

ZONING ORDINANCE

THE COMMISSIONERS OF BARNESVILLE, MARYLAND

[AS OF MAY 15, 2006]

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Section 1. CITATION AND COVERAGE

A. This Ordinance may be cited as the "Zoning Ordinance of the Town of Barnesville, Maryland."

B. This Ordinance shall apply to all property located within the corporate boundaries of the Town of Barnesville.

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Section 2. PURPOSE

This Ordinance is adopted for the purpose of protecting and promoting the public health, security, safety, comfort and general welfare of the Town of Barnesville, its inhabitants, visitors thereto and sojourners therein.

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Section 3. DEFINITIONS

Accessory Building: See "Building, Accessory".

Accessory Structure: See "Structure, Accessory".

Accessory Use: See "Use, Accessory".

Advertising Structure: See "Sign".

Alley: See "Road".

Agricultural Processing, Primary: Processing on the farm of an agricultural product in the course of preparing it for market. This may or may not cause a change in the natural form or state of the product, but it does not entail operations of a commercial or industrial character that must be regulated so as to preclude adverse external impacts.

Agriculture: Science or art of cultivating and managing the soil, growing and harvesting crops and other plants, forestry, horticulture, hydroponics, breeding or raising livestock, poultry, fish, game, and fur bearing animals, dairying, beekeeping, and similar activities.

Animal Boarding Place: Any buildings or buildings and/or land used, designed, or arranged for the boarding, breeding, or care of dogs, cats, pets, fowl, horses or other domestic animals for a profit wherein a fee is charged for such service, or where such animals are kept for purposes of sale, but not including the raising of animals for agricultural purposes.

Board: Board of Appeals for the Town of Barnesville.

Building: A structure having one or more stories and a roof, designed primarily for the shelter, support or enclosures of persons, animals or property of any kind.

Building, Accessory: A Building subordinate to, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or common roof to the main building.

Building Line: A line beyond which the foundation wall or any enclosed or covered porch, vestibule, or other enclosed or covered portion of a building shall not project.

Building, Main: A building in which is conducted the principal use of the lot on which it is situated. In the RA zone, any dwelling shall be deemed to be a main building on the lot on

which the same is located if the lot is used primarily for residential purposes.

Care Home: A home which provides board, shelter and personal services in a protective environment for persons not gainfully employed, not including child care or a group residential facility. Includes rest and nursing homes, convalescent homes, and boarding homes for the aged established to render domiciliary care for chronic or convalescent patients, but excludes foster homes and nurseries, or facilities for care of feeble-minded or mentally ill patients, senile psychotics, or drug addicts.

Cemetery: A place for the permanent interment of dead human bodies or the cremated remains thereof; provided, however, that a memorial garden located on the premises of a church where ashes of deceased persons may be scattered or placed, shall not be deemed a cemetery.

Child Day Care Facility: A building or residence in which child day care services are provided in accordance with all applicable state and county laws and regulations.

Commission: The Planning Commission of the Town of Barnesville.

Commissioners: The Commissioners of Barnesville, Maryland.

County: Montgomery County, Maryland.

County Health Officer: Includes the County Health Officer, Montgomery County Health Department, and the State of Maryland Department of Health, or any of them.

Dwelling: A building or portion thereof arranged or designed to provide living facilities for one or more families.

Dwelling, One-Family or Single-Family: A building containing not more than one (1) dwelling unit.

Dwelling Unit: A building or portion thereof providing complete living facilities for not more than one (1) family, including, at a minimum, facilities for cooking, sanitation and sleeping.

Educational Institution, Private: Every private school or educational or training institution, however designated, which offers a program of college, professional, preparatory, high school, junior high school, elementary, kindergarten or nursery school instruction, or any combination thereof, or any other program of trade, technical or artistic instruction.

Elderly Day Care Facility: A day care center, residence or other place used for the reception or care, as a cooperative or for compensation, of one (1) or more persons over the age of sixty (60), for any part of a twenty-four (24) hour period.

Family: An individual, or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons, excluding servants, not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

Farm: A tract of land, with or without associated buildings, that is devoted to agriculture as herein defined.

Farm Tenant Dwelling: A dwelling unit occupied by agricultural worker(s) actively engaged in farming on a full-time or part-time basis on a farm under the control of the owner or operator of the farm on which the farm tenant dwelling is located.

Nothing in this ordinance is intended to prevent the renting of a farm tenant dwelling in existence prior to January 1, 1959, to non-farm families for residential purposes; provided that all applicable health and safety regulations are complied with.

Foster Home: A dwelling which was originally acquired and maintained as the principal domicile of the adult head of household and which has subsequently been approved and/or licensed to shelter children by either the Department of Social Services, Juvenile Services Administration, or any licensed child placement agency.

Guest or Tourist Rooms: A room, rooms or suite of rooms in a building originally designed, constructed and utilized as a single-family dwelling in which, for compensation, living and sleeping accommodations are provided for transient visitors to the Town and for which all furnishings and housekeeping services are provided and maintained by the management. The guest or tourist room shall have no provision for cooking, except that if they have minor kitchenette facilities.

Home Occupation: An occupation conducted within the dwelling or accessory building by members of the immediate family residing therein. Home occupation shall not be conducted on any open yard area of the lot or parcel upon which the dwelling is located, but may involve off-site activities such as sales, client contact and other matters related to the home occupation. Home occupation must also satisfy the following criteria: (1) There is kept no stock in trade or commodity which is sold upon the premises; (2) Not more than one (1) person other than a member of the immediate family residing on the premises shall be engaged or employed; and (3) no equipment or facilities are used other than

those normally needed or utilized for domestic, household or hobby purposes.

Kennel, Commercial: See "Animal Boarding Place".

Kennel, Non-commercial: Any building or buildings and/or land used, designed, or arranged for the boarding, breeding or care of dogs, cats, or other domestic animals belonging to the owner thereof and kept for purposes of show, hunting or as pets. Not more than four (4) such animals over the age of six (6) months shall be kept on the premises at any given time. A riding stable is not a kennel.

Lot: A parcel of land occupied or to be occupied by a building and its accessory buildings or, together with such open spaces as are required under the provisions of this ordinance, having at least the minimum area required by this ordinance for a lot in the zone which such lot is situated and having its principal frontage on a public street.

Lot Area, Net: The total horizontal area included within the rear, side and front lot or proposed street lines of the lot excluding any streets or highways, whether dedicated or not dedicated to public use, including off-street automobile parking areas and other accessory uses.

Lot, Record: The land designated as a separate and distinct parcel of land on a legally-recorded subdivision plat filed among the Land Records of Montgomery County, but not including land identified on any such plat as an outlot.

Nonconforming Use: A building, structure or use which was lawful when established and legally continued, but which no longer conforms to the requirements of the zone in which it is located because of the adoption or amendment of the zoning ordinance or zoning map.

Nursery, Horticultural or Greenhouse: The business of selling plants and plant materials grown on or off-site as well as garden supplies and related items. This may be a wholesale or retail operation or a combination of both and may not be combined with landscape contracting. A farm selling only those horticultural products that are grown on-site is not deemed to be a horticultural nursery.

Nursing Home: Any rest home, convalescent home or home for the aged and any place devoted primarily to the maintenance and operation of facilities for the treatment and care of any person suffering from illness, disease or injury, not requiring extensive or intensive care that is normally provided in a general hospital or other specialized hospital, but who do require care in excess

of room and board and who need medical, nursing, convalescent or chronic care.

Office, Professional, Residential: Rooms and/or accessory building of a single-family dwelling used for office purposes for a resident member or members of a recognized profession, such as, but not limited to, doctors, lawyers, architects, accountants, engineers and veterinarians, but not including medical, dental or veterinarian clinics or inpatient treatment facilities; provided, that such use shall be incidental to and subordinate to residential use of the property. Such use shall preclude manufacture or sale of any product, except those remedial devices which are prescribed as a direct result of the specific service rendered on the premises and which devices cannot be obtained by the client from any commercial establishment. Professional residential offices do not include general business offices.

Percentage of Lot Coverage: The percentage of "net lot area" which may be covered by buildings, including covered porches and accessory buildings.

Person: Any individual, corporation, association, firm, partnership or the like, singular or plural.

