations of the Town, the New York State and Albany County Departments of Health, the New York State Department of Environmental Conservation, and other governmental authorities. Issuance of a Certificate of Occupancy shall be subject to sanitary system inspection and certification by the Albany County Department of Health, and compliance with all conditions imposed by any other governmental authority.

A minimum horizontal separation distance of 25 feet shall be maintained between wastewater treatment and disposal systems and the property line. For all systems involving the placement of fill material, separation distances shall be measured from the toe of slope of the fill.

In the case of any proposed residential development or realty subdivision, the Planning Board may require the applicant to demonstrate that an acceptable location exists, on each and every parcel, for the installation of conventional or alternative wastewater treatment and disposal systems. The applicant shall clearly identify any site modifications necessary for the installation of the system.

The Planning Board or Zoning Board of Appeals may require an applicant to provide evidence of water availability, and may require professional hydrological studies sufficient to establish that a proposed

development will have adequate supplies of potable water and will not adversely affect water supply or quality in the surrounding area.

4. Landfills - Dumping of refuse, waste material and other substances is prohibited in all districts in the Town except as specified in Town of Berne LOCAL LAW NO. 1 of 1969; as amended.

5. Driveway and Road Standards - Driveways and roads shall be designed in conformance with the standards established in the Town of Berne Land Subdivision Regulations and the following provisions:

a. For reasons of traffic and pedestrian safety, as well as to provide for possible future road widening or other improvements, all new driveways entering onto any street shall comply with the requirements of this Section, and shall be subject to the approval of the Town Highway Superintendent. Where such driveways enter onto a County or State road, they shall also be subject to Albany County Department of Public Works and New York State Department of Transportation approvals, respectively. Where such driveways are part of a subdivision application or site plan approval, they shall also be subject to Planning Board approval.

b. The maximum grade for any new driveway accessory to a single-family dwelling and connecting its off-street parking area to a road shall not exceed ten percent (10%), except where it can be demonstrated to the satisfaction of the reviewing Board or official that, because of practical difficulty affecting a particular property, the construction of such a driveway is infeasible.

c. A private driveway serving one lot (dwelling unit) shall have a minimum 12 feet wide shale, gravel or paved travel way and a minimum 18 feet wide cleared right-of-way.

d. Clear visibility shall be provided and maintained in both directions at all exit points so that the driver of an automobile stopped on the platform portion of any new driveway will have an unobstructed view of the highway for a reasonable distance, commensurate with the speed and volume of traffic on the highway, and so that there is a similar view of the automobile in the driveway.

e. Additional driveway design details shall conform to any separately enacted Town driveway standards.

6. Activity Standard - In any district, the following standards for activities shall apply:

a. No offensive or objectionable vibration, odor or glare shall be noticeable at or beyond the property line.

b. No activity shall create a physical hazard by reason of fire, explosion, radiation, or other such cause, to persons or property in the same or adjacent districts.

c. There shall be no discharge, in the form of either liquid or solid wastes, into any stream or body of water or any public or private disposal system or into the ground, of any material of a nature that may contaminate any water supply, including ground water supply.

d. There shall be no storage of any material either indoors or outdoors in such a manner that it facilitates the breeding of vermin, or endangers health in any way.

e. The emission of smoke, fly ash, or dust, which can cause damage to the health of persons, animals, or plant life, or can otherwise damage any property, is prohibited.

7. Planned New Streets - After any planned right-of-way line for future streets, for future extensions of existing streets, or for future widening is established on the Official Map, buildings and structures shall be set back from such line as though it was a street line.

8. Accessory Buildings and Uses - Accessory buildings not attached to principal buildings shall be located no closer to the principal buildings than 12 feet or a distance equal to the height of each accessory building, whichever is greater. In a Residential or TN/MU district accessory buildings shall not exceed a maximum height of 20 feet, with the exception of farm buildings which shall have a maximum height of 35 feet.

In a Residential or TN/MU district, accessory uses not enclosed in a building, including swimming pools and tennis courts, shall be erected only on the same lot as the principal structure, may not be constructed in the side or front yards of such lot and shall be distant not less than 20 feet from any lot line nor less than 10 feet from the principal structure, and shall not adversely affect the character of any residential neighborhood by reason of noise or glare or safety. (Refer also Section V, subsection I, "Swimming Pools" herein.)

9. Corner Clearance - For the purpose of minimizing traffic hazards at street intersections, on any corner lot no obstructions higher than three feet above the adjacent top-of-curb elevation shall be permitted to be planted, placed, erected or maintained within the triangular area formed by the intersecting pavement lines, or their projections - where corners are rounded - and a straight line joining the pavement lines at points 35 feet distant from their point of intersection.

10. Fences and Walls - In any Residence or TN/MU district, walls and fences up to four feet in height shall be permitted anywhere on a lot except where corner clearances are required for traffic safety. In a side or rear yard such wall or fence may be higher than four feet, if it is a retaining wall, but if it is a fence or freestanding wall above four feet at least 75 percent of the whole surface shall be unobstructed and open in a uniformly distributed manner. In any Business or Industry district, there shall be no restriction on fences or walls, except on a Residence or TN/MU district boundary line where such fences or walls shall be in accordance with the provisions of paragraph 12 "Transition Requirement" below.

11. Commercial Parking Lots - Commercial parking lots shall comply with the provisions of Section V, subsection B "Off-Street Parking and Loading Regulations" herein.

12. Transition Requirement - Where a commercial or mixed use abuts a residential lot there shall be provided along such side or rear lot line of the commercial use a wall, fence, compact evergreen hedge or a landscape strip of trees or shrubs so designed as to form a visual screen not less than six feet in height at the time of planting. Except for landscaped areas and parking areas a use that is not conducted within a completely enclosed building shall be completely screened by a six-foot solid wood, masonry wall, or chain link fence covered with an evergreen vine, or compact evergreen hedge.

Where a lot in an Industrial district abuts a lot in a Residential district, such lot in the Industrial district shall meet the applicable performance standards contained in Section V, subsection D "Industrial District Regulations" herein.

13. Agriculture - Agriculture shall include all buildings used for agriculture and all agricultural activities, except farms expressly for the disposal of offal and farms expressly for garbage disposal. The processing and storage of agricultural products including packing, warehousing and storing is permitted except that slaughterhouse, rendering, fertilizer plants and canneries are prohibited. The unenclosed storage of manure, or areas for storage of dead fowl or other odor or dust producing substance or use shall not be permitted within 100 feet of a property line or 125 feet of a public street right-of-way. Buildings for the housing of fowl or farm animals shall not be located in the required front yard or within 100 feet of a property line.

B. Off-Street Parking and Loading Regulations

In all districts, off-street automobile parking spaces and truck loading areas for the various permitted uses shall be required at the time any of the main buildings or structures of such uses are constructed or altered, as follows:

1. Required Off-Street Automobile Parking in the TN/MU1 and 2 Districts. The number of parking spaces shall be based on the need to protect public safety and convenience while minimizing harm to community character and to environmental, historic, and scenic resources. Since businesses vary widely in their need for off-street parking, it is most appropriate to establish parking requirements based on the specific operational characteristics of the proposed uses. In determining the parking requirements for any proposed use, the Planning Board shall consider:

a. The maximum number of persons who may be driving to the use at times of peak usage. Parking spaces should be sufficient to satisfy 85% of the anticipated peak demand. There shall be sufficient parking to meet demands of both employees and customers.

b. The size of the structure(s) and site.

c. The environmental, scenic, or historic sensitivity of the site. In proposals located in sensitive areas, the Planning Board may require a reduction in size of the parking lot.

d. The Planning Board may refer to generally accepted traffic engineering and planning manuals.

e. The Planning Board may require that an applicant set aside additional land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped, but may not be used in a manner that would prevent it from being used for parking in the future.

2. Required Off-Street Automobile Parking Spaces - The minimum cumulative number of spaces shall be determined by the amount of dwelling units, bedrooms, floor area, members, equipment, employees, and/or seats contained in such new buildings or structures, or added by alteration of buildings or structures and such minimum number of spaces shall be maintained by the owners of such buildings or structures, as follows:

a. Offices, Business and Commercial Uses - For retail business or service, bank, or post office one space for each 100 square feet of floor area, and each two employees.

For funeral home, one space for residence, manager, and each two employers plus ten spaces for visitors.

For roadside stands, three spaces per stand.

For restaurant, cafe, one space for each three seats, and each two employees.

For public utility office, one space for each two employees.

For auto and equipment sales and service, gas stations and wholesale establishments, one space for each 200 square feet of floor space, and each two employees.

For motel one space for each bedroom, owner or manager, plus one space for each two employees.

Spaces in municipal parking lots or on-street parking, where provided, may be credited toward the parking requirements for these non-residential uses, provided that:

1) these spaces are within 400 feet of the uses to be served.

2) the parking needs of existing facilities (within 400 feet and computed on the same basis as for new facilities) are satisfied first, and only excess capacity is used for this purpose.

3) a special permit for such use is obtained from the Zoning Board of Appeals.

b. Industrial Uses One space for each two employees, company vehicle, custodian dwelling. No off-street parking except for visitors permitted in front yard.

c. Public and Semi-Public Uses For churches one space for each four seats plus one for each clergyman and each two employees.

For community building, one space for each four seats, 60 square feet floor area, two employees.

For schools, one space for each two employees including teachers. Loading and unloading space for buses.

For clubs, one space for each two members, two employees.

d. Recreational Uses For stadium, one space for each four seats and for each two employees.

e. Residential Uses For dwellings, one space for each dwelling unit, to be provided on a buildable portion of the lot.

For home occupation, one space for each employee. Where home occupation is authorized no off-site parking shall be permitted.

For boarding house, one space for each bedroom.

For multi-family dwellings, three spaces for each two units.

f. For uses not listed herein, as established by the Zoning Board of Appeals.

3. Calculation of Required Spaces - In the case of combination of uses, the total requirements for off-street automobile parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.

4. Dimensions for Off-Street Automobile Parking Spaces - Every such space provided shall be at least ten feet wide and 20 feet long, and every space shall have direct and usable driveway access to a street or alley with minimum maneuver area between spaces as follows:

a. Parallel Curb Parking Five feet end to end with 12-foot aisle width for one-directional flow and 24 foot aisle width for two-directional flow.

b. 30 Degree Parking 13-foot aisle width for one-directional flow and 26-foot aisle width for two-directional flow.

c. 45 Degree Parking 16-foot aisle width for one directional flow and 26-foot aisle width for two-directional flow.

d. 60 Degree Parking 21-foot aisle width for one-directional flow and 26-foot aisle width for two-directional flow.

e. Perpendicular Parking 26 foot aisle width for one-direction and two-direction flow.

5. Location of Required Spaces - In any Residential district, required automobile parking spaces shall be provided on a buildable portion of the same lot and shall not encroach on any required yards, or required open area.

In Commercial districts or Industrial districts, such spaces shall be provided on the same lot, or not more than 400 feet therefrom.

No open or enclosed parking area shall encroach on any required front yard open areas. Open parking areas may encroach on a required side or rear yard to within three feet of a property line.

No entrance and exit drives connecting the parking area and the street shall be permitted within 25 feet of the intersection of the public rights-of-way.

6. Required Off-Street Truck Loading Areas. For permitted commercial and industrial uses, one berth for 10,000 square feet of floor area, and one additional berth for each additional 25,000 square feet of floor area, unless it can be proven that truck deliveries shall not exceed one vehicle per day.

For funeral homes, one berth for each chapel.

For hotels, motels and vacation resorts, one berth for floor area in excess of 10,000 square feet.

For office, business, and commercial uses, one berth for 10,000 square feet to 25,000 square feet of floor area and one additional berth for each additional 25,000 square feet of floor area.

For manufacturing and permitted industrial uses, one berth for the first 10,000 square feet of floor area and one additional berth for each additional 40,000 square feet of floor area.

7. Dimensions for Off-Street Loading Berths. Each required loading berth (open or enclosed) shall have the following minimum dimensions: 35 feet long, 12 feet wide and 14 feet high, except that berths for funeral home may be 20 feet long, 10 feet wide and 8 feet high.

8. Location of Required Berths - All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Open off-street loading areas shall not encroach on any required front or side yard, access way or off-street parking area, except that in Commercial districts off-street parking areas where they exist may be used for loading or unloading, provided that such spaces shall not be so used for more than three hours during the daily period that the establishment is open for business.

The location, number, size and design of loading and unloading areas for non-residential uses and the access ways thereto shall require the approval of the Planning Board prior to the issuance of a building permit or certificate of occupancy by the Building and Zoning Administrator.

9. Off-street Parking Spaces On Corner Lots. In all districts, except Industrial districts, off-street parking spaces on corner lots shall be set back from side street line at a distance equal to front yard requirements on such side street unless lots are back to back in which case they shall be set back at least 10 feet. The 10-foot setback shall be planted with vegetation of sufficient density to screen the parking lot from view.

10. Landscaping - At least eight percent of the area of the lot usable for off-street parking shall be devoted to landscaping with lawn, trees, shrubs or other plant material. All loading berths and parking areas of three or more spaces that abut a residential lot line, and any parking lot for more than 20 cars shall be screened by a six-foot high solid masonry wall, or compact evergreen hedge or a landscaped strip of trees and shrubs so designed as to form a visual screen from the adjoining property. All parking areas and landscaping shall be properly maintained thereafter in a sightly and well kept condition.

C. Sign Regulations

No sign or other device for advertising purposes of any kind may be erected or established in the town except and provided as follows:

1. Signs in Residential Districts - No sign or other device for advertising purposes of any kind may be erected or established in any Residential district except and provided as follows:

a. Permitted non-residential uses and legal non-conforming non-residential uses, but not including home occupations, places of worship, libraries, museums, social clubs or societies or day nurseries, may display one sign or bulletin board pertaining to the use of property, having a total face area of not more than 12 square feet, and not projecting beyond the principal building of such use to which they are attached more than 12 inches, except that where such non-residential uses are set back from property lines the sign may be in the ground, provided that such ground signs shall not exceed 12 square feet in total face area, shall not exceed four feet in height, and shall be no nearer than 10 feet from the nearest point of sign to any property line. If such free standing signs face substantially at right angles to the road and/or display in more than one direction, they shall have a face area of not more than eight square feet per side, with no more than two sides.

b. Dwellings for five or more families may display one non-illuminated sign identifying the premises, having an aggregate total face of not more than eight square feet, and not projecting beyond the principal building on the lot more than 12 inches.

c. Any dwelling unit in a detached, attached or town house structure may display one name plate or professional sign not exceeding 4 square feet in area.

d. Any Bed and Breakfast may display one sign not exceeding six square feet in area; and not projecting more than 12 inches from the principal building on the lot.

2. Signs in Commercial Districts.

a. General Commercial and Neighborhood Commercial Districts - Not more than two signs per business unit, having a total face area of not more than one square foot per lineal foot of width for each foot of principal frontage of the lot may be displayed, but not to exceed a total area of 50 square feet. Such signs shall not project more than five feet beyond the principal building on the lot, and there shall be not more than one projecting sign per business unit, provided further that such signs shall not extend more than 20 feet above the ground level or exceed the highest part of the building housing the business or service advertised, whichever is less restrictive except in the case of pole signs which shall be limited to a maximum height of 35 feet above ground level. "Principal frontage" throughout this subsection shall mean the frontage of the lot adjacent to the principal street in the case of a corner lot. Where a corner lot faces two principal business streets, only one such frontage shall be considered the "Principal frontage."

b. TN/MU1 and 2 District – Not more than two signs per business unit are permitted. Prohibited signs include those using neon, mercury vapor, low pressure and high pressure sodium, and metal halide lighting, plastic panel rear-lighted signs, signs on roofs, dormers or balconies, and billboards.

1. The maximum permitted height of a wall-mounted sign, having a total face area of not more than five percent of the ground floor building façade or 24 square feet, whichever is less may be displayed no more than fifteen feet above the ground and shall project outward from the wall to which it is attached no more than six inches. Wall mounted building directory signs are allowed identifying the occupants of a commercial building with the area not to exceed three square feet, and with each tenant limited to one square foot.

2. One free-standing sign is allowed and the area of the signboard shall not exceed six square feet. The height of the top of the sign or of any posts, brackets, or other supporting elements shall not exceed six feet from the ground. The sign shall be architecturally compatible with the style, composition, materials, colors and details of the building. The sign shall not be illuminated after 10:00 P.M. and its location shall not interfere with pedestrian or vehicular circulation.

3. One directional sign directing visitors to a rear parking lot is allowed and shall be wall-mounted and shall be limited to three square feet in area.

4. Painted window or door signs are allowed provided that the sign shall not exceed ten percent of the window or door area or four square feet, whichever is less.

5. Signs on an awning or valance are allowed. If an awning sign is acting as the main business sign, it shall not be in addition to a wall-mounted sign.

6. Projecting signs are allowed providing that they have a clearance of ten feet and do not exceed 15 feet in height. The signboard area shall not exceed six square feet. It shall not extend into any public right-of-way. Projecting signs are not permitted in conjunction with wall-mounted or free-standing signs.

7. Restaurants are permitted to place a sandwich board sign with an area not to exceed five square feet (single-sided) provided the sign is located within four feet of the main entrance to the business and the location does not interfere with pedestrian or vehicular circulation and the sign is removed at the end of the business day.

3. Signs in Industrial Districts - One sign having an aggregate total face area of not more than 80 square feet may be displayed for each establishment provided that such signs shall be located not nearer than 10 feet to any property line and provided further that such signs shall not extend more than 20 feet above ground level or above the height of the roof of a building at the point of location of the sign, whichever is less restrictive, except in the case of a pole sign which shall be limited to a maximum height of 35 feet above ground level.