President: The President of the Commissioners of Barnesville.

Private Club or Service Organization: An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, recreational or like activities operated not for profit and not open to the general public.

Riding Stable, Commercial: A facility shall be deemed to be a commercial riding stable if it: (1) Conducts horse shows for a competitive or other display of riding ability more than twice a year; or (2) provides boarding of more than two (2) horses or ponies not belonging to the owner or residents of the property; or (3) provides for the rental of more than two (2) horses or ponies for recreational riding or riding instruction. A horse farm is not deemed to be a commercial riding stable unless it: (1) conducts horse shows for competitive or other display of riding ability more than twice a year; or (2) directs more than twenty-five percent (25%) of its operations to either riding instruction or renting out horses or ponies.

Road: Includes street, highway, avenue, lane, marginal access street, service drive, alley, bridge, viaduct or any segment thereof.

Sign: Any structure, part thereof or device attached thereto or painted or represented thereon or any material or

thing, illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, insignia, device, trademark or other representation used as, or in the nature of, an announcement, advertisement, direction or designation of any person, place, commodity, product, service, business, profession, enterprise or industry which is located upon any land, or any building, in or upon a window, or indoors, in such a manner as to attract attention.

Sign, Projecting: A sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.

Sign, Real Estate: A sign advertising for sale, lease, rental or development of any particular premises or directing attention to the opening and location of a new subdivision, neighborhood or community.

Sign, Wall, Flat: A sign affixed directly to the exterior wall or screening surface and confined within the limits thereof and which projects from the surface less than twelve inches at all points.

Street: A public or dedicated way or a public proposed right-of-way, widening or extension of an existing street or public way shown on the Master Plan.

Street Frontage: Any part of a lot which abuts a public street, road, highway, rural right of way or other public way for vehicles, including widening or extension, whether existing or proposed.

Street Line: A line defining the edge of a street right-of-way and separating the street from abutting property or lots. If on an adopted Master Plan, a street is scheduled for future widening, the proposed right-of-way line shown on the Master Plan shall be the street line.

Structure: An assembly of materials forming a construction for occupancy or use including, among other things, buildings, tents, reviewing stands, platforms, stagings, observation towers, radio and TV broadcasting towers, watertanks, tressels, open sheds, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.

Structure, Accessory: A structure affixed to the ground which is not a building and is subordinate to, and located on the same lot with, a main building, the use and purpose of which is clearly incidental to that of the main building or to the use of the land, including satellite dish receivers, radio or television antennas, windmills, clothes lines, playground equipment and like

structures, but excluding fences, public utility poles, signs and their supporting poles or framework.

Town: The municipal corporation of the Commissioners of Barnesville, Maryland.

Use: The principal purpose for which a lot or the main building thereon is designed, arranged or attended and for which it is or may be used, occupied or maintained.

Use, Accessory: A use which is (1) customarily incidental and subordinate to the principal use of a lot or the main building thereon, and (2) located on the same lot as the principal use or building. In addition, a temporary structure or trailer used for construction administration or real estate sales in conjunction with and during the period of development, construction or sales within the same site or subdivision in which it is located is also an accessory use.

Yard: Open space on the same lot with a building or group of buildings, lying between the building or outbuilding of a group and the nearest lot or street line and unoccupied and unobstructed from the group upward, except as provided in this chapter.

Yard, Front: Open space extending across the full width of a lot between the front lot line and the proposed front street line and nearest line of the building or any enclosed portion thereof. The depth of such yard is the shortest horizontal distance between the front lot line or proposed street line and the nearest point of the building or any enclosed portion thereof.

Yard, Rear: Open space extending across the full width of a lot between the rear line of the lot and the nearest line of the building, porch or projection thereof. The depth of such yard is the shortest horizontal distance between the rear lot line and the nearest point of the building.

Yard, Side: Open space between the side lot line or the side street line or the proposed side street line, if such line falls within the lot, and the nearest line of the building, porch or projection thereof, extending from the front yard to the rear yard. The width of the side yard is the shortest distance between the side lot line and the nearest point of the building, porch or projection.

Zone: An area within which certain uses of land and buildings are permitted and certain others are prohibited; yards and other open spaces are required; lot areas, building height limits and other requirements are established; and all of the foregoing are identical for the zone in which they apply.

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Section 4. GENERAL PROVISIONS.

A. Uses.

(1) No land, building, or structure shall be used or constructed except in compliance with this Ordinance.

(2) Every building hereafter erected shall be located on a lot as herein defined; and, except as herein provided there shall be not more than one (1) one-family dwelling on one (1) lot.

B. Alterations.

No building or structure shall be altered or extended except in such manner that the alteration or extension will be in compliance with the requirements of the Zone in which it is located.

C. Construction of Detached Houses on Lots of Record.

Notwithstanding any other provision of this Ordinance to the contrary, any lot lawfully created and reflected among the land records of Montgomery County (either by plat or deed) prior to January 1, 1959 may be used for a one-family dwelling; provided that the yard requirements and building height restrictions applicable to said lot shall be complied with, and that the requirements of this Ordinance pertaining to water supply and sewage disposal are satisfied.

D. Existing Buildings and Uses Not Affected.

Nothing in this Ordinance shall affect any building, structure or use existing as of November 18, 1991. A building and its use will be deemed to be existing within the meaning of this section, if, prior to the effective date of this Ordinance, its foundation footings have been poured or set in accordance with a building permit lawfully issued for said building. Nothing in this Ordinance shall prevent the renting of farm tenant houses in existence prior to January 1, 1959 to non-farm families for residential purposes; provided that all applicable health and safety regulations are complied with.

E. Non-Conforming Uses.

Any non-conforming use shall be subject to the following conditions:

(1) The use may not be extended, except as provided in this Ordinance; but the extension of such a use to any portion of an existing building as of the effective date of this ordinance, which portion was manifestly arranged or designed for such use, shall not be deemed to be an extension thereof.

(2) Such a use once abandoned shall not thereafter be permitted to be re-established. Abandonment shall be defined as a cessation of an existing use for a period of twelve (12) months or more after the effective date of this Ordinance. *[Amended by Ordinance 2006-02]*

(3) No building devoted to a non-conforming use shall, in the event of destruction or serious damage (defined as damage to more than 60% of the value of the structure) by fire, flood, or similar cause, be permitted to be reconstructed for the purpose of carrying on said use, except as provided in this Ordinance. *[Amended by Ordinance 2006-02]*

(4) Normal and routine maintenance and repair shall not be considered reconstruction.

(5) A non-conforming use operated in a building or buildings separate from a residence as of November 18, 1991, upon Petition to, and as may be authorized by the Board of Appeals, may be expanded, intensified, substantially modified or rebuilt in the event of fire or other casualty. In passing upon any Petition, and after a public hearing thereon, the Board of Appeals may grant its approval subject, however, to any restrictions or conditions that could otherwise be imposed upon a special exception use, and the non-conforming use shall thereafter be subject to all such restrictions and/or conditions. The filing of a Petition regarding a non-conforming use shall act to toll the period of abandonment otherwise applicable by Section 4.E.(2). The period of abandonment shall begin to run anew with the Board of Appeals' written decision denying, approving, or approving with conditions, the Petition. *[This paragraph (5) added by Ordinance 2006-02]*

F. Prior Approval of Water Supply and Sewage Disposal Arrangements Required.

No Building or Use Permit shall be issued by the President of the Commissioners until the Montgomery County Health Department shall have approved the proposed water and sewage disposal facilities required in connection with the proposed

building or use; provided that in an area served by a public utility for water or sewage disposal, or both, if such public utility shall have certified that such facility or facilities are available or will be made available by the time construction is completed, and that adequate arrangements have been made for their installation, the Montgomery County Health Department may elect to waive the requirement for its approval.

G. Hunting, Trapping, and Fishing.

Nothing in this Ordinance shall be deemed to prevent lawful hunting, trapping, and fishing in the Town.

H. Enforcement.

The provisions of this Ordinance shall be administered and enforced by the President of the Commissioners or the President's duly authorized designee. In approving or disapproving any application under the provisions of this Ordinance, the President of the Commissioners shall be guided by any master plan or parts thereof which may have been approved or adopted. Appeals from the decision of the President of the Commissioners or any official in the administration of this Ordinance may be made to the Board of Appeals as provided in Section 11 of this Ordinance.