4. Representational Signs - No representational sign shall be permitted in any district except such signs as shall be approved by the Planning Board. Further, such sign shall not project more than 5 feet beyond the principal structure to which it is attached, and shall not have a face area of more than 15 square feet. Only one such sign per establishment shall be permitted.

5. Billboards - Notwithstanding any other provisions of this Ordinance, signs not pertaining to the use, sale, rent or lease of property on the same lot, and signs not representing construction of subdivision activity as allowed, are not permitted in any district, except that signs for the purpose of directing persons to a local business or community establishment may be erected in any district, providing such signs shall not exceed 4 square feet in area per establishment, shall conform with applicable regulations of the district in which they are located, shall be grouped on community poles and shall be approved by the Planning Board.

6. Projecting Signs - Signs projecting into a public right-of-way shall have a clearance of not less than 10 feet above the side-walk or surrounding ground and not less than 15 feet above any public driveway or thoroughfare. No sign may project into any public right-of-way without approval of the Planning Board.

7. Subdivision Signs - Any person offering lots for sale in a subdivision may erect non-illuminated, directional signs within the limits of the subdivision, or adjoining property in the same ownership, having an aggregate total face area of not more than 50 square feet. No subdivision sign shall be erected without a permit. Permits shall be issued for a period of one year and may be renewed for successive periods of one year each, following annual determination by the Building and Zoning Administrator that the signs are properly painted and in good condition in each case.

8. Exemption from above regulations:

a. Real estate signs which advertise the sale, rental, or lease of the premises upon which said signs are located, having an aggregate total face of no more than 6 square feet within any Residential district, 12 feet in any Commercial district, or not more than 20 square feet within any Industrial district.

b. One professional or business nameplate not exceeding 2 square feet in area for any one professional or business establishment where such signs would not otherwise be a permitted use.

c. One sign denoting the architect, engineer, and/or contractor when placed upon work under construction, and not exceeding 12 square feet in area.

d. Memorial signs or tablets, names of buildings, and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material.

e. Traffic or other municipal signs, legal notices, and such temporary, emergency, or non-advertising signs as may be authorized by the Town Board.

f. Posting of notice to the public pertaining to but not limited to fishing or trespassing provided each such sign does not exceed one square foot in area.

g. Signs or bulletin boards customarily incident to places of worship, libraries, museums, social clubs or societies, which signs or bulletin boards shall not exceed 24 square feet in area and shall be located on the premises of such institutions.

9. Illuminated Signs - Illumination of signs shall not be of intermittent or varying intensity or produce direct glare beyond the limits of the side property line. Colored lights of such shape and hue that they may be confused with official traffic lights and signals shall be prohibited. All bare incandescent light sources and immediately adjacent reflecting surfaces shall be shielded from view.

10. Banners - No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering or revolving devices which shall be displayed for no longer than a 2 week period. These devices, as well as strings of lights, shall not be used for the purpose of advertising or attracting attention when not part of a sign.

11. Window Signs - No signs erected or maintained in the window of a building, visible from any public or private street or highway, shall occupy more than 10 percent of the area of said window.

12. Roof Signs - No signs shall be placed on the roof of any building.

13. Posters - Temporary, non-permanent posters covering such things as political events, sporting events, shows and elections, shall not be displayed until 4 weeks prior to the event and must be removed within 4 days after the event. No such sign shall be attached to a street or utility pole.

14. All applications for approval of signs or for sign permits as required by this Ordinance shall be in writing, in the form of a request for a permit. Applications shall be to the Building and Zoning Administrator. He shall refer each application to the Planning Board for its consideration. The Planning Board shall then recommend to the Building and Zoning Administrator, in writing, approval of the application, or approval of the application with modifications required for conformance with this Ordinance specified in the approval, or disapproval. If the Planning Board shall recommend disapproval, its reasons therefore shall be set out in its records. If the Planning Board shall not make a written recommendation to the Building and Zoning Administrator within 45 days after he shall have referred an application for an approval or a permit to it the application shall be deemed to have been approved by the Planning Board without modification. The Building and Zoning Administrator shall issue a permit for each approved application, including therein any modifications required by the Planning Board in accordance with this Ordinance.

15. No sign, including signs existing on the date of enactment of this Ordinance, shall be erected or altered except in conformity with the provisions of this Ordinance. Notwithstanding any other provisions set out herein, all signs shall be kept clean, neatly painted and free from all hazards, including but not limited to faulty wiring, loose fastenings and weakened supports and shall be maintained at all times in such condition as to present no potential threat to public health or safety.

a. In the event a violation of any provision of this Ordinance relating to signs shall exist, the Building and Zoning Administrator shall give notice of the violation to the owner of the land on which the sign is and to the owner of the sign, specifying the violation. Such notice may be given orally to such owner or

owners in person, or in writing personally delivered to such owner or owners, or may be given in writing by depositing the same in the United States mails, postage pre-paid, addressed to such owner or owners at their residence or business address or addresses. An owner's address, for purposes of mailing, shall be presumed to be the address set out on any application for a permit for the sign which he may have submitted to the Building and Zoning Administrator.

b. A notice of violation in respect to a sign shall instruct the owners of the land and of the sign to remove the violation and they shall be allowed 30 days from the date of personal notice, or the mailing of notice, to do so. In the event the violation shall not be removed within such time, the Building and Zoning Administrator shall revoke any permit issued for such sign and the owner or owners of the land and of the sign shall remove the sign. If the owners of the land and of the sign are not the same they shall be individually and severally responsible for removing the same.

16. Any sign existing on or after the effective date of this Ordinance which no longer advertises an existing business conducted or product sold on the premises, shall be removed by the owner of the premises upon which such sign is located after written notice as provided herein. The Building and Zoning Administrator, upon determining that any such sign exists, shall notify the owner of the premises in writing to remove the said sign within 30 days from the date of such notice. Upon failure to comply with such notice within the prescribed time, the Building and Zoning Administrator is hereby authorized to remove or cause removal of such sign, and shall assess all costs and expenses incurred in said removal against the land or building on which such sign is located, unless the existing contract between the owner of signs or billboards and the owner of the land has limited the responsibility of the owner of the land for removal of the sign.

If the Building and Zoning Administrator shall find that any sign regulated by this Ordinance is unsafe or insecure, or is a menace to the public, he shall give written notice to the named owner of the sign and the named owner of the land upon which the sign is erected, who shall remove or repair the said sign within 30 days from the date of said notice. If the said sign is not removed or repaired, the Building and Zoning Administrator shall revoke the permit issued for such sign, as herein provided, and may remove or repair said sign and shall assess all costs and expenses incurred in said removal or repair against the land or building on which such sign was located. The Building and Zoning Administrator may cause any sign which is a source of immediate peril to persons or property to be removed summarily and without notice.

17. Advisory Board - The Supervisor of the Town of Berne is hereby authorized and empowered to appoint a sign and billboard advisory board consisting of members of the Town Board, the Zoning Board and the Planning Board with such professional volunteers, as they deem helpful or necessary.

D. Industrial District Regulations

The Town Board may, after the Planning Board review, public notice and hearing, approve the development of a parcel of land for industrial use and establish a special Industrial district for such development in a RAF district subject to the following conditions:

1. Minimum Acreage - The minimum required acreage of any industrial use/site shall be 10 acres.
2. Application of Regulations - Individual uses and structures in an Industrial district need not comply with the specific building location, height, lot size and open space requirements of the underlying basic district. The overlay superimposes the regulations for Industrial district upon the underlying district.
3. Use Regulations:
 - a. Permitted uses:
 - 1) Any use permitted by right in the Industrial district.
 - 2) Any use permitted by special permit in the Industrial districts subject to the favorable approval thereof by the Board of Appeals.

b. Prohibited uses:

1) Residential uses, except dwellings of caretakers and any and all residential uses made and permitted prior to the establishment of such Industrial district shall be allowed to continue as permitted heretofore.

2) All prohibited industrial uses listed in Section III, subsection B "Prohibited Uses" herein.

3) Any use, although expressly allowed as a permitted use, shall be prohibited if the particular application or adaptation of such use is or shall become or cause a nuisance.

4) Performance Standards:

a. General Standards The following general standards are hereby adopted for the control of uses in an Industrial district and no use shall be permitted, established, maintained, or conducted therein which shall cause or be likely to cause:

1) Excessive smoke, fumes, gas, dust, odor or any other atmospheric pollutant beyond the boundaries of the lot whereon such use is located. What smoke is excessive shall be determined according to the Ringelmann's Scale for Grading the Density of Smoke, published by the U.S. Bureau of Mines, when the shade or appearance of such smoke is darker than No. 2 on said Ringelmann Smoke Chart.

2) Noise, perceptible beyond the boundaries of the lot occupied by such use causing the same.

3) Any pollution by discharge of any waste material whatsoever into any watercourse, open ditch or land surface.

4) Discharge of any waste material whatsoever into any sanitary disposal system or sewerage system except only in accordance with the rules of and under the control of public health authorities or the public body controlling such sewerage system. Any chemical or industrial waste which places undue loads, as determined by the Town Engineer or the Building and Zoning Administrator shall not be discharged into any municipal system and must be treated by the industrial use.

5) Storage or stocking of any waste materials whatsoever.

6) Glare or vibration perceptible beyond the lot lines whereon such use is conducted.

7) Hazard to person or property by reason of fire, explosion, radiation, or other cause.

8) Any other nuisance harmful to persons or property.

b. Specific standards The following specific standards are hereby adopted and must be complied with, for and by any use in any Industrial district and before the same be permitted, established, maintained or conducted:

1) Storage Facilities Materials, supplies, or semi-finished products shall be stored on the rear one-half of the property and shall be screened from any existing or proposed street.

2) Loading Docks No loading docks shall be on any street frontage. Provisions for handling of all freight shall be on those sides of a building which do not face on any street or proposed streets and if a building shall front on a street or proposed street on all sides, the loading dock shall be in the rear of the building unless otherwise ordered by the Building and Zoning Administrator.

3) Landscaping It is hereby declared that all areas of the plot not occupied by buildings, parking, driveways or walkways, or storage shall be landscaped attractively with lawn, trees, shrubs or other plant material. Such landscaping shall take into consideration the natural growth presently on the premises and the nature and condition of the terrain as well as the situation of the lands and premises themselves and with regard to adjoining lands and premises.

4) Fences and Walls Property that is adjacent to a Residential or Commercial district shall be provided along such property lines, with a wall, fence, compact evergreen hedge or a landscaped strip of trees and shrubs so designed as to form a visual screen not less than 6 feet high at the time of planting. Except for landscaped areas and parking areas, a use which is not conducted within a completely enclosed building shall be screened by a six foot solid masonry wall, chain link fence covered with an evergreen vine, or compact evergreen hedge. Where a front yard adjoins a street, the wall, fence or hedge, shall be located not closer to the street than the depth of the required yard.

5) Off-Street Parking and Loading Refer to subsection B of this Section.

6) Signs Refer to subsection C of this Section.

7) Buffer Strip In addition to the fences and walls, the entire district must be separated along its outside boundary from any adjoining residential zones by a buffer strip, suitably landscaped, at least 100 feet wide.

c. Proper and adequate water supply, sewerage and waste disposal, other utility services and accessibility to and from public streets must be provided.

d. Special consideration must be given to the traffic generated by each proposed use in an Industrial district and no undue traffic volumes shall be permitted on residential streets. Such data are to be submitted with each petition for amendment. No access drive for any Industrial district shall be within 300 feet of and on the same side of the street as a school, public library, theater, church or other public gathering place, park playground, or fire station unless a street 50 feet or more wide lies between such access drive and such building or use.

5. Area and Bulk Regulations - Area and bulk requirements shall be in compliance with those for Industrial districts as set forth in the Density Control Schedule of this Ordinance.

6. The Planning Board upon review of the proposed development may prescribe such additional conditions as are in its opinion necessary to secure the objective of this Ordinance.

7. Procedure - Application for rezoning classification of a site shall be filed by the owner or several owners jointly or the holder of a written option of purchase of the site with the secretary to the Town Board, in writing on a form required by the Town Board, and shall be accompanied by a certified check in an amount in accordance with the schedule of fees as promulgated from time to time by the Town Board to help defray the cost of advertising the hearing on said petition and incidental disbursements. The applicant shall also submit the following:

a. A plan of the site and surrounding areas drawn to scale and accurately dimensioned in accordance with Section VII, subsection B "Site Plan Approval" herein.

b. The use and height of each proposed building or structure, yard lines, lot coverage, and number of parking spaces in each proposed parking area, and the expected flow of traffic in and out of the area.

c. Any additional data as may be requested by the Planning Board in order to determine the suitability of the tract for the proposed development.

Each application shall be referred to the Planning Board. The Planning Board shall report its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Planning Board disapproves the proposed amendment, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by adoption of a resolution passed by four-fifths of its members fully setting forth the reasons for such contrary actions.

8. The Town Board by a resolution shall fix the time and place of public hearing and cause notice to be given as follows:

a. By publishing a notice of the application and the time and place of the public hearing in a newspaper of general circulation in the Town of Berne as designated by the Town Board not less than 10 days prior to the date of the public hearing.

b. By giving notice of hearing to any required Municipal, County, State or Federal Agency in the manner prescribed by law.

9. Upon approval of the proposed development the new district established shall be excepted from the provisions and controls of this Ordinance only to the extent specified in the approval, and such new district shall become a part of the regulations established herein, shall be enforced in the same manner, and be similarly subject to amendment, except that if construction of the proposed development is not commenced within one year after approval of the Town Board, such approval shall be revoked and such area shall be subject to the requirements of the prior district regulations.

E. Historic Districts

1. It is hereby declared that the preservation of architecturally historic sites, areas, buildings and landmarks located in the Town of Berne is essential to the general welfare of the community and the purpose of this section of the Zoning Ordinance is to:

a. Safeguard the heritage of the Town of Berne by preserving sites and districts in the Town which reflect its cultural, social, economic, political and architectural history.

b. Protect buildings, structures, and areas in the Town which are recognized as architecturally historic sites and landmarks.

c. Stabilize and improve property values.

d. Foster civic beauty.

e. Strengthen the local economy.

f. Promote the use of the Historic district for the education, pleasure and welfare of the present and future citizens of the community.

Pursuant to these purposes there is hereby created in the Town of Berne, districts known as "Historic Districts," with boundaries as shown on the Zoning Map.

2. Regulations of Structures - No structure shall be constructed, altered, repaired, moved or demolished in the historic district unless such action complies with the requirements hereinafter set forth.

3. Duties and Powers of the Town Planning Board - All plans for the construction, alteration, repair, or demolition of structures in the historic districts shall first be submitted to the Town Planning Board which

shall have the power to pass upon such plans before a permit for such work shall be granted; provided, however, that the Planning Board shall pass only on such exterior features of a structure and shall not consider interior arrangements. In reviewing the plans, the Board shall give consideration to:

- a. The historic or architectural value and significance of the structure and its relationship to the historic value of the surrounding area.
- b. Consistency with existing conditions in the historic district and the general appropriateness of the exterior design arrangement, texture and materials proposed to be used.
- c. The scale of proposed alteration or new construction in relation to the property itself, surrounding properties and the historic district.
- d. Texture and materials and their relation to similar features of other properties in the historic district.
- e. Visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the front facade, roof shape, and the rhythm of spacing of properties on streets, including setback.
- f. The importance of historic, architectural or other features to the significance of the property.
- g. To any other factor, including aesthetics, which it deems pertinent.

In addition to the foregoing general standards, the following specific standards shall apply in appropriate cases:

Alterations, repairs and additions to existing buildings shall either be made consistent with the spirit of their architectural style or shall alter the structure to an appropriate appearance consistent with the architectural styles of historic value existing in the Historic district.

New construction shall be consistent with the architectural style of historic value in the Historic district, except in such instances of new construction as the Planning Board shall determine to be in appropriate because structures adjoining the site of such proposed new construction are of a significantly dissimilar period of architecture, in which cases the Planning Board may approve such periods of architecture as it deems proper for the site and the best interests of the Historic district.

Demolition shall be prohibited of any structure within the Historic district if the Planning Board shall determine it to be of a particular architectural or historical significance.

Moving of structure of historic and architectural value may be permitted by the Planning Board as an alternative to demolition.

The Building and Zoning Administrator shall not issue a building permit until a certificate of approval of the plans has been issued by the Planning Board.

4. Procedure for Review of Plan - Application for a building permit to construct, alter, repair, move or demolish any structure in the Historic district shall be made to the building and Zoning Administrator. The application shall state that the property is in the Historic district and plans shall be submitted showing the structure in question and also giving its relation to adjacent structures.

Upon the filing of such application, the Building and Zoning Administrator shall immediately notify the Planning Board and shall transmit to such Board the application and any supporting plans or documents. The Planning Board shall consider such application and shall approve or disapprove the plans and if it shall approve such plans, shall issue a certificate of approval and transmit the same to the Building and Zoning Administrator.

If the Planning Board shall disapprove the plans, it shall so notify the Building and Zoning Administrator who shall thereupon deny the application for a permit.

Nothing in this Ordinance shall be construed to prevent ordinary maintenance or repair of any structure within the Historic district.

5. Advisory Board - The Planning Board of the Town of Berne is hereby authorized and empowered to retain, as an historical Advisory Board, architects and other such experts as they deem desirable or necessary, to advise on specific applications.

6. Any person aggrieved by a decision of the Planning Board or Building and Zoning Administrator acting under this subsection shall have the right to appeal to the Zoning Board of Appeals for a variance as provided by the Zoning Ordinance or general law.

7. Uses Permitted - As shown elsewhere, subject to the approval of the Planning Board as set forth herein.

8. Building Height, Limit Lot Area and Yards - The provisions of the Zoning Ordinance governing the permitted height of buildings, the required lot area and the requirements of front, side and rear yards in the appropriate district shall apply in the Historic district.