I. Setback Requirements from Streams.

There shall be a minimum setback of one hundred fifty (150) feet for all buildings (except public recreation and agricultural structures) from the banks of all streams and water courses. *[Amended by Ordinance 2006-02]*

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Section 5. ZONING DISTRICTS

A. Zones Established. The following are the zoning districts and their identifying symbols:

- (1) Residential-Agricultural - R-A
- (2) Rural Density Transfer - BRDT

B. Zoning Map. The location and boundaries of Zones established in the Town shall be shown on a on an official zoning map entitled "Zoning Map of the Town of Barnesville", as the same may be amended from time to time by action of the Commissioners; and said map, sections or portions thereof, together with all

notations, designations, references, or other data shown thereon, are made a part of this Ordinance to the same extent as if the information set forth on said map was fully described and incorporated herein.

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Section 6. DEVELOPMENT STANDARDS

A. Land uses. No use is allowed except as indicated in the following table.

Permitted uses. Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

Special Exception uses. Uses designated by the letters "SE" may be authorized as special exceptions, in accordance with the provisions of Section 11.

(Footnotes appear at end of this section.)

|                                                                                       | <u>RA</u>      | <u>BRDT</u> |
|---------------------------------------------------------------------------------------|----------------|-------------|
| (1) Residential                                                                       |                |             |
| Single family detached dwelling                                                       | P              | P           |
| Farm tenant dwelling                                                                  | P              | P           |
| Guest house, as accessory use                                                         | P              | P           |
| Foster home                                                                           | P              | P           |
| Rental of a single room in dwelling                                                   | P              | P           |
| Accessory apartment                                                                   | SE             |             |
| (2)Transportation, Communication<br>& Utilities                                       |                |             |
| Public utility buildings and structures                                               | SE             | SE          |
| Electric power distribution or transmission<br>lines: overhead--69,000 volts or less  | P              | P           |
| greater than 69,000 volts                                                             | SE             | SE          |
| underground--                                                                         | P              | P           |
| Parking of vehicles, off street, in<br>connection with a permitted use                | P              | P           |
| Pipelines, underground                                                                | P              | P           |
| Radio, television & microwave towers                                                  | SE             | SE          |
| Amateur radio antenna, not to exceed 40 feet,<br>in connection with a residential use | P              | P           |
| (3)Commercial                                                                         |                |             |
| Antique shop in the home operated by a resident                                       | P <sup>1</sup> | SE          |
| Antique shop in an accessory building operated<br>by a resident                       | SE             | SE          |
| Home occupations limited to a residence                                               | P <sup>1</sup> | SE          |
| Home occupations utilizing an accessory building                                      | SE             | SE          |

|                                                                                      |                |    |
|--------------------------------------------------------------------------------------|----------------|----|
| Greenhouse or Horticultural nursery                                                  | P <sup>1</sup> | SE |
| Farm supply, sales, service or storage                                               | SE             | SE |
| Craft, Artisan or Photography Studio in the home operated by a resident              | P <sup>1</sup> | SE |
| Craft, Artisan or Photography Studio in an accessory building operated by a resident | SE             | SE |
| Kennel, Commercial                                                                   |                | SE |

*[Ordinance 2006-02 amended language relating to Home Occupations]*

(4) Services

|                                                                                                                                                                                                                                 |                 |                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|
| Animal Boarding Place                                                                                                                                                                                                           | SE <sup>2</sup> | SE <sup>2</sup> |
| Cemetery                                                                                                                                                                                                                        | SE              | SE              |
| Child Day care facility: 6 or less children                                                                                                                                                                                     | P               | P               |
| more than 6 children                                                                                                                                                                                                            | SE              | SE              |
| Church, convent, memorial garden or place of worship                                                                                                                                                                            | P               | P               |
| Educational Institution, private                                                                                                                                                                                                | SE              | SE              |
| Elderly day care facility: 4 or less persons                                                                                                                                                                                    | P               | P               |
| more than 4 persons                                                                                                                                                                                                             | SE              | SE              |
| Funeral Parlor or Mortuary                                                                                                                                                                                                      | SE              | SE              |
| Guest or Tourist Rooms                                                                                                                                                                                                          | SE              |                 |
| Nursing and care home                                                                                                                                                                                                           | SE              | SE              |
| Office, professional, for a resident of the dwelling                                                                                                                                                                            | P <sup>1</sup>  | P <sup>1</sup>  |
| Carnival, rodeo, athletic events, and community affairs of a temporary nature (not to exceed 48 hours), repeated not more than once per 30 days, sponsored by a church, school, or community organization, with required permit | P               | P               |

(5) Agricultural<sup>2</sup>

|                                             |   |   |
|---------------------------------------------|---|---|
| Farm (including crops, livestock & poultry) | P | P |
| Primary agricultural processing             | P | P |

(6) Cultural, Entertainment & Recreational

|                                                   |                  |                   |
|---------------------------------------------------|------------------|-------------------|
| Kennel, non-commercial                            | P <sup>2</sup>   | P <sup>2</sup>    |
| Private Club or Service Organization              | SE               | SE                |
| Commercial Riding Stables                         | P <sup>2,3</sup> | SE <sup>2,3</sup> |
| Swimming Pool, private, as accessory to residence | P                | P                 |

(7) Miscellaneous

|                                     |   |   |
|-------------------------------------|---|---|
| Accessory buildings                 | P | P |
| Accessory Structures                | P | P |
| Signs, in accordance with Section 8 | P | P |

B. Minimum net lot area.<sup>4</sup> No main building, together with its accessory buildings, shall be located on a lot having a net area of less than 4 4





width shall be the total frontage of the lot on a public road. *[Ordinance 2006-02 added this paragraph I]*

\*\*\*\*\*  
1 Provided no regular hours are posted.

2 No barn, stable, swine pen, chicken coop or any other animal accommodation shall be located closer than 50 feet from any adjacent property in any zone. The Board of Appeals, in its discretion, may require a greater distance for animal accommodations as a condition of a special exception.

3 Commercial riding stables in any zone shall require a minimum net lot area of 5 acres.

4 The Board of Appeals, in its discretion, may approve a special exception for a public utility structure without regard to the minimum net lot area requirements of this section.

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Section 7. OFF-STREET PARKING AND SERVICE REQUIREMENTS

A. General Provisions.

(1) Off-street parking shall be provided for every building and use created, erected, enlarged, or increased in capacity after the effective date of this Ordinance.

(2) Off-street loading and unloading facilities, hereafter referred to as "service areas", shall be provided in conjunction with every non single family residential use created, erected, enlarged, or increased in capacity after the effective date of this Ordinance; such areas (whether inside or outside a building) shall be in addition to any off-street parking areas.

(3) The President of the Commissioners, in consultation with the Planning Commission, shall issue a Building and/or Use Permit for the construction of off-street parking and service areas only after a finding that the plans and design submitted are in conformity with this Section 7.

B. Design Standards.

All off-street parking and service areas shall conform to the following minimum requirements:

(1) Each automobile parking space shall not be less than two hundred (200) square feet.

(2) Adequate interior vehicle circulation ways, in addition to service areas and parking spaces, and entrance and exit driveways shall connect each public parking space and service area with a public right-of-way.

(3) Each off-street parking and service area shall be connected to a driveway entrance of sufficient width to adequately serve the property for the purposes contemplated within a public right-of-way, which entrance shall be constructed in accordance with at least the minimum standards established by the Montgomery County Road Code.

(4) Each off-street parking and service area shall be so drained as to prevent damage to abutting properties and the public right-of-way.

(5) All garage or other space allocated for the parking of vehicles within buildings or in basements, shall be considered part of the required off-street parking facilities and may be included as such.

(6) No off-street parking area shall be reduced in area or encroached upon by buildings, vehicle storage, loading or unloading, or any other use where such reduction or encroachment will reduce the area below that required by this Ordinance.

(7) Requirements for the provision of parking facilities with respect to two or more property uses of the same or different types may be satisfied by the permanent allocation of the requisite number of spaces for each use in a common parking facility; provided that the minimum requirements of this Section 5 are met for each use.