F. Traditional Neighborhood/Mixed Use District1 and 2

1. Design Standards and Guidelines

a. Purpose. The Design Standards and Guidelines are hereby enacted to establish design parameters for new commercial development or expansion of existing commercial uses in the hamlet for the following purposes:

- 1.To preserve and reinforce the historic and architectural features of the hamlet of Berne.
- 2.To establish and promote aesthetic and architectural compatibility within the hamlet of Berne.
- 3.To ensure that future development creates an aesthetic and pleasant living and working environment in the hamlet.
- 4.To stabilize and reinforce property values, protect private and public investment, and protect adjacent residential uses.
- 5.To encourage the development of new uses that are in harmony with the surrounding area.
- 6.To enhance the pedestrian character of the hamlet.
- 7.To permit originality and resourcefulness in building design and appearances which are appropriate to the hamlet and surroundings.

b. Delegation to the Planning Board and Zoning Board of Appeals. The Town of Berne's Planning Board and Zoning Board of Appeals are hereby granted the authority to administer the intent of this section through the site plan review and special use permit processes.

c. Applicability. These Design Standards and Guidelines shall apply in the TN/MU1 and 2 Districts. These design standards are not intended to be a substitute for other district provisions but are additional standards to be met by the applicant prior to project approval. The only actions that shall be subject to the Design Standards and Guidelines are those that require approval by the Berne Planning Board pursuant to Site Plan Review, or the Zoning Board of Appeals pursuant to special use permits.

Development not subject to Site Plan Review or a Special Use Permit is encouraged to use these design standards and guidelines.

d. Review Procedures.

- 1.No separate application for approval under this section is required.
- 2.In addition to data and plans required to be submitted for site plan approval or special permit approval, every applicant shall also submit the additional data or plans necessary to comply with the guidelines of this section.
- 3.Prior to approval of a site plan or special permit subject to the provisions of this section, the reviewing Board shall make a determination that the proposed action complies with these Design Standards and Guidelines and set forth such finding in its resolution of approval.

e. Design Standards and Guidelines.

1. General. The TN/MU area has a strong residential character. The hamlet is compact and buildings are relatively close together. These guidelines are intended to encourage development that reinforces and follows that existing pattern. The intent of the following design standards is to ensure that the hamlet can accommodate new housing and businesses without destroying its essential character. It is not the intent of this chapter to discourage contemporary architectural expression but rather to preserve the integrity and authenticity of the district and to ensure the compatibility of new structures. During project development and review, attention should be given to the compatibility of adjoining developments when reviewing project proposals.

2. Building Placement.

- Buildings shall be designed so that entrance doors and windows, rather than blank walls, garages, side walls or storage areas, face the street.
- The front façade of the building shall be parallel to the main street.
- No parking area shall be located in the front yard setback between a principal building and any public street. If necessary due to specific site conditions, one row of parking may be placed between the principal building and the public street only if topography or a year round vegetative buffer of sufficient density to substantially limit the view of the parking lot screens the parking lot.
- Detached garages to the rear of buildings are encouraged. Attached garages should have doors set 10' or more behind the street face unless the doors face the side.

3. Building Scale.

- The scale and mass of buildings shall be compatible with that of adjacent and nearby buildings as viewed from the street.
- The total footprint of any single building or group of attached buildings shall not exceed the area designated in the Area and Bulk Schedule (Section IV B).
- In order to minimize the apparent scale of buildings greater than 80' in width, facades facing the main street should be broken by periodic setbacks, and rooflines should include offsets and changes in pitch. Other design features such as porches or cupolas may also be used.

4. Building Façades

- Exterior materials of new construction shall be compatible with those traditionally used in the hamlet and may include wood or wood-simulated (clapboard, board and batten or shingles, vinyl), red common brick, natural stone, and man-made or processed masonry materials if they simulate brick or stone and have the texture and architectural features sufficiently similar to that of the natural material to be compatible. Stucco, sprayed-on textured surface finishes, metal, and concrete blocks are not permitted.

5. Roof Types and Materials

- All roofs shall be pitched with a minimum pitch of 5" vertical rise for each 12" horizontal run.
- Peaked or slope roof dormers and cupolas are encouraged.
- Roofing materials of slate, metal, asphalt or fiberglass shingles or cedar shakes are acceptable.

6. Windows

- The spacing, pattern and detailing of windows and window openings shall be compatible with adjacent buildings in the hamlet.
- The relationship of the width of windows to the height of windows in a building shall be visually compatible with adjacent buildings.

7. Accessory Equipment.

- All roof, wall or ground mounted mechanical equipment such as heating and air conditioning units, exhaust fans, etc. shall be confined within the principal structure or within an area enclosed by a well, fence, berm or hedge of sufficient height and density to screen the equipment year round from view from adjacent streets, properties and parking lots.
- All dumpsters or other trash containers shall be fully enclosed by a fence and screened by appropriate landscaping. No dumpster shall be located in front of a building and the preferred location is to the rear of the building.

8. Parking Lot Design

- The interior and edges of parking lots for more than 5 cars shall include landscaping of sufficient area to break up and/or screen any large mass of parking. When trees and shrubs are planted, they shall be at a minimum of 3" caliper for deciduous trees, 6' high for conifers, 1" caliper for small flowering trees, 30" height for large shrubs and 18" height for small shrubs. Existing trees located on the site shall be incorporated into the landscaping design.
- No parking space shall be located more than 50 feet from a deciduous tree or conifer.
- Where two parking lots are adjacent to each other, a single access or an interconnection is encouraged and may be required where necessary to provide safe traffic management.
- See also Section V (B) for other parking lot requirements.
- Parking lots with permeable surfaces are encouraged wherever possible.

9. Signage

- Any sign lighting shall be via an external light source oriented to avoid glare towards adjacent roadways. External lights mounted at the top of the sign are preferred. Internally lighted signs are prohibited.
- Signs shall be architecturally compatible with the style, composition, materials, colors and details of the building. Wood and painted metal are preferred materials for signs.

- See Section V (C) for other requirements pertaining to signs.

10. Lighting

- All external light sources shall be designed to direct glare away from adjacent streets and properties and use fully shielded designs to direct light downwards rather than sideways.
- Light fixtures shall not exceed 18' in height.

11. Sidewalks and Street Trees

- Where no sidewalks exist, new uses shall construct 5-foot wide sidewalks located with a 3 foot green space between the road and the sidewalk edge , where feasible, and shall transition to existing walkways.
- Existing street trees should be preserved whenever possible. Dead trees that are within 20 feet of the pavement should be replaced with new trees. If no existing street trees are present, deciduous, broad-leaved trees with a minimum of 3" caliper trunk shall be planted at minimum 30' intervals along the road frontage. Street trees can be planted within the first 10 feet of the front yard, or in the area between the street and sidewalk (should a sidewalk exist).

G. Multi-family Development (RESERVED)

H. Cluster Development (RESERVED)

I. Conditions for Uses Requiring Special Use Permits

1. General The types of uses for which special permits are required shall be deemed to be permitted in their respective districts, subject, as to each specific use, to the satisfaction of the requirements and the standards set forth in the following section and according to requirements of Section VIII, subsection E "Special Use Permits" herein. Each specific use for which a special permit is sought shall be considered as an individual case and shall conform to the detailed application of such standards, in a manner appropriate to the particular circumstances of the permitted use.

2. Conditions and Standards

a. Protection of Agriculture from Potentially Incompatible Uses

1.Agricultural Buffers - Wherever agricultural uses and other uses unrelated to the agricultural operations abut, buffers shall be provided to reduce the exposure of these abutting uses to odors, noise, and other potential nuisances related to the agricultural operation. Provision of buffers shall be the responsibility of the proponent of the nonagricultural use, unless such use predates the agricultural use. Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features.

2.Required Disclosure Statement - In the case of any proposed residential development that abuts agricultural uses, the Planning Board may require the applicant to issue a disclosure to potential purchasers of lots or dwelling units, informing such purchasers that living next to agricultural operations may on occasion subject them to unpleasant odors and noises and that the application of agricultural chemicals may occur on such agricultural land. This disclosure may be required as a note on a subdivision plat or site plan, along with a requirement that such disclosure be made in writing in a real estate listing sheet or contract of sale. The Planning Board may require that such a disclosure statement be reviewed and approved by the Planning Board. This Section may also be applied to any commercial development within the jurisdiction of the Zoning Board of Appeals, which abuts agricultural land, at the discretion of the Zoning Board of Appeals.

b. Aircraft Landing Fields.

All federal, state and local governmental rules and regulations shall be fully complied with. There shall be a finding by the Zoning Board of Appeals that such aircraft landing field shall not cause a hazard to or be detrimental to nearby properties and buildings both in the Town and adjacent municipalities considering the location of buildings accessory to the aircraft landing field, approach and take-off patterns and lights before any aircraft landing field may be established. Airports, as herein defined, are not a permitted use.

c. Automotive Wrecking Yards.

Automotive wrecking yards shall be allowed by special use permit in a Neighborhood Commercial (NC) and General Commercial (GC) zones subject to the following conditions:

1. The lot must be at least 3 acres with a minimum frontage of 250 feet.
2. No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theatre, church, or other public gathering place, park, playground or fire station unless a street 50 feet or more wide lies between such service station and such building or use.
3. The auto wrecking yard must be certified by the New York State Department of Motor Vehicles as an auto repair shop.
4. All vehicles, vehicle parts, and equipment must be stored either in a building or in a storage area.
5. The storage area can cover no more than one (1) acre.
6. The storage area must be located so that either its contents are not visible from any public road or the portion that would be visible must be shielded from view by an opaque fence not less than 7 feet high.
7. The storage area must be located as to minimize its visibility from surrounding residential areas. An opaque fence or plantings may be used to reduce the storage areas visibility.
8. The storage area must be at least 70 feet from the front lot line and 20 feet from the side and rear lot lines.
9. The storage area cannot be located in a flood plain, or other environmentally sensitive area.

d. Cemeteries and Crematories

No burial or memorial plots or buildings shall be located closer than 50 feet to any residential lot line, except that when dense evergreen hedge or a wall or landscaped strip at least 6 feet in height providing complete visual screening from all adjacent residential property is provided, burial or memorial plots of less than 6 feet in height may be located not closer than 20 feet from any residential lot line. Crematories shall be located only in cemeteries.

e. Conversion and Change of Use of Residences

1. Seasonal Residences: Prior to converting a seasonal residence to a year-round residence, it shall be demonstrated that there exists a functioning sewage disposal system and an adequate water supply servicing the residence in accordance with subsection S "Sanitary Disposal and Water Supply" herein.

Such inspection shall have occurred not more than one (1) year prior to application for a special use permit to allow such a conversion and shall have been conducted or approved by the Albany County Department of Health.

2. **Conversion of residence to commercial use:** Prior to converting any residence to commercial use, it shall be demonstrated that there exists a functioning sewage disposal

system and an adequate water supply servicing the structure in accordance with subsection S "Sanitary Disposal and Water Supply" herein.

Such inspection shall have occurred not more than one (1) year prior to application for a special use permit to allow such a conversion and shall have been conducted or approved by the Albany County Department of Health.

f. Drive-in Movie Theater

Drive-in movie theaters must have a minimum lot area of 480,000 square feet , preferably 600 feet by 800 feet; 100 feet extension on one side and 50 feet extension on second side for each 100 car capacity above 500 cars; 100 feet front yard for service facilities; one ticket booth for each 300 cars or fraction thereof of the total capacity; screens are prohibited from facing major highways; waiting or storage space, off the highway or streets, permissible in front yard equal to 25 percent of the total capacity; and, approval as a place of public assembly of the structures and layout by the New York State Department of Labor.

g. Excavation for Soil Mining

Excavation for the purpose of soil mining such as gravel pits, quarrying, or any subsoil removal shall be allowed only by special permit in the RAF or IND districts, subject to Section V, subsection A, paragraph 2 "Excavations" herein, and the following provisions:

1. Before a special permit is issued the applicant shall submit to the Planning Board and the Board of Appeals, two copies of a map at a scale of one inch equals not more than 100 feet showing all land within 200 feet of the proposed soil mining area or premises, with exact locations of all buildings, streets, utilities, drainage or other easements, watercourses, lot lines, block and lot numbers and names of the land owners. Such map shall also show the present topography at 2-foot contour intervals. The map shall be signed by a licensed engineer or land surveyor for certification of its accuracy.

2. The applicant shall also submit to the Planning Board and the Zoning Board of Appeals two copies of the proposed plan of excavation at the same scale as above showing the proposed finished elevations at one foot contour intervals and the proposed drainage plan.

3. During any excavation or quarry operations, excepting shale bank operations, open pits and quarry walls shall be entirely surrounded by a substantial fence at least 6 feet high that will effectively block access to the area with suitable gates provided with locks. Top and/or toe of slope of any excavation including shale banks shall be not closer than 100 feet to a property line.

4. The applicant shall be required to furnish a performance bond, in amount determined by the Building and Zoning Administrator, to be sufficient to guarantee completion of the finished grading and drainage plan. Such bond shall be released only upon certification by the Building and Zoning Administrator that all requirements including the finished grading and drainage have been complied with.

5. No special permit for excavation operations or soil mining shall be granted for a period of more than three years, but such permit may be extended for an additional two years, upon approval of the Board of Appeals.

6. Upon approval, one copy of the approved excavation plan shall be returned to the applicant by the Town Clerk together with the special permit upon the payment of a fee as promulgated from time to time by the Town Board to cover all engineering and other costs directly attributable to the approval and office and field checking of the proposed soil mining operations.

h. Gasoline Filling Stations

In any district where permitted, a gasoline filling station shall be subject to the following regulations:

1. **Except in the TN/MU2 District:** Filling stations shall be permitted only on lots of 1 ½ acre or more, with 250 feet minimum frontage. **In the TN/MU2 District, Section IV shall govern density standards for the TN/MU2 District and there shall be 150 feet minimum frontage.**
2. The area for use by motor vehicles, except access drives thereto, as well as any structures shall not encroach on any required yard area.
3. No fuel pump shall be located closer than 20 feet from any side lot line nor closer than 35 feet from any street line, measured from the outside of the fuel island.
4. All repair work, and storage shall be within a completely enclosed building which has a maximum height of 25 feet. Such repair work shall not include any body repair work or spray painting or car washing which requires mechanical equipment, except by special permit of the Zoning Board of Appeals as provided by this Ordinance.
5. **The Planning Board may limit the number of gas pumps to ensure consistency in scale between the gas filling station and adjacent land uses.**
6. **There shall be no glare of gas canopy islands outside the boundaries of the site.**
7. **All gas canopy lights shall be recessed with no bulb, lens or globes extending below the casing or canopy ceiling.**
8. **No signs shall be allowed on the canopy mansard, fascia or roof area covering gas dispensers.**
9. **There shall be no amplified sound audible at property lines.**
10. **All pumps, pump islands, tanks, piping and canopies shall be removed when fuel dispensing activity has been inactive for a period of 12 months.**
11. **Construction, maintenance and inspection of any gas filling station shall use all applicable federal, state and county environmental protection and mitigation requirements relative to installation, use and removal of tanks and pumps.**
12. **The Town may require a bond to cover costs related to possible future cleanup of underground tanks, contaminated soils, or site restoration.**
13. **For gas filling stations proposed in the TN/MU2 district, the Planning Board shall require a traffic impact analysis.**
14. **Applicants shall prepare and maintain on site, an acceptable Spill Prevention, Control and Countermeasure Plan prepared under the supervision of a professional licensed engineer.**
15. **Employees shall be up-to-date in Spill Prevention training.**
16. **Owners of underground storage facilities for oil or gas shall maintain financial responsibility for costs associated with the cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000.**
17. **The Zoning Board of Appeals may limit hours of operation or limit acceptable hours of fuel delivery.**
18. **Applicants shall evaluate site conditions and provide information, analysis, and evidence that the proposed gasoline filling station will not degrade the quality of groundwater.**

Mitigation measures including, but not limited to use of steel above ground tanks encased in concrete, shall be implemented to reduce or eliminate risks to groundwater.

i. Home Occupation

1. Home occupation - Major. The following standards are applicable to Major Home Occupations: An individual may, with special use permit from the Planning Board, conduct their business, trade or profession in their home or residence provided that: no more than one person is employed in addition to the owner or tenant of the property; that no other professional shall be permitted to share, let, or sublet space for professional use; that no more than 800 square feet or 30% of the total floor area of a dwelling is utilized; that there be no external evidence of such use except for one sign not exceeding four square feet in area; and, that there shall not be any exterior storage of materials or equipment. A home occupation may be located in an accessory building not to exceed 500 square feet. All exterior aspects of the home occupation shall not disrupt the residential character of the area. There shall be no exterior display, exterior storage of materials or other exterior evidence of any home occupation except for signs and off-street parking. No home occupation shall produce any odor, noise, vibration, smoke, dust, heat or glare that exceeds the average level in the immediate vicinity, and is detectable beyond the property line of such parcel. (Refer also to Section XI "Definitions" herein.)

2. Home Occupation – Low Impact: Low impact home occupations are permitted by right.

3. Home Occupation – An individual may, with special use permit from the Planning Board, conduct their business, trade or profession in their home or residence provided that: no more than one person is employed in addition to the owner or tenant of the property; that no other professional shall be permitted to share, let, or sublet space for professional use; that no more than 500 square feet or 25% of the total floor area of a dwelling is utilized; that there be no external evidence of such use except for one sign not exceeding four square feet in area; and, that there shall not be any exterior storage of materials or equipment.

j. Hospital

All hospitals shall have a minimum lot area of 8 acres and a minimum distance from any lot line to any building of 100 feet. Parking shall be provided in accordance with regulations set forth in subsection B of this Section.

k. Kennels and Veterinary/Animal Hospital Clinic

Kennels shall be allowed by special use permit in RAF, NC and GC zones subject to the following conditions:

1. Shelters for animals within kennels shall not be closer than 100 feet to any side or rear lot lines. No shelters shall be permitted in the front yard.

2. No outdoor area enclosed by fences shall be permitted within the front yard. Fenced areas shall not be located closer than 50 feet from the side or rear lot line.

3. No kennel shall be located closer than 300 feet to an existing residential dwelling on an adjacent lot.

4. There shall be no incineration of any refuse upon the premises.

5. The site plan shall contain provisions for adequate measures to prevent offensive noise and odor and disposal of all animal wastes.

l. Membership or Private Club, Community Building

All membership or private clubs and community buildings shall have a minimum lot area of 8 acres and a minimum distance from any lot line to a principal building of 100 feet. No off-street parking in required front yard. Off-street parking as required by subsection B of this Section.

m. Mobile homes and House Trailers

1. Trailer Parks :

- a. No person being the owner occupant, or tenant of land or premises within the Town of Berne shall use or permit the use of said land or premises as a trailer park without obtaining a permit therefore. A trailer park permit shall be valid until the December 31st next succeeding the date of its issuance. The application for renewal shall be in writing on an approved form.
- b. The applicant for a trailer park permit or for a renewal thereof shall, at the time of making such application, pay a fee equal to (\$5.00) dollars per unit based upon the maximum number of house trailers to be accommodated as shown by the application, or such other fee per unit as the Town Board may from time to time establish by resolution.

2. Trailer Park Regulations:

- a. No trailer park shall be located within 1,000 feet of the boundary line of any property used for public school purposes.
- b. All lands used as a trailer park shall be well drained, and free from heavy or dense growth of brush or weeds. The land shall be properly graded to insure proper drainage during and following rainfall and shall at all times be so drained as to be free from stagnant pools of water.
- c. Each trailer park constructed, altered or expanded after the effective date of this Ordinance shall be subdivided and marked off into units numbered consecutively, the number being conspicuously posted on each unit; such number shall correspond with the number assigned to such units as shown on the plans submitted with the application required for a permit or renewal of a permit. Each unit shall contain a minimum of 5,000 square feet and shall have gravel or other approved base on which the house trailer shall be set, such base having a minimum size of 10 X 50 feet and in no event shall a house trailer protrude or hang over such base. Each house trailer shall be placed on approved piers or foundation with adequate tie down of such trailer. No more than one house trailer shall be permitted to park or remain on any one unit. All house trailers, including additions, shall have a minimum front yard of 20 feet, minimum side yard of 10 feet and a minimum rear yard of 25 feet. The units shall be grouped in blocks with streets at least 25 feet wide between each block. Each street shall be of shale or of macadam surface or equal. Each unit shall have access to a street. No unit shall be located within 100 feet of any public street or highway or within 40 feet of any adjacent property line. The trailer park shall be kept in a neat and sanitary condition at all times.
- d. Each such trailer park shall be provided with proper water connections for each unit.
- e. A sufficient supply of pure drinking water shall be provided for each unit. Such water supply shall be approved by the Department of Health of the County of Albany.
- f. No house trailer, not containing a working water closet, lavatory, and shower or bathtub shall be allowed to park or remain in any trailer park unless said park contains independent sanitary facilities approved by the Department of Health of the County of Albany and the Building and Zoning Administrator as sufficient for such use.
- g. All sewerage and other water-carried waste shall be disposed of into a municipal sewerage system whenever possible. In trailer parks in which such connections are not available, disposal systems shall comply with applicable regulations of the Town, the New York State and Albany County Departments of Health, the New York State Department of Environmental Conservation, and other governmental authorities. When a water-carried system of sewage disposal is used, each unit shall be provided with a sewer connection for the combined liquid waste outlet or outlets of each house trailer. A water-and-odor - tight connection from the trailer water drainage to the sewer connection shall be provided and such connections shall remain at all times while the house trailer

remains parked in such trailer park. Sewer connections in unoccupied units shall be closed so that they shall emit no odors. No sewerage shall be allowed to fall upon the ground.

h. Each trailer park shall provide appropriate facilities for collection of recyclables and equipment sufficient to prevent littering of the grounds with rubbish, garbage and refuse, and shall be equipped with fly-tight metal depositories of sufficient size and number to contain all the refuse and garbage which may accumulate between removals from the trailer park.

i. Each trailer park shall provide weatherproof electric service connections and outlets for each unit. All electrical installations shall be approved by the New York State Board of Fire Underwriters.

j. Insect and rodent control measures as required by the Building and Zoning Administrator shall be taken and accumulation of debris shall not be permitted.

k. All piping from fuel storage tanks or cylinders shall be permanently installed and securely fastened in place. All such tanks and cylinders shall be securely fastened in place and shall not be located beneath any house trailer.

l. A telephone shall be maintained in working order at each trailer park for use of the occupants in emergencies. Such telephone may be of the coin-operated type.

m. Each trailer park shall be completely fenced, except at entranceways, with a solid, opaque fence around the entire premises. Such fence shall be eight feet high and shall be set back fifteen feet from all rights-of-way and property lines. The requirements of this section may be waived by the Zoning Board of Appeals, in its discretion, upon its finding that topographical or other natural features make such fence unnecessary.

n. No boats, campers, travel trailers, recreational vehicles, or unregistered and unlicensed motor vehicles shall be parked or stored at any place within a trailer park except in areas designated and approved for such storage as part of the site development plan.

o. Each roadway shall be named and noted upon signs at each roadway intersection. Each trailer lot shall be assigned a permanent number which shall be noted on the lot in a location clearly visible from the roadway.

p. Every trailer park shall have a recreational area or open-space area for use by the occupants of the trailer park. Such areas shall be as centrally located as the topography and design of the park permit. Such areas shall be not less than eight percent of the gross site area of the park. No trailer site, required buffer strip, street right-of-way, storage area, or utility site shall be counted as meeting recreational purposes.

3. Recreational Trailer Parks:

a. No person being the owner, occupant or tenant of land or premises within the Town of Berne shall use or permit the use of said land or premises as a recreational trailer park without obtaining a permit thereof. A recreational trailer park permit shall be valid until the December 31st next succeeding the date of the issuance. The application for renewal shall be in writing on an approved form.

b. The applicant for a recreational trailer park permit or for a renewal thereof shall, at the time of making such application, pay a fee equal to five dollars, per unit based upon the maximum number of recreational trailers to be accommodated as shown by the application, or such other fee per unit as the Berne Town Board may from time to time establish by resolution.

c. Site Improvement Requirements

1) General. The condition of soil, groundwater levels, drainage and topography shall not create hazards to the property, or the health and safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable and/or sudden flooding, subsidence, or erosion shall be used for any purpose which would expose persons or property to hazards. The recreational trailer park shall be kept in a neat and sanitary condition at all times.

2) Soil and ground cover. Exposed ground surfaces in all parts of every recreational trailer park shall be paved or covered with stone screenings or other solid materials or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.

3) Site drainage requirements. The ground surface in all parts of every recreational trailer park shall be graded and equipped to drain all surface water in a safe, efficient manner.

4) Nonresidential uses. No part of any recreational trailer park shall be used for nonresidential purposes.

5) Size. The recreational trailer park shall be at least eight (8) acres in size, with at least four hundred (400) feet frontage on a public road.

6) Signs. The only sign or display permitted on the premises is one (1) sign at each entrance to the recreational trailer park from a public road indicating the name of the recreational trailer park. Such signs shall conform to the sign requirements outlined in Section V.

7) No recreational trailer park shall be located within 1,000 feet of the boundary line of any property used for public school purposes.

d. Recreational Trailer Lots

1) Each recreational trailer park constructed, altered or expanded after the effective date of this Ordinance shall be subdivided and marked off into units numbered consecutively, the number being conspicuously posted on each unit and such number shall correspond with the number assigned to such units as shown on the plans submitted with the application required to be submitted pursuant to paragraph 1.a above.

2) Each unit shall contain a minimum of 4,000 sq. ft.

3) The units shall be grouped in blocks with streets at least 25 feet wide between each block, or in such other and comparable configuration as may be approved by the Board.

4) Each lot shall have access to a street.

5) Each recreational trailer park shall have an undisturbed 100 foot buffer between all adjoining properties. No lot shall be located within 100 feet of any public street or highway.

e. Recreational Trailers

1) Any recreational trailer parked or located on such lot shall not be placed on any foundation but shall remain sufficiently mobile so that it may be removed from such lot without any structural changes to such recreational trailer lot.

2) No more than one recreational trailer shall be permitted to park or remain on any one lot.

3) No recreational trailer shall be allowed to occupy a lot for more than six consecutive months. Removing the recreational trailer for a period of less than 120 days shall not be deemed to render a period of occupancy non-consecutive.

4) Recreational trailers may be stored in an approved designated storage area, if approved by the management.

f. Recreational Trailer Pads.

1) Each lot shall have a recreational trailer pad which will provide for the practical placement or removal of the trailer, from the lot, and the retention of the recreational trailer on the lot in stable condition.

2) The pad shall be of sufficient size to fit the dimensions of the anticipated recreational trailers.

3) All recreational trailers shall have a pad, located such that each recreational trailer, when parked, shall have a minimum front yard of 20 feet, minimum side yards of 10 feet, and a minimum rear yard of 25 feet.

4) The pad shall be constructed of an appropriate material which is durable, compacted and adequate to support the maximum anticipated loads.

5) The pad shall be suitable graded to permit rapid drainage.

g. Recreation Areas

1) In all parks accommodating or designed to accommodate five (5) or more recreational trailers, there shall be one (1) or more recreation area/s which shall be easily accessible to all park residents.

2) The size of such recreation areas shall be based upon a minimum of two hundred (200) square feet for each lot. No outdoor recreation area shall contain less than five thousand (5000) square feet.

3) Recreation areas shall be so located as to be free from traffic hazards and should, where the topography permits, be centrally located.

4) Playground equipment shall be installed in each required recreation area and maintained in a safe manner.

h, Open Space

1) Each recreational trailer park shall provide common open space for the use of the occupants of such park.

2) Such open space shall be conveniently located in the park. Such space shall have a total area equal to at least ten percent (10%) of the gross land area of the park or at the rate of one thousand five hundred (1500) square feet per recreational trailer lot, whichever is greater. The buffer area shall not count towards this requirement.

i) Street Systems

1) Accessibility

- a) Each recreational trailer park shall be directly accessible from an existing public highway or street.
- b) Where a recreational trailer park has more than sixteen (16) recreational trailers, two (2) points of entry and exit shall be provided, but in no instance shall the number of entry and exit points exceed four (4).
- c) Entrances and exits shall be designed and strategically located a minimum distance of one hundred (100) feet between them for the safe and convenient movement into and out of the park and to minimize friction with the free movement of traffic on a public highway or street.
- d) All entrances and exits shall:
 - 1) Be at right angles to the existing public highway or street.
 - 2) Be free of all objects, for a distance of twenty (20) feet from the edge of pavement of the public highway and park road, which would impeded the visibility of the driver entering or exiting a public highway or street.
 - 3) Be of sufficient width to facilitate the turning movements of recreational trailers.
- e) No lots shall exit directly onto a public highway.
- f) Each street shall be named and noted upon signs at each roadway intersection.

2) Streets

- a) Each recreational trailer park shall have improved streets to provide for the convenient access to all recreational trailer lots and other facilities within the park. Streets shall meet the following specifications:
 - 1) The street system shall be so designed to permit safe and convenient vehicular circulation within the park.
 - 2) Streets shall have suitable alignment and gradient for traffic safety.
 - 3) No dead-end street or cul-de-sac shall be permitted in any recreational trailer park.
 - 4) All streets shall intersect at angles not less than 80 degrees.
 - 5) Streets shall be at least 25 feet wide. All streets shall be maintained in a well graded, well drained condition and surfaced with an all-weather dustless material.
 - 6) All entrances and exits shall have a grade not to exceed three percent for the first seventy five feet of street from the public highway.
 - b) Except in cases of emergency no parking shall be allowed on any street in the park.
- j. Off-street parking
- 1) One off street parking space shall be provided on each recreational trailer lot. Each parking space shall have a minimum length of 25 feet.

2) Additional off street parking spaces, surfaced with an all weather dustless material, shall be provided at strategic and convenient locations within 200 feet from the recreational trailer that it is intended to serve.

3) There shall be one such parking space for each two recreational trailer lots within the park.

4) Such parking space shall be provided in bays of a dimension of ten by twenty (10 x 20) feet which shall provide for adequate maneuvering space.

k. Walks. Walkways shall be designed where possible to avoid crossing roads to reach service buildings or recreational areas. Walkways in the park shall be indicated on the plan and shall be surfaced with an all-weather dustless material.

l. Landscaping.

1) Lawn and ground cover shall be provided on those areas not used for the placement of recreational trailers and other buildings, walkways, roads and parking areas.

2) All recreational trailer parks shall be provided with screening, such as attractive and well maintained fences or natural growth, such as trees or shrubs, along the property boundary line separating the park and the adjacent uses. Planting or screening soil shall be provided and maintained to the extent needed in order to provide for the screening of objectionable views. Views which shall be screened include, but are not limited to, nonresidential uses, garbage storage and collection areas and fuel tanks.

3) Trees and shrubs shall be provided along all walks and streets and around recreational areas. Trees shall be planted at an interval of not more than fifty (50) feet, where feasible.

m. Water Supply System.

1) A safe and potable supply of water shall be provided for each lot and structure. The private water system shall be of a type approved by the New York State Department of Health.

2) Any well casings, pumping machinery or suction pipes shall be adequately housed and landscaped.

n. Water Distribution System

1) All water piping, fixtures, and other equipment shall be constructed and maintained in accordance with state and local regulations and requirements and shall be of a type and in locations approved by the New York State Department of Health.

2) The water piping system shall not be connected to non-potable or questionable water supplies and shall be protected against the hazards of backflow or back siphonage.

3) The system shall be designed and maintained to provide a pressure of not less than twenty (20) pounds per square inch under normal operating conditions at service buildings and other locations requiring a potable water supply.

o. Sewage Disposal

1) An adequate and safe sewage system shall be provided in all recreational trailer parks for conveying and disposing of all sewage. Such system shall be designed, constructed, and maintained in accordance with State and local laws.

2) Recreational trailer parks shall provide adequate dumping stations for the disposal of waste products. Such dump station shall provide a connection with an approved sewage treatment system and a non-potable water outlet for the flushing of the sewage tanks, and must conform to all Town, County and State Health Department requirements.

3) All sewer lines, treatment units and appurtenances shall be constructed of materials approved by the New York State Department of Environmental Conservation.

4) All proposed sewage disposal facilities shall be approved by the New York State Department of Environmental Conservation prior to construction. Effluent from sewage treatment facilities shall not be discharged into any waters of the state, except with prior approval of the New York State Department of Environmental Conservation.

p. Toilet Facilities

1) Toilet and other sanitary facilities shall be provided in permanent structures. Such facilities for males and females shall be housed in either separate buildings or in the same building; in the latter case such facilities shall be separated by soundproof walls. The male and female facilities shall be marked with appropriate signs and have separate entrances for each.

2) Such toilet and other sanitary facilities shall be provided for in the following manner:

a) Male facilities shall consist of not less than one flush toilet for every fifteen recreational trailers; one urinal for every fifteen recreational trailers; one lavatory for every ten recreational trailers; and one shower, with an adjoining dress compartment of at least sixteen square feet for every ten recreational trailers.

b) Female facilities shall consist of not less than one flush toilet for every ten recreational trailers, one lavatory for every ten recreational trailers; and one shower, with an adjoining dress compartment of at least sixteen square feet for every ten recreational trailers.

c) Lavatory and shower facilities shall be supplied with hot and cold running water.

d) The buildings housing such toilet and sanitary facilities shall be well lighted at all times of the day and night shall be well ventilated with screened openings shall be constructed of moisture-proof material; shall be well heated; and shall be clean and maintained in a sanitary condition at all times. The floors of such buildings shall be of a water-impervious material.

e) Such buildings shall not be located nearer than twenty feet or further than two hundred feet from any recreational trailer.

q. Electrical Distribution System

1) Every park shall contain an electrical wiring system which shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

2) Power distribution lines:

a) Main power lines not located underground shall be suspended at least eighteen (18) feet above the ground. There shall be a minimum horizontal clearance of three feet between overhead wiring and any recreational trailer, service building, or other structure.

b) All direct-burial conductors or cable shall be buried at least eighteen (18) inches below the ground surface and shall be insulated and specially designed for the purpose. Such conductors shall be located not less than one (1) foot radial distance from water, sewer, gas or telephone lines.

3) Electrical connections. Recreational trailer lots, when provided with electricity, shall be furnished with waterproof electric service connections and outlets which are of a type approved by the New York State Board of Fire Underwriters or other qualified inspection agency approved by the town. A minimum of 30 ampere service shall be provided.

r. Fuel Storage. All piping from fuel storage tanks or cylinders shall be permanently and securely fastened in place. All such tanks and cylinders shall be securely fastened in place and shall not be located beneath any recreational trailer.

s. A telephone shall be maintained in working order at each recreational trailer park for use of the occupants in emergencies. Such telephone may be of the coin-operated type.

t. Solid Waste Handling

1) Each recreational trailer park shall provide appropriate facilities for collection of recyclables and equipment sufficient to prevent littering of the grounds with rubbish, garbage and refuse, and shall be equipped with fly-tight depositories of sufficient size and number to contain all the refuse and garbage which may accumulate between removals from the recreational trailer park.

2) Insect and rodent control measures as required by the Building and Zoning Administrator shall be taken and accumulation of debris shall not be permitted.

u. Recording of Occupants.

1) The owner or operator of each recreational trailer park shall keep a written record of all persons occupying or using the facilities of such park. This record shall be available for a period of at least one (1) year from the date of occupancy.