(8) All off-street parking and service areas that make it necessary for vehicles to back out directly into a public road or back in to the entrance are prohibited.

(9) Every off-street parking and service area for a non-residential use that abuts land improved with a residential structure shall be set back a minimum of three (3) feet from the abutting lot line.

(10) Every off street parking and service area for a non-residential use shall:

a. Have interior circulation ways and entrance and exit driveways of sufficient width to allow safe and expeditious movement of vehicles.

b. Have separate entrance and exit driveways

providing for one way movement of traffic, unless two way movement therein will safely and more adequately serve, or unless a separate entrance and exit is impractical in light of the size of the facilities or configuration of the property.

c. Have driveways located where they shall create the least amount of traffic noise and traffic congestion; and where such driveways shall not endanger pedestrians, created congestion or hazards, or interfere with the safe and efficient movement of traffic at road intersections.

d. Be adequately separated from walkways, sidewalks and streets by curbing, protective devices or landscaped areas, where appropriate.

e. If used at night, have adequate lighting, provided that such lighting shall not be designed or installed so as not to reflect or cause glare onto abutting or confronting property.

C. Number of Spaces Required for Specific Uses.

Off-street parking space must be provided in the minimum amount as follows for the specific uses enumerated:

(1) Each residential use shall provide two (2) parking spaces for each dwelling unit.

(2) Each mortuary or funeral parlor shall provide one (1) parking space for each thirty-six (36) square feet of assembly space.

(3) Each office use, including professional offices, but excluding medical practitioners, shall provided one (1) parking space for each two hundred (200) square feet of office space.

(4) Each office of a medical practitioner shall provide three (3) parking spaces for each practitioner occupying or using said office.

(5) Each guest or tourist room shall provide one (1) parking space for each sleeping room, and one (1) parking space for each two (2) employees.

(6) Each commercial use devoted to retail sales shall provide two (2) parking spaces for each five hundred (500) square feet of floor area devoted to the use, plus one (1) space for every two (2) employees who do not reside on the premises.

(7) Each nursing or care home shall provide one (1) parking space for every four (4) beds, plus one (1) parking space for every two (2) employees on the largest work shift.

(8) Each church or place of worship shall provide one (1) parking space for each four (4) persons for whom seating is provided in the main building.

D. Requirements for Other Uses.

Each public or private building or land use, except buildings and land used exclusively for agricultural purposes, not specifically addressed in Section 7.C., shall provide a minimum of one (1) parking space for each two (2) employees, plus additional facilities for residents, visitors or patrons, as the President of the Commissioners, in consultation with the Planning Commission, shall deem necessary. In making such a determination, the President shall be guided by the number of persons expected to reside in, visit in, or patronize said building or use; the number of persons to be employed in said building or by said use; the anticipated percentage of residents, visitors, or patrons driving automobiles; and the need for safe and convenient loading and unloading space for visitors or patrons and goods arriving by motor transport.

E. Location Relative to Use.

All off-street parking facilities and service areas shall be conveniently located to the establishment or use to be served by said facilities and areas, and shall be located on the same lot or parcel as the establishment or use to be served.

F. Variance From Provisions.

The Board of Appeals is authorized, upon application, to grant a variance from the strict application of the provisions of this Section 7 in favor of a satisfactory alternative plan if the Board of Appeals, after referral to the Commissioners and the Planning Commission for recommendations and after a hearing by the Board after reasonable notice, finds:

(1) That the strict application of the requirements of this Section 7 would result in undue particular and exceptional hardship or practical difficulty to the owner of the property; and

(2) That such relief can be granted without substantial impairment of the intent or purposes of this Section 7 or this ordinance. In granting the variance, the Board may impose

reasonable conditions and restrictions as provided in Section 11 for Special Exceptions.

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Section 8. SIGNS

A. General Provisions.

No signs shall be erected, constructed, or maintained except as expressly provided in this Section 8. Any signs not listed herein are expressly prohibited.

B. General Prohibitions.

No sign shall be erected, constructed or maintained that:

(1) May or does obstruct the sight distance of a public right-of-way or the sight distance of persons entering the public right-of-way from adjacent or nearby properties;

(2) May or does, by its location, color, shape or content, tend to be confused with a traffic control device or uniform highway or street sign erected by a governmental authority;

(3) Contains statements, words or pictures of an obscene, indecent or immoral character, such as will offend public morals or decency.

(4) Advertises an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located.

(5) Contains, incorporates or consists of pennants, spinners, streamers, or any moving devices.

(6) Contains, incorporates or uses any flashing, moving, intermittent or color other than clear or white illumination.

(7) Is hung, placed or attached to any utility pole, street lamp pole, street sign or traffic control device.

(8) Is constructed or erected without the express prior approval of the owner of the property upon which the sign is located.

C. Signs which do not require prior approval.

The following signs, may be erected, hung, placed and maintained without prior approval of the Commissioners or Board of Appeals:

(1) A sign not exceeding four (4) square feet in area displaying the name of the owners or occupants of a residence or farm, the address of said property and/or the name of the residential property or farm; provided that not more than one (1) such sign shall be erected for each public road adjacent to said property or farm, and shall only be located on the property to which it applies.

(2) A temporary real estate sign offering property for sale or lease not exceeding six (6) square feet in area; provided that not more than one (1) such sign shall be erected for each public road adjacent to said property. Any such sign shall not be illuminated, and shall only be located on the property to which it applies.

(3) Any temporary construction site sign not exceeding thirty-two (32) square feet in area erected on a site during the period of active construction to announce the name of the project, contractor, architect and/or engineer. Any such sign shall not be illuminated, and shall only be located on the property to which it applies.

(4) Temporary seasonal sign not to exceed twelve (12) square feet advertising for sale agricultural products produced on the property. Any such sign shall not be illuminated, shall be removed out of the applicable season for the products offered, and shall only be located on the property to which it applies.

(5) Temporary sign not to exceed thirty-two (32) square feet in area advertising an event sponsored by a governmental entity or charitable organization of public interest such as meetings, fairs or festivals. Any such sign shall not be illuminated; shall not be erected or placed earlier than thirty (30) days prior to the event, and shall be removed within (3) days after the event.

(6) Temporary signs supporting candidates for political office or relating to voter questions not to exceed a total of thirty-two (32) square feet on a single property. Any such sign shall not be illuminated; shall not be erected or placed earlier than thirty (30) days prior to the election or vote, and shall be removed within seven (7) days after the election or vote.

(7) Directional or informational signs erected by a governmental body on property owned by it.

(8) A sign not exceeding four (4) square feet in area displaying the name and/or place of meeting of a religious congregation, civic body or charitable organization. Such a sign shall not be illuminated.

(9) Temporary sign not exceeding four (4) square feet in area displaying a seed type on farms or announcing a 4-H, Soil Conservation or similar project on the property to which it pertains; provided that not more than one (1) such sign shall be erected for each public road adjacent the property. Such a sign shall not be illuminated.

(10) Temporary sign not exceeding four (4) square feet in area announcing an auction, yard sale, estate sale or similar event. Such a sign shall not be illuminated, shall not be erected or placed earlier than seven (7) days prior to the event, and shall be removed within twenty-four (24) hours after the event.

(11) "Posted", "No Hunting", "No Trespassing" and similar warning signs; provided that they shall not be illuminated, no single sign shall be greater than two (2) square feet in area, and that not more than one (1) such sign shall be posted for every one hundred (100) feet, or additional part thereof, of frontage on a public road.

(12) "Open", "Closed", "Parking", "Entrance", "Exit" or similar signs for the primary purpose of informing those entering property in connection with any permitted non-residential or approved special exception use in accordance with Sections 6 and 11 of this Ordinance. Such a sign shall not exceed two (two) square feet in area.

D. Signs which require prior approval.

The following signs may not be erected, hung or placed without a valid permit issued by the Commissioners:

(1) A sign for the purpose of informing the public of the nature, name and/or address of a permitted non-residential use, in accordance with Section 4 of this Ordinance. Such a sign may only be located on the property to which it applies, shall not exceed six (6), square feet in area, and not more than one (1) such sign shall be erected for each public road adjacent to the property.