2) The record shall include:

a) The name and address of the occupant of each recreational trailer.

b) The name and address of the owner of each recreational trailer which is not occupied by such owner.

c) The state in which such recreational trailer is registered and the registration number.

d) The name and address of the owner of the automobile or other vehicle which propelled the recreational trailer.

e) The state in which such automobile is registered and the registration number.

3. Inspection – Any peace officer and the Building and Zoning Administrator shall have the right at any reasonable time, to inspect any trailer park and its register.

4. Application to Existing Trailer Parks -

a. This ordinance shall apply to all trailer parks in the Town except that trailer parks in existence on the nineteenth day of September, 1968 shall be required to conform to all the provisions of this Ordinance by January 1, 1979. Any addition to or enlargement of a trailer park which park was in existence on the day aforesaid, shall comply with all provisions of this Ordinance.

b. Non-conforming recreational trailer parks. Any lawful recreational trailer park existing at the time of this amendment to the zoning ordinance (April 18, 2000) may be continued in use.

1) The provisions of preceding paragraphs 3a, 3b, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3k, 3l, 3m, 3n, 3o, 3p and 3u shall be applicable to nonconforming trailer parks.

c. All recreational trailers shall have a minimum front yard of 20 feet, a minimum side yard of 5 feet, and a rear yard of 15 feet.

d. One temporary structure may be constructed on each trailer site provided:

a) The structure is clearly temporary in that it is neither permanently attached to the trailer nor set on a permanent foundation.

b) The maximum length of the temporary structure is 30 feet or the length of the trailer, whichever is less, the maximum width of 12 feet, and the maximum height of the roof at the peak is 15 feet.

c) No permanent electrical or plumbing connections may be constructed in the temporary structure.

d) The temporary structure should be able to stand alone without support from the trailer.

e) The structure may be framed with permanent windows and doors and an inside wall on the trailer side constructed of solid material.

f) The maximum length of the roof over the trailer may not exceed 40 feet or the length of the trailer, whichever is less.

g) The maximum width of the covered area for the recreational vehicle from the inside wall of the structure may not exceed 12 feet. A roof structure is not allowed where no building is attached.

h) No recreational trailer shall be allowed to remain occupied more than 6 consecutive months. Removing the recreational trailer for a period less than 120 days shall not be deemed to render a period of occupancy non-consecutive.

5. Trailer Sales Lots:

a. No person being the owner, occupant or tenant of land or premises within the Town of Berne shall use or permit the use of such land as a trailer sales lot without obtaining a permit therefore as provided by this Ordinance.

b. A trailer sales lot permit shall be valid for the same period as a trailer park permit.

c. The applicant for a trailer sales lot permit or for a renewal thereof shall, at the time of making application, pay a fee of \$50.00, or such other fee established by the Town Board from time to time in its schedule of fees.

d. Each trailer sales lot shall comply with the following conditions:

1) Trailers exhibited for purpose of sale shall be set back at least 50 feet from the pavement of any street or highway and at least 30 feet from any other property line.

2) One off-street parking place shall be provided for each two trailers exhibited for sale.

3) All such off-street parking areas shall be set back at least 20 feet from any street or highway pavement or any property line.

4) One non-flashing indirectly illuminated sign shall be permitted. Such sign shall not be greater in area than 50 square feet nor be higher above ground than 10 feet.

5) Such sign shall be located at least 20 feet from any street or highway pavement and any property line.

6. House Trailers Not Located In Trailer Park -

a. No house trailer shall be parked or allowed to remain upon any street, alley, highway or other public place for a period longer than four hours, except that emergency stopping or parking occasioned by mechanical failure is permitted for a period of not longer than 24 hours, unless otherwise prohibited.

b. A permit for the permanent location of a house trailer outside a duly licensed trailer park may be granted to the owner of land within the Town to locate a trailer upon such land for their own occupancy in accordance with the following limitations:

1) Such house trailer shall comply with the area and bulk requirements as listed in the "Density Control Schedule" set forth in Section IV hereof.

2) Such house trailers will be required to have all sewer and water supply systems and connections approved by the Department of Health of the County of Albany prior to any occupancy thereof.

3) Such house trailers must be constructed to conform to or exceed the minimum requirements established in the U.S. Department of Housing and Urban Development 1976, Manufactured Home Construction and Safety Standards, or an affidavit of a licensed architect or engineer indicating that same has been inspected by him and meets said standards must be presented to the Building and Zoning Administrator prior to the issuance of a Certificate of Occupancy.

4) Such house trailer shall be located on approved piers with adequate and secure tie-downs and shall have skirting all around or shall be placed upon an approved foundation.

c. A Permit for the temporary location of a housing trailer may be granted by the Zoning Board of Appeals in the following instances and in accordance with the following limitations:

1) To the owner of land within the Town who intends to construct a dwelling house for their own occupancy on such land. Such permit shall be granted only for the period of actual construction of said dwelling or for 2 years, whichever is less.

2) To the owner or leasee of a farm for occupancy by farm employees and the immediate families of such employees. Such permit shall be granted for the period of one year only but may be renewed.

3) To an owner of land or their contractor engaged in construction on such land for use as a field office for such construction or as a dressing room for employees engaged in such construction. Such a permit shall be valid for a period of one year.

9. Recreational Trailers and Campsites - This Section shall not apply to recreational trailers parked in campsites for temporary hunting, fishing, vacation or camping use, nor to storage or parking of the same at the residence of the owner.

n. Motels

Motels must have a minimum distance of 100 feet from any lot line to any building; minimum distance of 10 feet between buildings; minimum lot area of 2,000 square feet per unit; off-street parking

requirements as required by subsection B of this section; and, approval of water supply and sewage disposal by the Albany County Department of Health.

o. Riding Academy

All riding academies shall have a maximum height of 35 feet and a minimum distance from street line to any building of 125 feet. The minimum distance from any side or rear line to any building or dwelling shall be 100 feet.

p. Telecommunication Towers

1. The purpose of these supplemental regulations is to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future towers, and the use of existing buildings and other structures; and to minimize adverse visual effects from telecommunication towers by requiring careful siting, visual impact assessment, and appropriate landscaping.

2. Special Use Permit Regulations:

- a. No telecommunication tower, except those approved prior to the effective date of this section, shall be constructed, used or allowed unless in conformity with these regulations and unless a special use permit has been issued. No telecommunication tower shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations and unless a special use permit has been issued. No existing structure shall be modified to serve as a telecommunication tower unless in conformity with these regulations and unless a special use permit has been issued.
- b. Applicants proposing to co-locate on a previously approved telecommunication tower do not require a special use permit. Applicants are, however, subject to Site Plan review in accordance with Section VII. The Planning Board (the Board) may require the applicant to submit any of the items under 3.a. below as part of the Site Plan Review Process.
- c. Application for construction of new telecommunication towers shall comply with the Code of Federal Regulations pertaining to objects affecting navigable airspace as delineated within Federal Aviation Regulations (FAR) Part 77. Additionally, no application for a special use permit for construction of a new telecommunication tower will be approved if the proposed tower violates the criteria for obstructions to air navigation as established by FAR Part 77 Subpart C – Obstruction Standards.

3. Shared Use of Existing Structures. At all times, shared use of existing structures (for example municipal water towers, multi-story buildings, church steeples, farm silos, etc.), and existing or approved telecommunication towers (see subsection 2.b. above), shall be preferred to the construction of new telecommunication towers.

- a. An applicant proposing to share use of an existing structure shall be required to submit:
 - 1) A completed application for a special use permit.
 - 2) Documentation of intent from the owner of the existing structure to allowed shared use.
 - 3) A site plan. The site plan shall show all existing and proposed structures and improvements including antennae, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility, shall be indicated on the site plan.

- 4) An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure, and explaining what modifications, if any, will be required in order to certify to the above.
 - 5) A completed short EAF and a completed visual EAF addendum.
 - 6) A copy of its Federal Communications Commission (FCC) license.
- b. If an applicant proposing to share use of an existing structure submits complete and satisfactory documentation in accordance with subsection 3.a. above, and if modifications indicated according to subsection 3.a. are deemed insignificant by the Board, and after the Board conducts a public hearing and complies with all SEQRA provisions, the Board shall grant a special use permit without further review under this section. If the Board determines that any modifications indicated according to subsection 3.a. are significant, it may require further review according to subsections 4 through 18 below.

4. New Telecommunication Tower. The Board may consider a special use permit for a new telecommunication tower when the applicant demonstrates that shared use of existing structures and existing or approved telecommunication towers is impractical. An applicant shall be required to present an adequate report inventorying all suitable existing structures and existing or approved telecommunication towers within a reasonable distance of the proposed site. This distance shall be determined by the Board in consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new telecommunication tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing structure and existing or approved telecommunication tower as well as documentation of the physical, technical and/or financial reasons why shared use is not practical in each case. Written requests and responses for shared use shall be provided.

5. Shared Usage of an Existing Tower Site for Placement of a New Tower. Where shared use of existing structures, and existing or approved towers, is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new telecommunication tower and accessory uses. Documentation and conditions shall be in accordance with subsection 4 above. Any proposals for a new telecommunication tower on an existing tower site shall also be subject to the requirements of subsections 6 through 18 below.

6. New Tower at a New Location. The Board may consider a special use permit for construction of a new telecommunication tower on a site not previously developed with an existing telecommunication tower when the applicant demonstrates that shared use of existing structures, and existing or approved telecommunication towers, is impractical, and submits a report as described in subsection 4 above; and when the Board determines that shared use of an existing telecommunication tower site for a new telecommunication tower is undesirable based upon the applicant's investigation in accordance with subsection 5. Any proposal for a new telecommunication tower shall also be subject to the requirements of subsections 7 through 18 below.

7. New Towers: Future Shared Use. The applicant shall design a proposed new telecommunication tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the Board a letter of intent committing the owner of the proposed new telecommunication tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed telecommunication tower by other telecommunication providers in the future. This letter shall be filed with the building inspector prior to issuance of a building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special permit. The letter shall commit the new telecommunication tower owner and his/her successors in interest to:

- a. Respond within 90 days to a request for information from a potential shared-use applicant.

- b. Negotiate in good faith concerning future requests for shared use of the new telecommunication tower by other telecommunication providers.
- c. Allow shared use of the new telecommunication tower if another telecommunication provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a proportionate share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

8. Site Plan Review: Submission Requirements

- a. The applicant for a special use permit for a new telecommunication tower shall be required to submit a site plan in accordance with Section VII.B. The site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.
- b. Supporting Documentation - The applicant for a special use permit for a new telecommunication tower shall submit a complete short EAF, a complete Visual Environmental Assessment Form (Visual EAF addendum), and documentation on the proposed intent and capacity of use as well as a justification for the height of ant telecommunication tower and justification for any clearing required. The applicant shall also submit a copy of its Federal communications Commission (FCC) license.

9. Lot Size and Setbacks. All proposed telecommunication towers and accessory structures shall be located on a single parcel and shall be setback from abutting parcel and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining residential properties.

- a. Lot size of a parcel containing a telecommunication tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased, the entire area required shall be leased from a single parcel unless the Board determines that this provision may be waived.
- b. Telecommunications towers shall comply with all existing setback requirements of the underlying zoning district, or shall be located with a minimum setback from any property line equal to 100% of the height of the tower, whichever is greater. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.

10. Visual Impact Assessment. The Board may require the applicant for a special use permit for a new telecommunication tower to undertake a visual impact assessment which may include:

- a. A "Zone of Visibility Map" shall be provided in order to determine locations where the telecommunication tower may be seen.
- b. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the town including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Board shall determine the appropriate key sites at a pre-submission conference with the applicant.
- c. Assessment of alternative telecommunication tower designs and color schemes, as described in subsection 11 below.
- d. Assessment of the visual impact of the telecommunication tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

11. **New Tower Design.** Alternative designs shall be considered for new telecommunication towers, including lattice and single pole structures. The design of a proposed new telecommunication tower shall comply with the following:

- a. Any new telecommunication tower shall be designed to accommodate future shared use by other telecommunication providers.
- b. Unless specifically required by other regulations, a telecommunication tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
- c. The maximum height of any new telecommunication tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation. The Board at its discretion may modify this requirement if the applicant can justify the need to exceed this height limitation.
- d. The Board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new telecommunication tower. The cost of this review shall be borne by the applicant.
- e. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with natural surroundings.
- f. No portion of any telecommunication tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company names, phone numbers, banners, and streamers.

12. **Existing Vegetation.** Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground), shall take place prior to the approval of the special use permit.

13. **Screening.** Deciduous or evergreen tree plantings may be required to screen portions of the V and accessory structures from nearby residential property as well as from public sites known to include important views p-r vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.

14. **Access.** Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

15. **Parking.** Parking shall be provided to assure adequate emergency and service access. The Board shall determine the number of required spaces based upon a recommendation from the applicant. No parking spaces shall be located in any required setbacks.

16. **Fencing.** The telecommunication tower and any accessory structures shall be adequately enclosed by a fence design which shall be approved by the Board. This requirement may be waived by the Board if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

17. **Removal.** The applicant shall submit to the Board a letter of intent committing the telecommunication tower owner, and his/her successors in interest, to notify the building inspector within thirty (30) days of the discontinuance of the use of the telecommunication tower. This letter shall be filed with the building inspector prior to issuance of a building permit (assuming the telecommunication tower is approved according to this section). Obsolete or unused telecommunication towers and accessory structures shall be removed from any site within four (4) months of such notification. Failure to notify

and/or remove the obsolete or unused telecommunication tower in accordance with these regulations shall be a violation of this chapter and shall be punishable according to Section XII.

18. Inter-municipal Notification for New Telecommunication Towers. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing structure or existing telecommunication tower in a neighboring municipality be considered for shared use, and to assist in the continued development of county 911 services, the Board shall require that:

- a. The applicant for a special use permit for construction of a new telecommunication tower shall notify in writing, by certified mail, the legislative body of each municipality that borders the Town of Berne, the Albany County Planning Board, and the Director of Albany County E-911 Service. Notification shall include the exact location of the proposed telecommunication tower, and a general description of the project including, but not limited to, the height of the telecommunication tower and its capacity for future shared use.
- b. Documentation of this notification shall be submitted to the Board at the time of application.

q. Swimming Pools

Swimming pools shall be subject to the provisions of subsection A, paragraph 8 "Accessory Buildings and Uses" herein, and the following provisions:

1. A permanent, good quality fence is to be erected to encompass the entire perimeter of the swimming pool and shall be not less than 4 feet in height and shall be in accordance with the standards specified for fences in of subsection A, paragraph 10 of this section. The Board of Appeals may grant permission to install a fence not to exceed 8 feet in height in accordance therewith.
2. Every gate or other opening in the fence enclosing such pool except an opening through the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at such pool.
3. Such pool shall be chemically treated in a manner sufficient to maintain the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.
4. If the water for such pool is supplied from a private well, there shall be no cross-connection with the public water supply system.
5. Where the pool is installed in an area supplied by a public water system, the Board of Appeals shall be furnished proof that the appropriate water authority has no objections to the tie-in with such water system, or, in the alternative, proof that the water will be furnished by an independent contractor.
6. No loud-speaker device which can be heard beyond the property lines of the premises on which any swimming pool has been installed may be operated in connection therewith which shall throw any rays beyond such property lines.
7. Swimming pools existing at the time this Ordinance becomes effective shall, within one year after such date, be enclosed by a fence as herein required for new swimming pools.

**SECTION VI
NON-CONFORMING
BUILDING, USES AND LOTS**

A. Continuation of Non-Conforming Building and uses.

Any lawful building, structure or use of premises existing at the time of enactment of this Ordinance, or any subsequent amendment thereof applying to such building, structure or use of premises may be continued although such building, structure or use of premises does not conform to the provisions **thereof**.

B. Cessation

1. Notwithstanding any other provisions of this Ordinance, any non-conforming auto wrecking yard, junk yard, billboard, structural advertising or sign in existence at the date of enactment of this Ordinance shall at the expiration of 4 years from such date become a prohibited and unlawful use and shall be discontinued. Non-conforming exterior storage of commercial vehicles and non-conforming storage of industrial equipment shall at the expiration of 2 years from such date become prohibited and unlawful use and shall be discontinued.

2. Any undeveloped lot in a subdivision which was not properly approved by the Planning Board and/or not filed in the office of the County Clerk and whose area and/or depth are less than the specified minimum lot requirements and average density requirements of this Ordinance shall be considered a violation of this Ordinance.

3. Nothing in this Ordinance shall extend the time period permitted under previous ordinances for cessation of non-conforming uses specified in paragraph 1.

C. Displacement

No non-conforming use shall be extended to displace a conforming use.

D. Necessary Maintenance and Repairs

A building or structure or portion thereof of non-conforming use declared unsafe by a proper authority may be repaired or restored to a safe condition. An unsafe building may be replaced provided that the new building does not exceed the original buildings dimensions.

E. Change to Other Non-conforming Use

A non-conforming use of a building, structure or land may be changed to another non-conforming use more nearly conforming to the requirements of the district in which it is situated.

F. Construction Started Prior to this Ordinance

Any building or structure for which construction was begun prior to the effective date of this Ordinance, or any subsequent amendment thereof applying, may be completed and used in accordance with the plans and specifications for that building or structure.

G. Alterations

Alterations to any building or part thereof which is used to house a non-conforming use shall be made only on a permit issued by the Board of Appeals subject to the condition and safeguards set forth in subsection B, of this section. A non-conforming building may be altered only if such alterations shall conform with the regulations contained in this Ordinance.