(2) A sign for the purpose of informing the public of the nature, name and/or address of an approved special exception use in accordance with Sections 6 and 11 of this Ordinance. Such a sign may only be located on the property to which it applies, shall not exceed forty (40) square feet in area, and not more than

one (1) such sign shall be erected for each public road adjacent to the property. In addition, the Board of Appeals, in acting upon any request for special exception or modification thereof, may impose reasonable restrictions on the location, design, illumination and content of such a sign, and may require a sign smaller than the maximum allowable area provided in this subparagraph (2).

(3) A sign for which a prior valid permit existed which is intended to be rebuilt, replaced or for which the size, design, character or location is to be changed.

#### E. General Standards.

The following standards apply to all signs unless otherwise noted.

(1) A freestanding or hung sign shall not be located less than ten (10) feet from the nearest road right-of-way or fifty (50) feet from the nearest road intersection as a traveller normally would approach such intersection.

(2) Signs shall be maintained in a good, neat and orderly appearance. A sign which is broken, hanging or loose, is missing intended characters or letters, or becomes structurally unsafe or endangers the building or premises or endangers the public safety, the sign shall be removed or repaired promptly by the property owner. The President of the Town Council may order that such sign be repaired or removed. Such order shall be complied with within ten (10) days of receipt thereof by the person, firm, or corporation owning or using the sign or the owner of the building or premises on which such sign is affixed or erected.

(3) In the calculation of the allowable number and area of signs, a double-faced sign shall be considered one sign and the area shall be calculated on the basis of a single side of the sign.

(4) No sign shall exceed ten (10) feet in height, measured from the top of the sign, including supporting framework, to the average ground level for a ten (10) foot radius from immediately beneath the sign.

(5) The area of a sign shall include the entire face of the sign and any wall work or framework incidental to its decoration or design and, in the case of an open sign made up of individual letters, figures or designs, the space between such letters, figures and designs shall be included.

(6) A temporary sign is one which is permitted to



remain standing for a period not to exceed six months, unless a shorter period is expressly imposed in this Section 8 with regard to particular types of signs.

(7) Illuminated signs, when permitted, shall be designed and constructed so as not to unreasonably shine or reflect light or glare onto adjacent or nearby properties.

F. Permits.

(1) Application. Application for permits to erect, hang, place, paint, or alter a sign for which a permit is required shall be submitted on forms obtainable at the office of the President of the Commissioners and Town Clerk. Each application shall be submitted in triplicate accompanied by the appropriate fee established by resolution of the Commissioners, three complete plans showing the areas of the sign; the size, character, and color of the letters and designs proposed; the method of illumination, if any; the exact location proposed for such sign; and in the case of a projecting sign, the proposed method of fastening such sign to the building structure. For signs proposed near or adjacent to public rights-of-way or adjacent properties, a survey also may be required, in the discretion of the President of the Commissioners. In the case of a sign for an approved special exception use, the applicant shall submit the written approval of the Board of Appeals for said sign, as well as the text of any restrictions or limitations on said sign imposed by the Board of Appeals.

(2) Action on Application. The President of the Commissioners shall refer any application to the Planning Commission for review and recommendations. Within forty-five (45) days of receipt of a complete application, or such longer period if agreed to by the applicant, the President shall either grant or deny the requested permit. If denied, the President shall state in writing the reasons therefor. If granted, the permit shall reference a permit number, the date of issuance, and the date of expiration, if any. The applicant shall affix to the sign the record permit number in a manner satisfactory to the President. Any violation of the provisions of this Section 6 shall be cause for revocation of the permit; whereupon, the sign shall be promptly removed by the property owner and/or applicant.

G. Special Provision for Signs Existing as of November 18, 1991.

A sign lawfully erected and existing as of November 18, 1991 shall be deemed lawful notwithstanding the fact that it may not be permitted or, if permitted, may not comply with the requirements of this Section 8. Such a sign may continue to be used and

displayed and ordinary maintenance performed thereon. In the event of a substantial change to the sign, including for the purposes of this Paragraph G, change of copy, reconstruction, change of location, change of illumination or in the event of serious damage affecting more than 50% of the sign, then said sign shall comply in all respects with the provisions of this Section 8, and, if not permitted by this Section 8, shall be promptly removed by the property owner or the owner of the business or establishment to which the sign applies.

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Section 9. BUILDING AND USE PERMITS

A. Permit Requirements.

(1) Building Permits Required.

No building or other structure shall be erected; nor shall any existing building or other structure be moved, added to, enlarged, or structurally altered; and no excavation for any building or other structure shall be begun before the issuance of a Building Permits therefor by the President of the Commissioners and by the Montgomery County Government. No Building Permit shall be issued where it appears that the structure or facilities to be constructed for the use contemplated would be in violation of the provisions of this Ordinance, or of any other applicable law or regulation; nor shall any Building Permit be issued for construction on land that has been subdivided in violation of any Subdivision Regulations for the Town of Barnesville. The provisions of this subparagraph shall not apply to the necessary construction, replacement or maintenance by a public utility of its outside facilities, including such items as poles, crossarms, guys, wire, cable, and drops.

(2) Use Permit Required.

No building or other structure or land shall be used, nor shall any building, structure, or land be converted, wholly or in part, to any other use, until a Use Permit, certifying compliance with this Ordinance, has been issued by the President of the Commissioners; except that no Use Permit shall be required for the use of a building as a one-family dwelling, or uses incidental thereto, or the use of land or buildings for agricultural purposes exclusively, or for any use lawfully in existence of the effective date of this Ordinance. No Use Permit shall be issued where it appears that the use contemplated would be in violation of the provisions of this Ordinance; nor shall any use Permit be issued for the use of land that has been subdivided in violation of any Subdivision Regulations for the Town of Barnesville.

(3) Duration and Validity.

Any Building Permit issued shall become invalid if the authorized work is not commenced within six (6) months of date of issuance or is suspended or abandoned for a period of six (6) months, provided that the President of the Commissioners may upon good cause shown within either of said six (6) month periods extend a permit for an additional period not exceeding six (6) months. A use permit once issued shall remain valid unless the use authorized thereby is discontinued or abandoned for a period of six (6) months or more, in which case the permit shall automatically expire and the use shall not be re-established without first obtaining a new permit.

(4) Reason for Denial.

If so requested by the person denied a permit, the President of the Commissioners shall provide a written statement of the reasons for the refusal of a permit.

B. Filing of Applications.

(1) Forms.

Application for Building and Use Permits shall be filed in writing or on forms from the President of the Commissioners, if a form or forms has been prescribed for said purposes.

(2) Contents of Application for Building Permit.

Each application for a Building Permit shall be accompanied by the following or as much thereof as the President of the Commissioners shall find necessary to determine whether the proposed building or facility will be in compliance with the provisions of this Ordinance:

(a) The approval required by Sec. 4.F. relating to water and sewage disposal facilities.

(b) A plat, drawn to scale, showing the north point, date, and scale of plan; the actual shape and dimensions of the lot to be built upon; the exact size and location on the lot of the existing buildings and structures, and the lines within which the proposed building, structure, or facility is to be erected, altered, or constructed; the existing and intended use of each building or part of a building; the number of families or housekeeping units the building is designed to accommodate; the proposed location and type of water supply and sewage disposal facilities; and such other information with regard to the lot and contiguous land uses as may be necessary to determine and provide for the enforcement of this Ordinance.

(3) Contents of Application for Use Permit.

Each application for a Use Permit shall be accompanied by copies of a plat, drawn to scale, showing; north point, date, and scale of plan; the lot or lots of which a use is proposed; lot dimensions; location, extent, and layout for the proposed use; and any other pertinent information which the President of the Commissioners shall find necessary to determine whether the proposed use will be in compliance with the provisions of this Ordinance.

C. Action on Application.

Applications for Building or Use Permit shall be acted upon in not more than thirty (30) days by the President of the Commissioners.

D. Montgomery County Building Permit Required.

In addition to the requirement for a Town building permit as set forth herein, the applicant also must obtain an appropriate Building Permit from Montgomery County before beginning excavation or construction, and all building permits issued by the Town shall contain a notation to that effect.