H. Existing Undersized Lots

1. Any lot held in single and separate ownership prior to the adoption of this Ordinance and whose area is less than the specified minimum lot requirements of this Ordinance for the district, may be considered as complying with such minimum lot requirements and no variance shall be required, provided that:

a. such lot does not adjoin any other lot or lots held by the same owner whose aggregate area is equal to or greater than the minimum lot area required for that district.

b. such lot has an area of at least 15,000 square feet and a minimum width of at least 60 feet at the required setback line to be used for any purpose.

c. the following minimum yard dimensions are maintained for residence: side yards 10 feet front and rear yards 20 feet.

d. height of accessory building not to exceed the height of the existing building or 20 feet.

e. all other bulk requirements for that district are complied with.

2. In any district where residences are permitted, such undersized non-conforming lots may be used for not more than one single family dwelling.

3. A lot of non-conforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owners' or owner's property or properties.

I. Lot Area

No lot shall be reduced in area so that any required area or open space will be less than prescribed in the regulations for the district in which said lot is located. Whenever such reductions in lot area occur, any building located on said lot shall not thereafter be used until such building is altered, reconstructed or relocated so as to comply with the area and yard requirements applicable thereto. These provisions shall not apply when a portion of a lot is taken for a public purpose.

If 25 percent of the block frontage on the same side of the street is improved with buildings having a greater or lesser depth of front yard than is required by this Ordinance, new buildings shall have a front yard whose depth shall not be less than the least depth of front yard of such existing buildings.

J. Exemption of Lots Shown on Approved Subdivision Plats

In accordance with Town Law Section 265-a any lot proposed for residential use in a subdivision whose plat delineates one or more new streets, roads or highways, and which said subdivision plat has been properly approved by the Planning Board, and filed in the office of the County Clerk, prior to the passage of this Ordinance, and whose area and/or width and/or depth are less than the specified minimum lot requirements of this Ordinance for that district shall be considered as complying with such minimum lot requirements for two years after the filing of the subdivision plat.

If at the time of the filing of the subdivision plat referred to above there was no planning board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of one year after the filing of said subdivision plat in the office of the County Clerk.

K. Lots in Two Districts

Where a district boundary line divides a lot in single or joint ownership of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend no more than thirty feet into the more restricted portion, provided the lot has frontage on a street in the less restricted district.

L. Restoration

Only on a permit by the Board of Appeals shall a building used to house a non-conforming use be restored if damaged or destroyed by fire, flood, earthquake, act of God or act of public enemy. Substantial restoration shall be made within six months but this time limit may be extended by such board in case of practical difficulty or hardship.

M. Abandonment

When a non-conforming use has been abandoned, it shall not thereafter be re-established.

N. Creation of Non-Conforming Uses Due to Changes in District Boundaries

Whenever the boundaries of a district shall be changed so that, under the regulations that apply in the changed area, a conforming use shall become a non-conforming use, the foregoing provisions of subsection M above shall apply to such non-conforming use.

SECTION VII BUILDING PERMITS, SITE PLAN APPROVAL AND CERTIFICATES OF OCCUPANCY

A. Building Permit

No building or structure shall be erected, added to, or structurally altered or house trailer or recreational trailer placed until a permit to do so has been issued by the Building and Zoning Administrator in accordance with the provision of the Building Code.

All applications for building permits shall be accompanied by two copies of a plat plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings as may be required by the Building and Zoning Administrator to determine compliance with this Ordinance. One copy of such plans, when approved by the Building and Zoning Administrator, shall be returned to the owner upon the payment of a fee in accordance with the schedule of fees as promulgated from time to time by the Town Board.

B. Site Plan Approval

In each case where a building or use requires site plan approval, an application for site plan approval shall be made in writing to the chairman of the Planning Board and shall be in accordance with the standards set forth herein. All submissions for site plan approval shall be accompanied by a fee to pay for the costs of the planning design and engineering review as from time to time shall be established by the Town Board. The objectives of Site Plan Review are to insure that the design and layout of structures are in harmony with the character of the area in which it is located, and to insure that land use and development is appropriately designed for the community and the environment.

A site plan of any proposed development of land, prepared by a registered architect, licensed landscape architect, licensed land surveyor, and/or professional engineer, shall be submitted in three (3) stages: Sketch Plan (Optional); Preliminary Plan; and Final Plan.

1. Pre-Submission/Sketch Plan - Prior to a formal submission, the applicant, and/or their designated representative, should meet in person with the Planning Board to discuss the proposed site plan in order to generally determine the information which should be incorporated in the preliminary site plan. The sketch plan phase is for the convenience of the applicant.

At the sketch plan conference the applicant, in addition to a statement or rough sketch describing what is proposed, should provide, to the extent applicable the following:

- a. The names of all owners of record of all adjacent properties, and the lot, block, and section number of the subject property as shown on the County Tax Maps.
- b. Existing school, zoning, and special district boundaries.
- c. Boundaries of the property, building or setback lines as required in this Ordinance, and lines of existing streets and adjoining lots. Reservations, easements, and areas dedicated to public use, if known, shall be shown.
- d. Map showing the applicant's entire property and adjacent properties and streets, at a convenient scale, including the approximate location and dimensions of all existing and proposed structures and the location of all existing structures on adjacent properties and within 100 feet of the site boundary.
- e. All existing and proposed paved areas.
- f. Areas to be left undisturbed.
- g. Existing topography, lawns, meadows, shrubs and trees, hedgerows and stonewalls (general location), water courses, wetlands, rock outcrops, and other prominent physical features.

h. A general written description of the architectural features of the proposed structure(s).

2. Preliminary Plan - Five (5) copies of the preliminary application and required information shall be submitted. The preliminary plan shall include all applicable information contained in the sketch plan in addition to the following:

a. Title of development, date, north point, scale, name and address of record owner and of the engineer, architect, land planner, or surveyor preparing the site plan.

b. All means of vehicular access and egress to and from the site onto public streets.

c. Elevations, and sections of proposed structures and roads, showing the proposed location, use and design of all buildings and structures, including any proposed division of buildings into units of separate occupancy and location of drives thereto, and showing the proposed location of all roads, pedestrian walkways and fire lanes.

d. The location and layout of any off-street parking or loading areas.

e. The location of all proposed water lines, valves, and hydrants and sewer lines, or of alternative means of water supply and sewage disposal and treatment.

f. The proposed location, direction, power, and timing of proposed lighting.

g. Extent and amount of cut and fill for all disturbed areas, including before-and-after profiles and cross sections of typical development areas, parking lots and roads.

h. Proposed storm water drainage system.

i. The proposed location, size, color and illumination of proposed signs.

j. Location of all existing and proposed site improvements, including drains, culverts, retaining walls, and fences.

k. Location of any outdoor storage.

l. Detailed breakdowns of all proposed floor space by type of use.

m. In an Industrial district, specific uses proposed, numbers of employees for which buildings are designed; type of power to be used for any manufacturing process, type of wastes or by-products to be produced by any manufacturing process, and the proposed method of disposal of such wastes or by-products shall also be shown.

n. Architectural Plans. In the TN/MU1 and 2 districts, architectural plans of proposed buildings or additions which shall include building facades, wall and roof materials, architectural window and door details, colors and such data as the Planning Board deems necessary for it to determine whether the proposed structure complies with Section V (F) Design Standards and Guidelines.

o. Environmental Assessment. Part I of the Environmental Assessment Form and any other necessary documentation to comply with SEQR.

p. A detailed landscaping plan.

q. A traffic impact analysis. A traffic impact analysis will be required for any new use proposing to increase traffic on state, county or town roads within the town by 100 or more cars per day.

3. Final Plan - The final detailed site plan shall conform substantially to the preliminary site plan originally recommended for approval. It should incorporate any modifications that may have been recommended by the Planning Board in its preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

The following additional information shall accompany an application for final detailed site plan review:

- a. Record of application for and status of all necessary permits from State and County officials.
- b. Detailed sizing and final material specification of all required improvements.
- c. An estimated project construction schedule.

4. Official Submittal - The time of submission of the site plan shall be considered to be the date of the respective regular monthly meeting of the Planning Board, at least 10 days prior to which, the completed application, the proper fee and all data required by these regulations shall have been filed with the Secretary of the Planning Board.

5. State Environmental Quality Review Compliance - No application shall be deemed complete without compliance with State Environmental Quality Review, including, where necessary, a lead agency determination, a negative or positive declaration and the submission of an acceptable Draft Environmental Impact Statement.

6. Referrals. At least ten days prior to the public hearing, the Planning Board shall mail notices thereof to the Albany County Planning Board as required by section 239-m of the general municipal law. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon.

7. Planning Board Action on Preliminary Site Plan:

a. Public Hearing The Planning Board may conduct a Public Hearing on the preliminary site plan if considered desirable by a majority of its members. Such hearing shall be held within 62 days of the receipt of complete application for preliminary site plan review and shall be advertised in the Town's official newspaper, or if there is none, in a newspaper of general circulation in the Town at least 5 days before the public hearing.

b. Decision Within 62 days of receipt of the complete application for preliminary site plan approval or if a public hearing is held within 62 days of public hearing, the Planning Board shall render a decision. The Planning Board's action shall be in the form of a written statement to the applicant stating whether the preliminary site plan is recommended for approval, disapproval or approval with modifications. The Planning Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, of which conformance with said modifications shall be considered a condition for a recommendation of approval. If the preliminary site plan is recommended for disapproval, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned. The Planning Board's decision must be filed with the Town Clerk within five business days after such decision is rendered and a copy mailed to the applicant.

8. Planning Board Action on Final Site Plan - After receiving a recommendation for approval, with or without modifications from the Planning Board on a preliminary site plan, the applicant shall submit a final detailed site plan to the Planning Board. If more than 6 months has elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

a. Public Hearing The Planning Board may conduct a Public Hearing on the final site plan if considered desirable by a majority of its members. Such hearing shall be held within 62 days of the receipt of complete application for final site plan review and shall be advertised in the Town's official newspaper, or if there is none, in a newspaper of general circulation in the Town at least 5 days before the public hearing.

b. Decision Within 62 days of receipt of the complete application for final site plan approval or if a public hearing is held within 62 days of public hearing, the Planning Board shall render a decision. The time period in which the Planning Board must render its decision can be extended by mutual consent of the applicant and the Planning Board. In its decision the Planning Board may approve, approve with modifications or disapprove the final site plan. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by the code enforcement officer.

1) Approval Upon approval of the final site plan, and payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall immediately file it and a written statement of approval with the Town clerk.

2) Disapproval Upon disapproval of the final site plan the decision of the Planning Board shall immediately be filed with the Town clerk and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Planning Board's reasons for disapproval.

9. Failure to Take Action on Application - Failure of the Planning Board to render a decision within the prescribed time limits shall constitute approval by the Planning Board.

10. General Criteria and Standards - In review and approval of site plans, the Planning Board shall follow the following standards set forth in this section, in addition to all applicable specific standards set forth elsewhere in this Ordinance. The standards are intended to provide a framework within which the designer of the site development is free to exercise creativity, invention and innovation.

a. Ecological considerations The development shall insofar as practicable:

1) Result in minimal degradation of unique or irreplaceable land types and in minimal adverse impact upon the critical areas such as streams, wetlands, areas of aquifer recharge and discharge, steep slopes, highly erodable soils, areas with a high water table, mature stands of vegetation and extraordinary wildlife nesting, feeding or breeding habitat.

2) Conform with existing geological and topographic features, to the end that the most appropriate use of land is encouraged.

b. Landscape The landscape shall be preserved in its natural state, insofar as practicable and environmentally desirable, by minimizing tree and soil removal. If development of the site necessitates the removal of established trees, special attention shall be given to the planting of replacements or to other landscape treatment. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.

c. Relation of proposed structures to environment. Proposed structures shall be related harmoniously to themselves, the terrain and to existing buildings and roads in the vicinity that have a visual relationship to the proposed structures.

Proposed structures shall be so sited as to minimize any adverse impact upon the surrounding area, and particularly upon any nearby residences, by reason of:

1) Building location, height, bulk and shadows.

- 2) Location, intensity, direction and times of use of outdoor lighting.
- 3) Likelihood of nuisances, noise or glare.
- 4) Consideration of building design in conformance with Section V (F) Design Standards and Guidelines for structures in the TN/MU 1 and 2 districts.
- 5) Other similar considerations.
Appropriate natural or artificial screening may be required to minimize any such adverse impact.

d. Scenic, historic, archeological and landmark sites Scenic, historic, archeological and landmark sites and features that are located on or adjacent to the proposed development shall be preserved and protected insofar as practicable and in conformance with Section V (E) Historic districts, herein.

e. Surface water drainage A proposed development shall be designed so as to provide for proper surface water management through a system of controlled drainage that, wherever practicable, preserves existing natural drainage patterns and wetlands and enhances groundwater recharge areas and that protects other properties and existing natural and artificial drainage features from the adverse effects of flooding, erosion and the depositing of silt, gravel or stone. All requirements of the New York State Department of Environmental Conservation related to the State Pollution Discharge Elimination System shall be met.

f. Traffic effects and driveway connections to public streets. The site plan proposal shall minimize adverse traffic effects on the road networks serving the area in question. All entrance and exit driveways to public streets shall be located with due consideration for traffic flow and so as to afford maximum safety to traffic on the public streets in conformance with Section V, subsection A (5) "Driveway and Road Standards" herein.

g. Adequacy and arrangement of pedestrian traffic access and circulation, including separation of pedestrian from vehicular traffic, walkway structures, including handicapped access.

h. Location, arrangement, appearance and sufficiency of off-street parking spaces and loading areas.

i. Adequacy of water supply facilities.

10. Additional Submissions - Where due to special conditions peculiar to a site, or the size, nature, or complexity of the proposed use or development of land or buildings, the Planning Board finds that additional information is necessary for proper review of the site plan, the board may request additional pertinent information.

11. Waiver of Required Information - Upon a finding by the Planning Board that due to special conditions peculiar to a site, certain of the information normally required as part of the site development plan is inappropriate or unnecessary, or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the Board may vary or waive such requirements wherever, in the opinion of the Board, such variance or waiver will not be detrimental to the public health, safety, or general welfare, or have the effect of nullifying the intent and purpose of the site development plan submission, the Official Map, the Master Plan, or this Ordinance.

12. Performance Guarantee - No certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. The sufficiency of such performance guarantee shall be determined by the Town Board after consultations with the Planning Board, Building and Zoning Administrator, Town Attorney and other appropriate parties.

13. Inspection of Improvements - The Zoning Officer shall be responsible for the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate.

14. Expiration of Approval - A site plan shall be void if construction is not started within 1 year and completed within 2 years of the date of the final site plan approval, except that such site plan approval may be renewed by the Planning Board at their direction.

15. Integration of Procedures - Whenever the particular circumstances of a proposed development require compliance with either the special use procedure in this Ordinance or the Town Land Subdivision Regulations, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

16. Court Review. Any person aggrieved by a decision of the Planning Board may apply to the Supreme Court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within 30 days after the filing of a decision by such board in the office of the town clerk. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

C. Certificate of Occupancy

No land shall be used or occupied and no building or structure hereafter erected, altered or extended shall be used or changed in use until a certificated or occupancy shall have been issued by the Building and Zoning Administrator in accordance with the provisions of the Building Code.

All certificates of occupancy for new or altered buildings or structures shall be applied for coincident with the application for a building permit therefore. Such certificate of occupancy shall be issued within 10 days after the erection or alteration shall have been approved as complying with the provisions of this Ordinance.

**SECTION VIII
ZONING BOARD OF APPEALS**

A. Establishment and Duties

Pursuant to Town Law the Town Board shall appoint a Zoning Board of Appeals consisting of five members, shall designate its chairman and also provide for compensation to be paid to said members and provide for such other expenses as may be necessary and proper. A member of the Board of Appeals shall not at the same time be a member of the Town Board. The Town Board shall have the power to remove any member of the Board of Appeals for cause and after public hearing.

1. Term of Appointment - Of the members of the Board of Appeals first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of five years, from and after their appointment.

Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term.

2. Staff - The Board of Appeals may employ such clerical or other assistance as may be necessary and prescribe their duties, provided it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for the purpose.

3. Rules of Procedure, By-Laws, Forms - The Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by-laws, and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this Ordinance. Such rules by - laws and forms shall not be in conflict with, nor have the effect of waiving, any provision of this Ordinance or any other

ordinance of the Town of Berne. Such rules, by-laws, and forms and any amendments or supplement thereto, shall be submitted to the Town Board by the Board of Appeals for approval and filing for public view. The Town Board shall move to approve, reject, or modify such rules, by-laws, and forms within 30 days after submission. Failure of the Town Board to so move shall be construed to constitute approval thereof.

4. All meetings of the Board of Appeals shall be held at the call of the chairperson and at such other times as such Board may determine. The chairman, or in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of such Board shall be open to the public. The concurring vote of a majority of all members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Building and Zoning Administrator and to decide any other matter within the Board's jurisdiction.

5. Every decision of the Board of Appeals shall be by resolution, containing a full record of the findings of the Board in the particular case. If a member is absent or fails to vote, the resolution shall indicate such fact. All resolutions shall be in writing. Every rule, regulations, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall immediately be filed in the office of the Town Clerk, by case number under one of the following headings: Special Use Permits, Interpretations or Variances, together with all documents pertaining thereto.

6. Referrals to the Planning Board - At least 45 days before the date of hearing in connection with any appeal or application submitted to the Board of Appeals, said Board shall transmit to the Planning Board a copy of said appeal or application, and shall request that the Planning Board submit to the Board of Appeals its advisory opinion on said appeal or application. The Planning Board shall submit such advisory opinion in writing prior to the date of said public hearings. The failure of the Planning Board to submit such opinion shall be interpreted as a favorable opinion on the appeal or application.

At least five days prior to the public hearing, the Board of Appeals shall also refer the application or appeal to the Albany County Planning Board as required in Section 239-m of the General Municipal Law.

7. The Board of Appeals shall notify the Town Board and the Planning Board of the Town of Berne of each special permit use and each variance granted under the provisions of this Ordinance.

8. Voting Requirements. Every motion or resolution of the Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as wholly constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency, the voting provisions of section 239-m of the general municipal law shall apply. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by law, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision 12 of town law 267-a.

B. Public Notice and Hearing

Public notice of any required hearing by the Board of Appeals shall be given in accordance with Town Law as follows:

By publishing a notice of any appeal or application and the time and place of the public hearing in the official newspaper of the Town of Berne not less than 10 days prior to the date of such hearing, giving written notice of hearing to any appellant or applicant and any other such notice to property owners in an affected area as may be required by the Board of Appeals, and to the Planning Board not less than five days prior to such hearing and giving written notice of hearing to any required Municipal, County, Metropolitan, Regional, State or Federal agency in the manner prescribed by law.

C. Appeals

1. The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Building and Zoning Administrator under this Ordinance in accordance with the following procedure:

a. Notice of Appeal shall be filed with the Building and Zoning Administrator and the Secretary to the Board of Appeals in writing, in a form required by such Board, within 60 days of the date of the action appealed from, specifying the grounds thereof. Every appeal or application shall refer to the specific provisions of the Ordinance involved and shall exactly set forth the interpretation that is claimed, or the use for which the special use permit is sought or the grounds on which it is claimed that a variance should be granted.

b. Upon filing of a Notice of Appeal and payment of a filing fee in accordance with the schedule of fees as promulgated from time to time by the Town Board by the appellant, the Building and Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

c. The Board of Appeals shall set a reasonable date for the hearing of each appeal, of which hearing date the appellant shall be given five days public notice and at which hearing he shall appear in person or by agent or attorney.

d. An appeal stays all proceedings in furtherance of the action appealed from, unless the Building and Zoning Administrator certified to the Board of Appeals, after Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Building and Zoning Administrator.

e. Within 62 days following public notice and hearing, the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order requirements, decision, or determination, appealed from and shall make such order, requirements, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the power of the Building and Zoning Administrator. If the action by the Board of Appeals is to reverse the action of the Building and Zoning Administrator in whole, the filing fee shall be refunded to the appellant.

D. Variances

1. 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, after public notice and hearing, to vary or modify the application of any of the regulations or provisions of the Ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the Ordinance shall be observed, public safety and welfare secured and substantial justice done.

2. All applications for variances shall be filed with the Secretary to the Board of Appeal in writing, shall be made in a form required by the Board of Appeals, and shall be accompanied by payment of a filing fee in accordance with the schedule of fees as promulgated from time to time by the Town Board, and a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot.

3. Any variance which is not exercised within one year from the date of issuance is hereby declared to be revoked without further hearing by the Board of Appeals.

4. Criteria for granting variances:

a. Use Variances No such use variance shall be granted by the board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In

order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that:

- 1) Under applicable zoning regulations the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence.
- 2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
- 3) The requested use variance, if granted, will not alter the essential character of the neighborhood.
- 4) The alleged hardship has not been self-created.

b. Area Variances In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
- 2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- 3) Whether the requested area variance is substantial.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

c. The board of appeals, in the granting of use and area variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant (in the case of use variances), and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

d. Imposition of Conditions The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

E. Special Use Permits

The Board of Appeals shall have the power, after public notice and hearing, to grant special use permits in the classes of cases specified in this Ordinance. For Home Occupations, special use permits shall be issued by the Planning Board (see Section V, subsection I).

1. All applications for special use permits shall be filed with the Secretary to the appropriate Board, in writing, and shall be in the form required by the Board. They shall be accompanied by payment of a filing fee in accordance with the schedule of fees promulgated from time to time by the Town Board and by a sketch plan, drawn to scale and accurately dimensioned as provided for in Section VII, subsection B "Site Plan Approval."

2. No special use permit shall be issued by the Board of Appeals/Planning Board unless it shall determine that all of the following conditions will be met:

a. The use for which the permit is sought will not, in the circumstances of the particular case and under the conditions that the Board of Appeals/Planning Board may consider necessary or desirable, adversely affect the neighborhood or public health or welfare.

b. The planned use will be appropriately located with respect to transportation facilities, water supply, water disposal, fire protection, police protection and similar services and facilities.

c. Off-street parking spaces required or specified in the permit will be adequate to handle expected attendance.

d. Neighborhood character and value of surrounding properties will be reasonably safeguarded.

e. The use permitted will not cause a traffic hazard or undue traffic congestion.

f. All applicable standards specified in this Ordinance, including those listed for specific uses in Section V of this Ordinance, will be complied with.

3. Additional standard deemed necessary for a special use permit may be required, in specific instances, where reasonable and necessary to carry out the objectives of this Ordinance.

4. Whenever the Board of Appeals/Planning Board grants a special use permit, appropriate conditions and safeguards and/or time limitations shall be attached thereto as to guarantee that the permitted use shall not be incompatible with the other permitted uses in the vicinity and district in which the subject property is located. In addition, the Board of Appeals shall use the guidelines set forth in Section V (F) Design Standards and Guidelines, as a basis for its review and determination in addition to the criteria set forth in Section VIII (E) for special use permit applications in the TN/MU1 and 2 districts.

5. A special use permit which is not exercised within one year from the date upon which it is issued is hereby declared to be revoked, without further hearing by the Board of Appeals/Planning Board.

6. Public hearing and decision on special use permits. The Board of Appeals shall conduct a public hearing within 62 days from the day an application is received on any matter referred to it under this section. Public notice of the hearing shall be printed in a newspaper of general circulation at least five days prior to the date thereof. The Board of Appeals shall decide upon the application within 62 days after the hearing. The time which the Board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the Board on the application shall be filed within 5 business days after such decision is rendered and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board. At least 10 days before a public hearing, the Board of Appeals shall mail notices thereof to the applicant and to the Albany County Planning Board as required by section 239-m of the general municipal law.

8. The Board of Appeals shall comply with the provisions of SEQRA.

F. Relief from Decisions

Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals may apply to the Supreme Court for relief by a proceeding under Article seventy-eight of the Civil Practice Law and Rules of the State of New York. Such proceedings must be instituted within thirty days after the filing of a decision in the office of the Town Clerk. Costs shall not be allowed against the Board of Appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

SECTION IX AMENDMENTS

A. Procedure

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation from the Planning Board, amend the regulations and districts established under this Ordinance after public notice and hearing in each case. All petitions for any amendment of the regulations or districts herein established shall be filed in writing in a form required by the Town Board, and shall be accompanied by a certified check in an amount in accordance with the schedule of fees promulgated from time to time by the Town Board to help defray the cost of advertising the hearing on said petition and incidental disbursements.

B. Advisory Report by Planning Board

Every proposed amendment, unless initiated by the Planning Board, shall be referred to the Planning Board. The Planning Board shall report its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Planning Board disapproves the proposed amendment, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution fully setting forth the reasons for such contrary action.

C. Public Notice and Hearing

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

1. By publishing a notice of the proposed amendment and the time and place of the public hearing in a newspaper of general circulation in the Town not less than 10 days prior to the date of public hearing.
2. By giving written notice of hearing to any required Municipal, County, Regional, Metropolitan, State or Federal Agency in the manner prescribed by law.

D. Protest by Owners

If a protest against a proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of 20 percent or more of the area of land included in such proposed amendment, or by the owners of 20 percent or more of the area of the land immediately adjacent to or extending to within 100 feet thereof, or by the owners of 20 percent or more of the area of land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of at least three-fourths of the members of the Town Board.

E. Publication and Posting

Every Amendment to the Zoning Ordinance, including any map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board and a summary or abstract thereof, exclusive of any map incorporated therein, shall be published once in the official newspaper of the Town of Berne. Affidavits of the publication thereof shall be filed with the Town Clerk.

SECTION X INTERPRETATION AND APPLICATION

A. Legislative Intent - In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, and general welfare.

B. Non-Interference and Precedence - This Ordinance shall not interfere with, abrogate, annul, or repeal any ordinance or any rule, regulation, or permit previously or hereafter enacted, adopted, or issued pursuant to law provided that, unless specifically excepted, where this Ordinance imposes greater restrictions its provisions shall control.

C. Separate Validity - If any Section, subsection, paragraph, clause, or other provision of this Ordinance shall be held invalid, the invalidity of such Section, subsection, paragraph, clause, or other provision shall not affect any other provisions of this Ordinance.

D. Effective Date - In accordance with the procedure set forth in Section 264 of the Town Law this Ordinance shall take effect 10 days after publication or upon personal service of a certified copy thereof.

SECTION XI DEFINITIONS

Except where specifically defined herein, all words used in this Ordinance shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context indicates the contrary.

The word "shall" is always mandatory. The word "may" is permissive. "Building" or "structure" includes any part thereof. The word "lot" includes the word "plot" or "parcel." The word "person" includes an individual person, a firm, a corporation, a co-partnership, and any other agency of voluntary action. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for."

ABANDONMENT: The voluntary, absolute relinquishment, the giving up of a known right to which one is entitled with the intention of permanently terminating or parting with such right. Abandonment depends upon the concurrence of two elements or factors: (a) the intention to relinquish, to permanently give up a known right to continue the non-conforming use, and (b) the cessation of such non-conforming use, an overt act or failure to act, implying that the owner intends to permanently cease from putting the premises to the nonconforming use, or such other non-conforming use as may be permitted by this Ordinance. Provided, however, that the cessation of such non-conforming use for a period of two years shall constitute an abandonment, unless such period has, for good cause, been extended by the Zoning Board of Appeals.

ACCESSORY BUILDING: A building detached from and subordinated to a main building on the same lot used for purposes customarily incidental to those of the main building.

ACCESSORY USE: A use customarily incidental and subordinated to the principal use or building and located on the same lot with such principal use or building.

AGRICULTURE: The utilization of land and structures for the production, preservation, non-industrial processing, storage, and sale of agricultural commodities raised directly on such land, including: crops, plants, flowers, vines, trees, sod, shrubs, livestock, honey, Christmas trees, compost, poultry, or dairy products.

AIRCRAFT LANDING STRIP: An aircraft landing area maintained for the horizontal or vertical landing and takeoff of aircraft with limited facilities for the shelter, supply and repair of aircraft, dedicated solely for the personal use of the owner of such property, used only for no more than 2 aircraft owned by such person or that person's family, that are single engine aircraft with a seating capacity, including pilot's seat, of 4 or less, and which landing area is used for no more than 50 flights per year.

AIRPORT: A piece of land that is maintained for the horizontal or vertical landing and takeoff of aircraft used for receiving and discharging passengers and/or cargo for personal or commercial use, that usually has

facilities for the shelter, supply and repair of aircraft, and which landing area is used for more than 50 flights per year.

ALTERATION: As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

AMUSEMENT: A commercially operated facility with various devices for entertainment and booths for the sale of food and drink.

AREA, BUILDING: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of patios, terraces and uncovered steps.

AREA VARIANCE: The authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

ASSISTED LIVING CENTER: Residences for the elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide other services such as recreational activities, financial services, and transportation.

ATTIC: That space of building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as one-half story in determining the permissible number of stories.

AUNCTIONS: A place where goods or livestock are offered for sale to persons who bid on the object in competition with each other.

AUTO JUNK YARD: Two or more dilapidated motor vehicles no longer intended or in condition for use on the public highway.

AUTOMOBILE SERVICE: Any building, land area, or other premises, or portions thereof, used for the servicing and repair of automobiles; and including as an accessory use the sale and installation of lubricants, tires, batteries, and similar vehicle accessories.

AUTO WRECKING YARD: The use of any area or portion of any lot or plot, whether inside or outside a building for the temporary storage of automobiles awaiting dismantling, or the dismantled parts of automobiles, or for the dismantling, cutting, demolition and burning of automobiles.

BAR OR NIGHTCLUB: Premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use.

BASEMENT: A story below finished grade, having at least one half of its height measured from floor to ceiling, not less than four feet above average finished grade. A basement shall be counted as one story determining the height of a building in stories.

BED AND BREAKFAST: An owner-occupied dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

BILLBOARD-STRUCTURAL ADVERTISING: Any commercial outdoor sign, advertising medium, structure or device which advertises, directs or calls attention to any business, article, substance, or service which is conducted, sold, or offered elsewhere than upon the lot on which such sign is situated and which is painted, printed, posted, or affixed to any building, billboard structure, wall fence, railing, natural object or structure of any kind on real property or upon the ground itself.

BUILDING: Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing, or enclosure of persons, animals or chattels.

BUILDING ACCESSORY: See "ACCESSORY BUILDING"

BUILDING DETACHED: A building surrounded by open space on the same lot.

BUILDING, FRONT LINE: The base line of a vertical plane, parallel to the street line, and extending from one lot to another, beyond which no portion of a building shall extend into the front yard. Side and rear lines shall be determined in a comparative manner.

BUILDING GROUP: A group of two or more principal buildings and any buildings accessory thereto, occupying a lot in one ownership and having any yard in common.

BUILDING HEIGHT: See "HEIGHT OF BUILDING"

BUILDING MAIN: A building in which is conducted the principal use of the lot on which it is located.

BUILDING PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING, SEMI-DETACHED: A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

BULK: A term used to describe the size, volume, area and shape of buildings and structures, and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures, or other walls of the same buildings, and all open spaces required in connection with a building, other structure, or tract of land.

CAR WASH: Any building or premises or portions thereof used for washing automobiles.

CELLAR: A story partly underground and having one half or more of its clear height below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories.

CHURCH OR OTHER PLACES OF WORSHIP OR RELIGIOUS INSTRUCTION: A building or structure, or groups of buildings or structures, that be design and construction are primarily intended for conducting organized religious services, study of the religion and associated accessory uses.

CLUB MEMBERSHIP: An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

COMMERCIAL SAWMILL: An operation housing a mill or machine for sawing logs that is carried on for profit by the owner or leasee.

COMMERCIAL VEHICLE: A commercial vehicle is a vehicle adapted for or engaged in the carrying of merchandise.

COMMUNITY POLE: A sign owned and maintained by the Town Board or by a group of businessmen as approved by the Town Board and which sign contains several directional signs for the purposes of directing persons to business and community establishments within the community.

CONSERVATION EASEMENT: A restriction on the use of land, created in accordance with the provisions of Section 49, Title 3 of the Environmental Conservation Law or Section 247 of General Municipal Law, for

the purposes of conservation of open space, agricultural land, and natural, cultural, historic, and scenic resources.

CONTRACTOR'S YARD: Any space whether inside or outside a building, used for the storage or keeping of construction equipment, machinery, or vehicles, or parts thereof, which are in active use by a construction contractor.

CONVENIENCE STORE: Any retail establishment offering for sale prepackaged food products, household items, newspapers and magazines, and sandwiches and other freshly prepared foods, such as salads, for off-site consumption.

COUNTRY CLUB: Land area and buildings containing golf courses, recreational facilities, a clubhouse and customary accessory uses, open only to members and their guests.

COVERAGE: That lot area or percentage of lot area covered by buildings or structures, including accessory buildings and structures.

CULTURAL FACILITY: Establishments that document the social and religious structures and intellectual and artistic manifestations that characterize a society and include museums, art galleries, botanical and zoological gardens and that have a natural, historic, educational or cultural interest.

DAY CARE: Either a family day care: an establishment providing for the care, supervision, and protection of children when provided in a private residence occupied by the provider of the day care, or a licensed child care center: An establishment providing for the care, supervision and protection of children when provided in a licenses center that is regulated by the State of New York.

DESIGNED SHOPPING CENTER: The division of a single structure or the grouping of buildings which will constitute a convenient, effective shopping center designed as a planned and harmonious unit.

DEVELOPMENT: The utilization of a lot or tract of land for two or more uses.

DISTRICT, MORE RESTRICTED OR LESS RESTRICTED: In the following list each district shall be deemed to be more restricted than the district or districts which follow it: RAF, MDR, NC, GC, IND, H.

DOG KENNEL: See KENNEL

DRIVE-IN-MOVIE THEATER: See THEATER, OUTDOOR DRIVE-IN.

DUMP/LANDFILL: A lot or land used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purposes, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

DWELLING: A building designed or used principally as the living quarters for one or more persons or families. The terms "dwelling," "one-family dwelling," "two-family dwelling," "multi-family dwelling," "multi-dwelling," or "dwelling group" shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy. (see RESIDENCE)

DWELLING, ONE-FAMILY: A building containing one dwelling unit only.

DWELLING, TWO-FAMILY: A building containing two dwelling units.

DWELLING, MULTI-FAMILY or MULTIPLE: A dwelling containing three or more dwelling units and occupied or designed for occupancy by three or more families living independently of each other.

DWELLING GROUP: A group of three or more but not over nine, attached single or two-family dwellings with party walls between.

DWELLING, PRIVATE: A dwelling occupied exclusively for residence purpose by one or two families and having not more than four boarders, roomers, or lodgers in one or both house-keeping unit.

DWELLING UNIT: A building or portion thereof providing complete housekeeping facilities for one family.

EXTRACTIVE OPERATION: The removal of soil, gravel, sand or dirt for purposes unrelated to excavation for construction where the extractive operation is conducted.

FAMILY: A family consists of (a) one person, or two or more persons related by blood, marriage or adoption, or (b) not more than five persons not necessarily related by blood, marriage or adoption, and in addition any domestic servants or gratuitous guests, who live together in a single dwelling unit and maintain a common household.

FINISHED GRADE: The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade in computing height of buildings and other structures or for other purposes shall be the average elevation of all finished grade elevation around the periphery of the building, except that this average shall not exceed one-half of the floor to ceiling height.