E. Cancellation and Revocation of Permit.

A Building or Use Permit shall be revoked and cancelled by the President of the Commissioners when construction or use violates any provision contained in this Ordinance or any State, County, or other Town laws or ordinances. Upon such revocation and cancellation any further work upon the construction, alterations, or repair on said building or structure, and any further use of said building, structure, or land, except for the purpose for which a use permit is not required, shall be immediately halted.

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Section 10. VIOLATIONS, ENFORCEMENT AND REMEDIES.

A. Criminal Penalties.

The construction, reconstruction, erection, structural alteration, repair, conversion, maintenance or use of any building or other structure or the use of land or premises in violation of any of the provisions of this Ordinance is hereby declared to be a misdemeanor which shall be punishable by a fine not exceeding two hundred dollars (\$200.00) or imprisonment for not more than thirty (30) days, or both. Where such an act or omission is

continued in violation of the provisions of this Ordinance after notice of such violation by the President of the Commissioners or the President's designee, each and every day during which such act or omission continues shall be deemed a separate misdemeanor and punishable as such.

B. Actions to Prevent and Abate Violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this Ordinance, the Commissioners, in addition to other remedies, may institute any appropriate action or proceeding, including the equitable jurisdiction of the Circuit Court, to prevent or abate said violation.

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Section 11. BOARD OF APPEALS-- APPEALS, SPECIAL EXCEPTIONS AND VARIANCES

A. Membership.

The Board of Appeals shall consist of three members residing within the Town. The term of office of the members of the Board shall be for three (3) years; however, in order that all three (3) terms shall not expire upon the same date, the terms of the original members of the Board shall be for one (1), two (2) and three (3) years, respectively. They shall be appointed by the President and confirmed by the Commissioners, and removable for cause, upon written charges, and after a public hearing. Vacancies shall be filled by the President and confirmed by the Commissioners for the unexpired term of any member whose term becomes vacant. Any member of the Board of Appeals shall be disqualified to act upon a matter before the Board with respect to property in which the member has a financial interest or is directly affected thereby. In the event of the disqualification of one or more members of the Board, then the President may, with the approval of the Commissioners, approve interim substitute members to hear the pending matter before the Board. Each member of the Board shall serve without remuneration.

B. Rules and Procedures.

The Board shall have authority to adopt rules of procedure. The Board shall appoint a chairman from among its members. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine; two members of said Board constituting a quorum. The Chairman or, in his

absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board or shall be a public record. The decision of the Board shall be by resolution, which resolution shall contain a statement of the grounds of its decision or action. The full text of the resolution shall be mailed to the appellant or petitioner. No appeal requesting the same relief in regard to the same property shall be received or heard by the Board for a period of twelve (12) months following the date of said resolution, except that this limitation shall not affect the right of the Board to grant a rehearing as provided in the rules of procedure as adopted by the Board.

C. Administrative Assistance.

The President of the Commissioners shall provide such administrative, legal and clerical assistance as is required by the Board to carry out its function under the provisions of this Ordinance.

D. Powers and Duties.

The Board of Appeals shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the President of the Commissioners, the Planning Commission or an administrative officer in the enforcement of this Ordinance.

(2) To hear and decide requests for special exceptions to the terms of this Ordinance upon which the Board is required to pass. The Board shall grant requests for such special exceptions when in judgment of the Board such special exceptions shall be in harmony with the general purpose and intent of this Ordinance and will not adversely affect the use and development of the general neighborhood. In granting a special exception, the Board may attach such conditions as it deems appropriate, including, but not limited to, restrictions on the scale and type of use, non-transferability to another person or entity to operate the special exception use without prior approval of the Board, hours of use, lighting, traffic, employees, parking, noise, and such other conditions as it deems appropriate to secure and protect the health, welfare and security of the Town, its residents, visitors and sojourners. All Special Exception grants are subject to periodic review by the Board in its discretion and possible amendment or revocation upon complaint of any person.

Violation of any of the terms and conditions of a grant of a special exception shall be sufficient cause for revocation of the same. *[Ordinance 2006-02 added the last 3 sentences to this paragraph (2)]*

(3) To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of this Ordinance will result in undue hardship and injustice or practical difficulty to petitioner. To justify the granting of such variance the Board must find that the hardship or difficulty which the petitioner will suffer under the general provisions of this Ordinance can be alleviated without affecting the general purpose and intent of this Ordinance and that the granting thereof will be to serve the best interests of the community as a whole. Notwithstanding the foregoing, the Board is not authorized to consider or authorize a variance from any requirement of this Ordinance for minimum frontage on a public road or street for any lot. *[Ordinance 2006-02 added the last sentence to this paragraph (3)]*

(4) To hear and decide petitions regarding non-conforming uses as set forth in Section 4.E.(5) of this Ordinance. *[Ordinance 2006-02 added this paragraph (4)]*

E. Public Hearing

(1) Before making any decision in any appeal, request for grant of special exception, request for a variance, or any other matter within the Board's purview, the Board shall hold a public hearing thereon. At least fifteen (15) days notice of the time and place of such hearing shall be sent to the appellant or petitioner, to the Planning Commission, to the President of the Commissioners and to the owners of all property adjacent to the property with which the hearing is concerned and of all properties opposite said property measured at right angles to the intervening street or streets. The Board may, in its discretion, send notice of hearings to other interested parties, organizations, or agencies. Such notices shall contain the name of the appellant or petitioner, the date, time, and place fixed for the hearing, and a brief statement of the error alleged by the appellant or of the variance, special exception, or other relief requested.

(2) Hearings may be adjourned, from time to time, and if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice of such continued hearing shall be required; otherwise, notice thereof shall be given as in the case of the original hearing.

F. Appeals.

(1) Appeals to the Board of Appeals may be taken by any person aggrieved or affected by any decision of the President of the Commissioners, the Planning Commission or administrative officer in the course of the administration of this ordinance. Such appeal shall be filed within fifteen (15) days of notice of the decision appealed from, by filing with the Chairman of the Board of Appeals a notice of appeal specifying the grounds therefor. The President of the Commissioners, the Chairman of the Planning Commission or Administrative official, as the case may be, shall forthwith transmit to the Board all the papers constituting the records upon which the action appealed from was taken. Except as otherwise may be provided by law, any appeal to the Board shall be considered de novo.

(2) The Planning Commission, the President, the Administrative officer, the appellant and any other public agency or private individual shall be entitled to testify and present evidence on matters before the Board, and the Board may request technical service, advice, data, or factual evidence from the Planning Commission and the Commissioners for assistance in reaching decisions. The Planning Commission upon request of the Board shall, or upon its own initiative, may render an advisory opinion in writing upon any matter before the Board. The recording and preparation of a transcript of the proceedings before the Board, if desired by the appellant, shall be arranged for and made at the sole cost and expense of the appellant, and shall provide a copy of any such transcript to the Board.

(3) In exercising the above mentioned powers the Board may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. It shall be the duty of the President of the Commissioners to carry out the decisions of the Board.

(4) Decisions of the Board of Appeals shall be appealable to the Circuit Court for Montgomery County, Maryland as provided in Section 4.08 of Article 66B of the Annotated Code of Maryland.

G. Miscellaneous.

(1) No decisions of the Board permitting the use of a building or land shall be valid for a period longer than six (6) months unless such use is established within said period; provided, however, that wherever such use is dependent upon the erection or alteration of a building, the board may extend the time upon request for good cause shown.

(2) It shall be unlawful for the appellant or petitioner to proceed with the erection or alteration of a proposed building, structure or sign or with the purposed use of a building or land when the Board of Appeals shall have disapproved an application or appeal.

(3) Appeals and petitions for special exception or variance shall be filed in triplicate on forms provided therefor, together with the fees established by the Commission by resolution.

(4) Erection of Sign: Within seven (7) days after acceptance for filing of an appeal the applicant shall erect a sign, to be furnished by the Town Clerk, on the land with which the appeal is concerned. Such sign shall be erected in accordance with the applicable provisions of Sec. 12 of this Ordinance and shall bear conspicuously in lettering in black on a white background not less than four (4) inches in height, the words:

ZONING

BOARD OF APPEAL HEARING

(date)

REQUEST FOR SPECIAL EXCEPTION

(or)

REQUEST FOR VARIANCE

(or)

ADMINISTRATIVE APPEAL

(or)

REQUEST RELATING TO NON-CONFORMING USE

CASE NO. _____

[Amended re non-conforming uses by Ordinance 2006-02]

(5) The Board may by resolution adopt standard forms for the filing of appeals and petitions for special exceptions and variances.