FLOOR AREA: The total of the gross horizontal areas of the several floors of a building, measured from the exterior walls or from the centerline of wall separating two buildings. In particular, the "floor area" of a building or buildings shall include:

- a. Basement space
- b. Elevator shafts and stairwells at each floor.
- c. Floor space for mechanical equipment, with structural head room of seven feet and six inches or more
- d. Penthouses
- e. Attic space (whether or not floor has actually been laid) provided structural head room of seven feet and six inches or more exists
- f. Interior balconies and mezzanines
- g. Enclosed porches
- h. Accessory uses, not including space for accessory off-street parking.

However, the "floor area" of a building shall not include:

- a. Cellar space, except that cellar space used for retailing shall be included for the purposes of calculating requirements for accessory off-street parking space and accessory off-street loading berths
- b. Elevator and stair bulkheads, accessory water tanks, and cooling towers
- c. Floor space used for mechanical equipment, with structural headroom of less than seven feet and six inches
- d. Attic space, whether or not a floor has actually been laid, providing structural headroom of less than seven feet and six inches exists
- e. Uncovered steps; exterior fire escapes
- f. Terraces, breezeways, open porches, and outside balconies and open spaces
- g. Accessory off-street parking spaces
- h. Accessory off-street loading berths

FLOOR AREA RATIO: The ratio between the total floor space of the building or buildings and the total lot area.

FLOOR AREA, GROSS: The sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor to ceiling height is less than six feet.

FORESTRY: Any management, including logging, of a forest, woodland or plantation, including the construction, alteration, or maintenance of wood roads, skidways, landing, fences, and forest drainage systems.

FRONTAGE: The length of the lot line which abuts upon a street or highway right-of-way boundary.

FUEL, GASOLINE, OIL STORAGE: Any structure or tank specifically used for the storage of petroleum products.

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

GARAGE PRIVATE: An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein and that space therein for more than one car is not leased to a non-resident of the premises.

GARAGE, PUBLIC: Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other motor vehicles.

GASOLINE FILLING STATION: An area of land, including structures thereon, or any building or part thereof, used primarily for the sale and direct delivery to the motor vehicle of gasoline or any other motor vehicle fuel or oil and other lubricating substances and may also be used for sale of motor vehicles accessories, and/or facilities for lubricating, washing (without mechanical equipment) or otherwise servicing motor vehicles, but not including auto body work, welding, or painting.

GOLF COURSE: A tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards and that may include a clubhouse and shelter.

GREENHOUSE: Any building or structure used as a conservatory for the growing and protection of flowers and plants, and for the propagation and culture thereof.

HEIGHT OF BUILDING: The vertical distance measured from the average finished grade along the wall of the building (or adjacent to the side of the structure) to the highest point of such building or structure.

HOME OCCUPATION - An occupation or business activity resulting in a product or service for financial gain, conducted wholly or partly in a dwelling unit or accessory structure as an accessory use by the resident thereof, which is clearly secondary to the use of the dwelling for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than a small sign.

HOME OCCUPATION – Low Impact: Any nonresidential use that is secondary and clearly subordinate to an existing residential use, conducted within a dwelling unit or a structure accessory thereto, by a permanent resident of that dwelling unit, which does not change the residential character of the dwelling unit or vicinity and where no customers or clients shall be encouraged to enter the premises.

HOME OCCUPATION (Major): An occupation or business activity resulting in a product or service for financial gain, conducted wholly or partly in a dwelling unit or accessory structure as an accessory use by the resident thereof, which is clearly secondary to the use of the dwelling for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than a small sign

and where customers, clients or sales representatives are encouraged to enter the premises. . (See also Section V, subsection A, paragraph 1 of this Ordinance.)

HOSPITAL: Unless otherwise specified the term "hospital" shall be deemed to include sanitarium, sanatorium, preventorium, clinic, rest home, nursing home, convalescent home or any other place for diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

HOTEL: A building, or any part thereof, which contains living and sleeping accommodations for transient occupancy, has common exterior entrance or entrances and which may contain one or more dining rooms.

HOUSE TRAILER/MOBILE HOME: A single family or individual dwelling designed for transportation after fabrication, on streets and highways on its own wheels or on a flat-bed or other trailer to a site where it is to be occupied as a dwelling complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, with a permanent foundation and connection to utilities.

JUNK YARD: A lot, land or structure, or part thereof, used for the collecting, storage or sale of waste paper, rags, scrap metal, building material or discarded material; or for the collecting, dismantling, storage or salvaging of machinery, vehicles not in running condition or for the sale of parts thereof. Any premises on which there is outside storage of two or more vehicles not in running condition for one month or more shall be deemed to be a junk yard.

KENNEL: Any place at which there are kept five or more dogs more than six months of age, or any number of dogs for the primary purpose of sale, or any place kept for the boarding, care or breeding of dogs for which a fee is charged or paid.

LINE, STREET: The dividing line between the street or highway and the abutting real properties.

LOT: A defined portion or parcel of land considered as a unit, devoted to a specific use or occupied by a building or group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same.

LOT, CORNER: A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135 degrees.

LOT, DEPTH OF: The mean distance from the front street line of a lot to its rear line.

LOT, THROUGH: A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

LOT COVERAGE: See "COVERAGE"

LOT FRONTAGE: A lot line which is coincident with a street line.

LOT LINES: The lines bounding a lot as defined herein.

LOT WIDTH: The horizontal distance between the side lot lines measured at right angles to the lot depths at a point midway between the front and rear lot lines; or the width of a lot measured along the rear line of the required front yard.

MANUFACTURED HOME: Structures built in the factory and transported to the site including panelized homes, modular homes and pre cut homes, are not transportable after installation and do not have a permanent axle.

MOTEL: A building or group of buildings whether attached or detached containing for hire individual living and sleeping accommodations each of which is considered a unit, each of which is provided with a separate exterior entrance and a parking space, and is offered for rental and use principally by motor vehicle

travelers. The term "motel" includes but is not limited to every type of similar establishment know variously as an auto court, motor hotel, motor court, motor inn, motor lodge, tourist court, tourist cabins and roadside hotel.

NON-CONFORMING BULK: That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this Ordinance or any amendment thereof.

NON-CONFORMING USE: Any use of a building, other structure, or tract of land, which does not conform to the use regulations for the district in which such is located, either at the effective date of this ordinance or subsequent thereto.

NURSING OR CONVALESCENT HOME: A building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

NURSERY: Any place used as a garden for the open cultivation and growing of trees, shrubs and other plants, including the replanting of said plants grown at places other than the nursery.

NURSERY SCHOOL: Any place, however designated, operated for the purpose of providing daytime care or instructions for two or more children from two to five years of age inclusive, and operated on a regular basis, including kindergartens, day nurseries, and day care centers.

OFFICE BUILDING: A structure the principal use of which shall be the accommodation of offices for administrative, governmental, public utility, professional or sales activity and which may also include retail stores, shops, restaurants and cafe.

OPEN SPACE: Any permanently preserved space or area of land not developed with residential, industrial or commercial structures, characterized by natural scenic beauty or whose existing openness, natural conditions, or permanent state of use maintains or enhances the conservation of natural or scenic resources including agricultural lands.

PARKING LOT: An off-street, ground level, open area, usually improved, for the temporary storage of motor vehicles.

PARKING SPACE UNIT: An off-street space available for the parking of one motor vehicle and having an area of not less than two hundred square feet exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street, highway or alley.

PERSON: An individual, partnership, corporation or association.

PERSONAL SERVICE: Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. Personal services include, but are not limited to: laundry, diaper service, beauty shops, barbershops, shoe repair, funeral services, and domestic services.

PREMISES: A lot together with all the buildings and uses thereon.

PRIVATE DRIVEWAY: A private driveway/road serving one lot (dwelling unit) with a minimum 12 feet wide shale, gravel or paved travel way and a minimum 18 feet wide cleared right-of-way.

PRIVATE ROAD (CLASS A): A privately owned road held in common ownership by a homeowners' association serving 2 to 9 lots (dwelling units), with a minimum 20 feet wide gravel or pavement travel way and a 50 foot wide Right Of Way, 24 feet of which is cleared, and approved in accordance with Section V, subsection X "Driveway and Road Standards" herein.

PRIVATE ROAD (CLASS B): A privately owned road held in common ownership by a homeowners' association serving 10 or more lots (dwelling units), with a minimum 24 feet wide asphalt or pavement travel

way and a 50 foot wide Right of Way, 30 feet of which is cleared, and approved in accordance with Section V, subsection X "Driveway and Road Standards" herein.

RECREATIONAL BUILDING: A place designed and equipped for the conduct of sports and leisure time activities.

RECREATIONAL BUILDING, COMMERCIAL: A recreational building operated as a business and open to the public for a fee.

RECREATIONAL BUILDING, PERSONAL: A recreation facility provided as an accessory use on the same lot as the principal permitted use and designed to be used primarily by the occupants of the principal use and their guests.

RECREATIONAL BUILDING, PRIVATE: A recreational facility operated by a nonprofit organization and open only to bona fide members and guests of such nonprofit organization.

RECREATIONAL TRAILER: A trailer of the type commonly known as a camping or travel trailer and including only such camping or travel trailers as are not designed as regular places of residence and which are capable of being towed behind an ordinary automobile or are self propelled.

RECREATIONAL TRAILER PARK: Any site, lot, field or tract of ground where two or more recreational trailers are parked or located.

RESIDENCE: A building or any part of a building which contains living and sleeping accommodations for permanent occupancy. "Residence" therefore, includes all one-family, multi-family, boarding, fraternity and sorority houses. However, "Residences" shall not include the following:

- a) transient accommodations, such as hotels, motels, and hospitals or;
- b) that part of a building containing both residences and other uses which is used for any non-residential uses, except accessory uses for residences.

RESTAURANT, CAFÉ WITH DRIVE-THROUGH: An establishment where food and/or **non-alcoholic** beverages are sold in a form ready for consumption, where all or a significant portion of the consumption takes place or is designed to take place outside the confines of the restaurant, and where ordering and pickup of food may take place from an automobile.

RESTAURANT, CAFÉ WITH NO DRIVE-THROUGH: An establishment designed specifically for the preparation and sale of food and drink and where it is served and consumed primarily within the principal building. Sale of alcoholic beverages may be available for consumption on the premises as accessory to the principal use of sale of food.

RETAIL SHOP: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

RIDING ACADEMY: Any establishment where horses are kept for riding, driving or stabling for compensation.

RIGHT-OF WAY: The property of a circulatory facility. (See STREET WIDTH.)

ROAD STAND: A light structure with a roof, either attached to the ground or moveable, intended for the sale of local produce to the general public.

SEASONAL DWELLING: 1) A detached dwelling not used or intended for permanent residence and not occupied for more than six months in each year; 2) A dwelling unit intended for occupancy only during certain seasons of the year, principally for recreational use by the owner, including beach cottages, hunting cabins, vacation cottages, summer cottages and vacation lodges.

SELF-SERVICE LAUNDRY: An establishment providing washing, drying, or dry cleaning machines on the premises for rental use to the general public.

SENIOR CITIZEN HOUSING: Multifamily housing designed for the elderly. Can include congregate residences, continuing care retirement communities, and assisted living centers.

SETBACK: The distance in feet from the street to the principal building on a lot.

SHOPPING CENTER: A lot occupied by more than 1 commercial use unit, attached or detached, providing retail or office and business services in excess of 10,000 square feet gross leasable area.

SIGN: Any structure or part thereof, or any device attached to a structure or printed or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of an announcement, direction or advertisement. A "sign" includes a bill board, neon tube, fluorescent tube, or other artificial light or string of lights, outlining or hung upon any part of a building or lot for the purpose mentioned above, but does not include the flag or insignia of any nation or of any governmental agency of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive movement, or event which is temporary in nature.

SIGN, ADVERTISING: Means a "sign" which directs attention to a business, commodity, service or entertainment conducted, sold, or offered elsewhere than on the premises and only incidentally on the premises if at all.

SIGN, BUSINESS: Means a "sign" which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a "business sign."

SIGN, ILLUMINATED: Means a "sign" designed to give forth any artificial light, or designed to reflect such light deriving from any source which is intended to cause such light or reflection.

SIGN, DIRECTLY ILLUMINATED: A sign which incorporates any artificial lighting as an inherent part or feature or which depends for its illumination on transparent or translucent material or electricity or radioactivity or gaseous material or substance.

SIGN FLASHING: An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

SIGN REPRESENTATIONAL: Any three-dimensional sign which is built so as to physically represent the object advertised.

SIGN, INDIRECTLY ILLUMINATED: A sign illuminated with an artificial light which is separated from or is not an intrinsic part of the sign itself.

SIGN AREA: The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. All faces of the sign shall be counted in computing the area. Any neon tube, string of lights, or similar device shall be deemed to have minimum dimensions of one foot.

SINGLE OWNERSHIP: Possession of land under single or unified control, whether by sole, joint, common or other ownership, or by a lease having a term of not less than 30 years, regardless of any division of such land into parcels for the purpose of financing.

STORY: That part of a building comprised between a floor and the floor or roof next above it. (See "ATTIC," "BASEMENT," and "CELLAR").

STORY HALF: That portion of a building situated above a full story and having at least two opposite exterior walls meeting a sloping roof at a level not higher above the floor than a distance equal to one-half the floor-to-ceiling height of the story below.

STREET: An existing public way which affords principal means of access to abutting properties and is suitably improved; or a proposed way shown on a plat approved by all appropriate official agencies.

STREET WIDTH: The width of the right-of-way or the distance between property lines on opposite sides of a street.

STRUCTURE: A static construction of building materials, including buildings, stadiums, platforms, towers, sheds, display stands, storage bins, signs, reviewing stands, gasoline pumps, mobile dwellings, whether mobile or stationary at the time and the like.

STUDIO: The workshop of an artist, sculptor, photographer, or craftsman.

SWIMMING POOL: Any outdoor water pool intended for bathing or swimming purposes made of concrete, masonry, metal or other impervious material maintained in a residential district which will cause the retaining of water to a greater depth than eighteen inches and having a plane surface area of water greater than one hundred square feet.

TELECOMMUNICATION TOWER: Any structure greater than thirty-five (35) feet in height, which is capable of receiving and/or transmitting signals for the purpose of communication, unless said structure is utilized by the occupant of the property on which the structure is or will be located for the purpose of sending or receiving personal communications only or unless otherwise provided herein.

THEATER: A building or part of a building devoted to showing moving pictures or stage productions on a paid admission basis.

THEATER, OUTDOOR DRIVE-IN: An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical productions, on a paid admission basis, to patrons seated in automobiles or in outdoor seats.

TOP SOIL: The surface layer of the soil containing more or less organic matter, to a depth usually plowed in cultivation.

TOWN HOUSE: A building consisting of a series of one-family attached dwelling units having common partywalls between each dwelling unit.

TRAILER HOUSE: (See "HOUSE TRAILER")

TRAILER PARK: Any site, lot, field, or tract of ground where two or more trailers are parked or located and for which a fee or rent is charged.

TRAILER SALES LOT: Any site, lot, field, or tract of land where house trailers/mobile homes or recreational trailers are stored, or parked for inspection or sale.

UNIVERSITY OR COLLEGE: An educational institution authorized by the state to award baccalaureate or higher degrees.

USE: This term is employed in referring to:

- a) the purpose for which any buildings, other structures or land may be arranged, designed, intended, maintained, or occupied.

b) any occupation, business activity, or operation conducted (or intended to be conducted) in a building or other structure or on land.

The term "permitted use" or its equivalent shall not be deemed to include any non-conforming use or use requiring special use permit.

USE VARIANCE: The authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

USED CAR LOT: Any place outside a building where two or more motor vehicles in operating condition are offered for sale or are displayed.

UTILITY BUILDING: a structure used for the generation, transmission, and or distribution of electricity, gas, steam, communications, and water; the collection and treatment of sewage and solid waste.

VACATION RESORT: Any area of land on which are located two or more cabins, cottages or a hotel or group of buildings, containing living and sleeping accommodations hired out for compensation, which has a public lobby serving the guest, and may contain one or more dining rooms and recreation facilities of a design and character suitable for seasonal or more or less temporary living purposes, regardless of whether such structure or other accommodations actually are occupied seasonally or otherwise.

VETERINARIAN/ANIMAL HOSPITAL: A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

WAY: A thoroughfare, however designated, permanently established for passage of persons or vehicles.

YARD, REQUIRED: That portion of the open are of a lot extending open an unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, FRONT: A yard extending along the full length of the yard lot line between the side lot lines.

YARD, REAR: A yard extending along the full length of the rear lot line, between the side lot lines.

YARD, SIDE: A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear front line (or rear lot line if there is no required rear yard).

SECTION XII VIOLATIONS AND PENALTIES

Pursuant to Section 10 of Municipal Home Rule Law and Section 268 of Town Law, any person, firm, or corporation who commits an offense against, disobeys, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall, upon conviction, be deemed guilty of a violation and subject to fine and/or imprisonment.

A violation of this Ordinance is an offense punishable by fine not exceeding \$350.00 dollars or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Each week the violation continues shall be deemed to be a separate and distinct violation.

The Town Board may maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this Ordinance.

Any person may file a complaint in regard to a violation of this Ordinance. All such complaints must be in writing and shall be filed with the Zoning Officer who shall properly record and immediately investigate such complaint. If the complaint is found to be valid, the Zoning Officer shall issue a stop work order requiring all work to cease until the violation is corrected. If the violation is not corrected within the specified time, the Zoning Officer shall take action to compel compliance.

STATE OF NEW YORK)
):ss:
COUNTY OF ALBANY)

I, Patricia Favreau, do hereby certify that the foregoing is a true and correct copy of an ordinance duly adopted by the Town Board of the Town of Berne on INSERT DATE HERE WHEN ADOPTED, as amended thereafter: that I have compared the preceding copy with the original thereof now on file in said minutes, and that the same is a true and correct copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Berne, this day of
(SEAL)

Pat Favreau
Town Clerk, Town of Berne.