(6) Appeals and petitions filed in proper form shall be numbered serially, docketed, and placed upon the calendar of the Board.

H. Data to Accompany Petition for Special Exception.

Each petition for a special exception or shall be accompanied at the time of its filing by three (3) copies of a statement which shall include:

(1) Survey plats or other accurate drawings showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of such structures from the nearest property lines.

(2) Plans, architectural drawings, photographs, elevations, specifications or other detailed information depicting fully the exterior appearance of existing and proposed construction, including all signs existing and proposed, involved in the petition.

(3) A statement explaining in detail how the special exception is proposed to be operated, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved and any special conditions or limitation which the applicant proposes for adoption by the Board.

(4) Complete information concerning the size, type and location of any existing and proposed trees, landscaping and screening and of any exterior illumination proposed.

(5) Complete information concerning proposed off-street parking, service areas, internal vehicular circulation and driveways.

(6) A complete list of the name and address of all adjoining and confronting property owners as reflected by the County tax records.

(7) If the petitioner is not the owner of the property involved, the lease, rental agreement or contract to purchase by which the petitioner's legal right to prosecute the petition is established.

(8) All additional exhibits which the petitioner intends to introduce.

(9) A summary of what the petitioner expects to prove, including the names of the petitioner's witnesses, summaries of the testimonies of any expert witnesses and estimated time required for the presentation of the petitioner's case.

I. Data to Accompany Petition for Variance.

Each request for a variance shall be accompanied at the time of filing by three (3) copies of a statement containing the information specified in Paragraphs (1), (2), (5), (6), (7), (8) and (9) of Subsection H.

J. Data to Accompany Petition relating to a Non-conforming use.

Each Petition relating to a non-conforming use pursuant to Section 4.E.(5) hereof shall be accompanied at the time of filing by three (3) copies of all of the information specified in Subsection H.

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Section 12. APPLICATIONS FOR ZONING MAP AMENDMENTS.

A. Who May Initiate.

Initiation of action for a zoning map amendment may be made only by:

- (1) the owner(s) of the property;
- (2) with the written consent of the owner(s), a contract purchaser or person with a financial interest in the property;
- (3) The Commissioners; or
- (4) the Planning Commission.

B. By Commissioners or Planning Commission.

Initiation of consideration of a zoning map amendment may be made by the Commissioners on its own motion in the form of a resolution adopted by an affirmative vote of a majority of the Commissioners, or by the Planning Commission on its own motion in the form of a recommendation to the Commissioners adopted by an affirmative vote of a majority of the Planning Commission. Each such resolution or recommendation shall set forth a description of the property adequate to identify the same, and the reasons for initiation of the action.

C. Others By Application.

An application for a zoning map amendment by a property owner, contract purchaser, or one who holds a financial interest in such property for which reclassification is requested shall be filed with the Town Clerk or President of the Commissioners.

D. Contents of Application.

An application for a zoning map amendment and all supporting documentation shall be filed in triplicate and shall contain or be accompanied by the following:

(1) If the applicant is the owner of the property, a copy of the deed or other instrument evidencing ownership.

(2) If the applicant is not the owner of the property, the contract to purchase or other document evidencing the applicant's legal right to prosecute the application and a written instrument executed by the property owner(s) consenting to the application.

(3) The street number, if any, or if none, the location of the property with respect to the nearby public roads.

(4) A description by metes and bounds, courses, distances of the land, or if the boundaries conform to the lot boundaries within a subdivision for which a plat is recorded in the Land Records of Montgomery County, then the lot, block and subdivision designations with appropriate plat reference and a copy of said plat.

(5) The present zoning classification of the land and the proposed classification sought.

(6) The area of the land proposed to be reclassified stated in square feet if less than one acre and in acres if one or more acre.

(7) The application number and date of application of, and action taken on, all prior applications filed for the reclassification of the whole or any part of the land proposed to be reclassified, including any proceedings undertaken before the County Council of Montgomery County, sitting as the District Council, prior to the property's annexation to the Town of Barnesville.

(8) An identification plat prepared by a licensed civil engineer or land surveyor, and certified thereon by him to be correct and in conformity with the requirements of this Section 12.D., showing by metes and bounds, courses and distances the land proposed to be reclassified.

(9) A vicinity map covering the area within at least 1,000 feet of the boundaries of the land proposed to be reclassified, showing all roads, streets, alleys, parts, and other public or governmental areas in public ownership or a public right of way, all streams, one hundred year flood plains, wetlands, and the type and relative location of all improvements on adjacent and confronting property.

(10) A list of all adjoining and confronting property owners as reflected by the County tax records.

(11) All additional exhibits which the applicant intends to introduce in support of the application.

(12) What applicant expects to prove at the hearing on the application, including the names of witnesses, summaries of testimonies of any expert witnesses and estimated time required for the applicant's presentation at the hearing.

(13) A statement signed by the applicant under oath that the contents of the application are true and correct to the best of the applicant's knowledge, information & belief.

#### E. Filing of Application.

An application for a zoning map amendment shall be filed with the Town Clerk in triplicate, accompanied by the appropriate fee set forth in Paragraph F.

#### F. Application Fee.

An application for a Zoning Map Amendment shall be accompanied by a fee in the amount of \$500.00 if the property which is the subject of the amendment is two (2) acres or less, \$750.00 for property greater than two (2) acres and not more than five (5) acres, \$1,000.00 for property greater than five (5) acres and not more than ten (10) acres, \$1,500.00 for property greater than ten (10) acres and not more than fifteen (15) acres, and \$2,000.00 for property in excess of fifteen (15) acres.

#### G. Withdrawal of Application.

An applicant may withdrawal an application without prejudice at any time prior to the hearing before the Commissioners on the application; thereafter, an application may only be withdrawn upon motion by the applicant and approval by the Commissioners. No fee shall be refunded unless the application is withdrawn prior to the time it is ordered advertised for hearing by the President, in which event four-fifths (4/5) of the fee shall be refunded on order of the President.

#### H. Posting of Property.

Property which is the subject of an application for zoning map amendment shall be posted as follows:

(1) Erection of Sign: Within three (3) days after acceptance for filing of application for a map amendment

the applicant shall erect a sign, to be furnished by the President, on the land proposed to be reclassified. Such sign shall be erected by the applicant within ten (10) feet of whatever boundary line of such land abuts the most traveled public road, and if no public road abuts thereon, the facing in such a manner as may be most readily seen by the public. The bottom of the sign shall be not less than two and one-half (2-1/2) feet from the ground. The sign furnished by the President shall be of cardboard and shall be placed on wood backing by the applicant and shall have a height and width of not less than two (2) and three (3) feet respectively, and shall bear conspicuously in lettering in black on a white background not less than four (4) inches in height, the words:

TOWN OF BARNESVILLE

ZONING

RECLASSIFICATION

APPLICATION

NO. \_\_\_\_\_ PENDING

FROM (insert present zoning classification)  
TO (insert proposed zoning classification)

The blanks shall be filled in with the assigned application number, the existing zoning classification, and the proposed classification sought, respectively. If the land sought to be reclassified comprises more than one (1) lot or parcel as shown on State Department of Assessments and Taxation tax maps, then a sign shall be erected by the applicant on each such lot or parcel. No sign shall be furnished by the President of the Commissioners to the applicant unless the applicant has first delivered to the President a receipt of the Clerk of the Commissioners showing payment to the Town a fee of \$15.00 for each sign as well as the appropriate application fee required by Section 12.F. At the hearing it shall be the duty of the applicant to prove by affidavit that he has fully complied with this paragraph and has continuously maintained the sign(s) up to the time of the hearing.

(2) Removal of sign: Any such sign shall be maintained at all times by the applicant until a decision on the

application has been made public by the Commissioners and for a period of twenty (20) days thereafter, and then shall be removed by the applicant unless a reconsideration shall have been applied for, in which event such sign shall remain until twenty (20) days after the disposition of the application for reconsideration has been made by the Commissioners. It shall be unlawful for any person to remove or tamper with such sign during the period it is required to be maintained under this paragraph.

I. Transmittal of Application to Planning Commission.

Within fifteen (15) days after acceptance for filing of any application the President shall promptly transmit two (2) copies thereof to the Planning Commission for its study and recommendations. The Planning Commission shall submit written recommendations on the application which shall be forwarded to the President and who shall incorporate it in the application file, and which shall thenceforth be considered a part of the record on the application. The recommendations of the Planning Commission shall be forwarded to the President at least ten (10) days prior to the scheduled hearing before the Commissioners on the Application.

J. Hearing Procedure.

(1) Notice of Hearing.

(a) Upon accepting any application for filing the President shall set the application for a hearing before the Commissioners at a specified date, time and place, and shall cause to be published in at least one (1) newspaper of general circulation in the Town for at least two (2) successive weeks a notice of the public hearing on such application stating the application number, date, time, and place of hearing, the location and description of the property, its area, name of owner, name of applicant, and the existing and proposed change of classification. The first publication of notice shall be published no less than fourteen (14) days prior to the hearing.

(b) The President shall notify the applicant and the Planning Commission of the date, time, and place of the hearing. The date of hearing shall be not less than fifteen (15) days following the last newspaper publication of the notice. All application files in the custody of the President shall be open to public inspection during reasonable hours.

(c) The applicant on or before the opening of the hearing shall provide an affidavit that a notice of a summary of the application as well as the date, time and place of the hearing was mailed by the applicant, first class mail postage prepaid, to the name and address of each adjacent and confronting property owner as reflected in the records of the State Department of Assessments and Taxation and that said notice was mailed at least ten (10) days prior to the date of the hearing.

(2) Conduct of Hearing.

Any interested person shall have the right to submit oral or written testimony at the hearing. There shall be a complete stenographic report of the testimony at the hearing, the cost of which shall be borne by the applicant; and a typewritten transcript thereof (a copy of which shall be provided to the Commissioners at not charge) with all exhibits admitted at the hearing, including the application, shall promptly be incorporated by the President in the application file and shall be considered a part of the record. Any master plan for the area within which lies the land proposed to be reclassified shall be considered a part of the record, as well as the master plan, where appropriate, for those areas outside of the boundaries of the Town which may be relevant in passing on the application. Evidence which is immaterial, irrelevant, or unduly repetitious may be excluded. Hearings may be adjourned, from time to time, and if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice of such continued hearing shall be required; otherwise, notice thereof shall be given as in the case of the original hearing.

K. Action by the Commissioners.

(1) All applications shall be decided on the basis of the evidence of record.

(2) An application for a map amendment shall be either approved or denied on the merits, or dismissed, or allowed to be withdrawn. The Commissioners may dismiss any such application if it finds that:

(a) the applicant does not conform to any procedural requirements of this Section 12.; or,

(b) the application is not acceptable for filing because it was filed within twelve (12) months from



a previous applications herein provided; or,

(c) the application is frivolous or filed in bad faith without the intention of the diligent pursuit thereof by the Applicant. The Commissioners may allow an applicant to withdraw an application at any time, provided, however, that if the request for withdrawal is made after publication of the notice of hearing, no application for the reclassification of all or any part of the land which is the subject of the application shall be allowed for twelve (12) months following the date of the resolution of the Commissioners approving such withdrawal, unless by the resolution allowing withdrawal or subsequent resolution the Commissioners specify that the twelve (12) months limitation shall not apply. If the application is not dismissed or allowed to be withdrawn as herein provided, it shall either be approved or denied on the merits, in which case no application for the reclassification of all or any part of the land which is the subject of the application shall be accepted for filing for twelve (12) months following the date of such approval or denial on the merits.

(3) No application for a map amendment shall be approved for a zone other than that applied for, or if the application is made for two alternative zones, the application shall not be approved for a zone other than one of the two applied for.

(4) No application for a map amendment shall be approved for a greater area than that applied for, but an application may be approved for a smaller area if the reclassification of such smaller area is supported by the evidence of record and such smaller area is accurately delineated in the record.

(5) Any area reclassified shall exclude and be held to exclude any portion of that area which lies in the bed of a road, street, or alley, whether existing or proposed on a plan adopted by the Planning Commission or other duly constituted public authority with jurisdiction over streets and public rights of way.

(6) The decision of the Commissioners approving, denying, or dismissing any application shall be rendered within sixty (60) days after receipt of the transcript of the hearing unless such time is extended by resolution of the Commissioners. The decision shall be determined by a majority of those voting. If, however, the Planning Commission recommended denial of the application, then

a favorable vote of at least two-thirds (2/3) of the Commissioners shall be required for approval of the application. All decisions of the Commissioners shall be made in open session on roll call by yeas and nays and the resolution embodying the decision shall not be effective until it is incorporated in the minutes of the proceedings of the Commissioners.

(7) The resolution shall be supported by a written opinion of the Commissioners setting forth findings of fact and conclusions of law which shall be filed among the records of the President. A copy of the resolution and opinion shall be promptly mailed by the Town Clerk to the applicant, the Planning Commission and to all persons entering their appearance at the hearing as shown by the hearing transcript.

(8) The decision of the Commissioners on any application for a map amendment shall be final except that a petition requesting reconsideration of the decision on any application may be filed in triplicate with the President by the applicant or any person appearing at the hearing, or by any person who has sent a timely written communication to the Commissioners prior to the close of the record on the application concerning the application for the map or text amendment, and the same shall be accompanied by an affidavit that a copy of the petition has been served in person or by first class mail postage prepaid on all persons (or their attorneys) who appeared at the hearing (naming them) as shown by the hearing transcript. No such petition may be filed more than twenty (20) days after the decision of the Commissioners on the application except where material fraud in the proceedings is alleged by the petitioner. The petition shall briefly state the alleged errors in the decision and the supporting arguments. Any response to the petition shall be made in writing, filed in triplicate with the President within ten (10) days after filing of the petition, and accompanied by an affidavit that a copy has been served in person or by first class mail postage prepaid on the petitioner. The petition may be granted by resolution of the Commissioners for good cause shown, and if granted, the decision of may be rescinded and the application thereafter by resolution of the Commissioners approved, denied or dismissed with or without further hearing in the discretion of the Commissioners. Pending further hearing if ordered, the decision may be suspended by resolution of the Commissioners. Any resolution under this sub-section shall be subject to the limitations on voting, accompanying option, and mailing or furnishing of copies applicable to resolutions adopted under

sub-sections (6) and (7) of this Section 12.K. Nothing herein contained shall prevent the Commissioners from reconsidering any decision on its own motion.

L. Appeal.

The decision of the Commissioners approving, denying or dismissing an application for map amendment may be appealed to the Circuit Court for Montgomery County pursuant to Subtitle B, Chapter 1100 of the Maryland Rules of Procedure and the provisions of Article 66B of the Annotated Code of Maryland. A petition for reconsideration shall not stay the time period for filing an appeal; however, a resolution by the Commissioners on their own motion made before the filing of any appeal shall stay the time period for appeal until final action by the Commissioners on the reconsideration.

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Section 13. CONFLICTS WITH OTHER LAW OR REGULATIONS.

Where the provisions of this Ordinance are higher or more restrictive than those imposed by any other applicable law or regulation, such higher or more restrictive provisions shall apply. Where any other applicable law or regulation contains provisions that are higher or more restrictive than those contained herein, such higher or more restrictive provisions shall apply.

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Section 14. SAVING CLAUSE.

Should any section, subsection, sentence, clause, or phrase of this Chapter be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the Ordinance in its entirety or of any part thereof other than that so declared to be invalid. The Commissioners of Barnesville, Maryland, hereby declare that it would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phases be declared invalid.

END

*Legislative History:*

*Originally Enacted October 1, 1959*

*Comprehensive amendments repealing and re-enacting by Ordinance No. 1991-02, Effective November 18, 1991*

*Amended by Ordinance No. 2006-02, Effective May 15, 2006.*

**THIS IS A TRUE TEST COPY OF THE ZONING ORDINANCE OF THE  
COMMISSIONERS OF BARNESVILLE, MARYLAND**

ATTEST:

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICIA MENKE, CLERK

\_\_\_\_\_/S/\_\_\_\_\_  
PETER MENKE, PRESIDENT