

ARTICLE 15 Berlin Commercial Overlay (BCO)

SECTION 15.01: PURPOSE

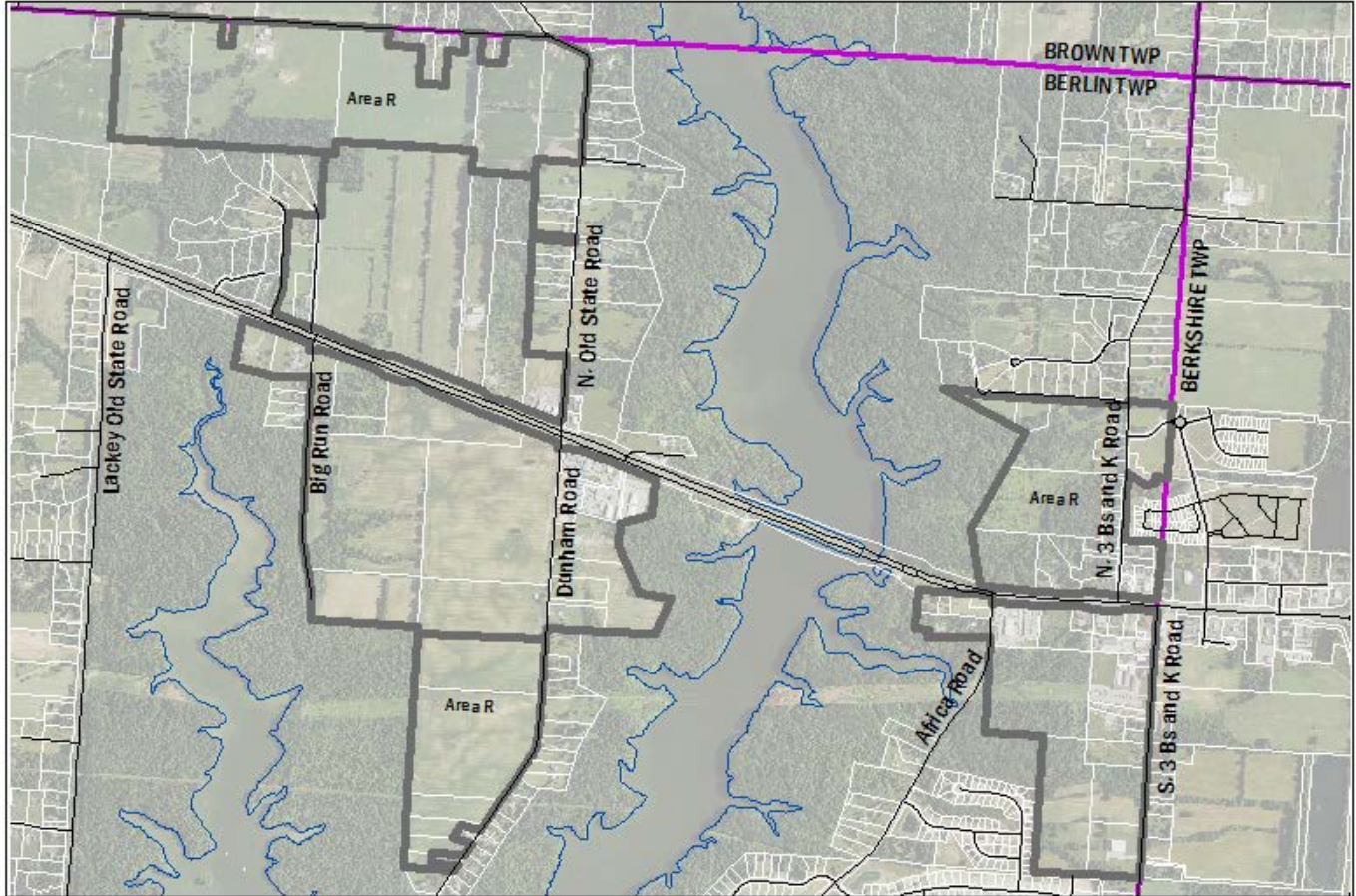
The Berlin Commercial Overlay (the “BCO”) is created pursuant to Section 519.021(C) of the Ohio Revised Code to further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting public and utility services, and encouraging innovation in the planning and building of appropriate types of retail, office, and commercial development. The overlay encourages flexibility of design to promote and accommodate environmentally sensitive and efficient use of the land, thereby allowing for a unified development that:

- Preserves unique or sensitive natural resources and integrates Open Space within developments.
- Plans the appropriate amount of infrastructure, including paved surfaces and utility easements, necessary for development.
- Reduces erosion and sedimentation by minimizing land disturbance.
- Provides an opportunity for an appropriate mix of uses.
- Enables an extensive review of design characteristics to ensure that projects are properly integrated into surroundings and are compatible with adjacent development.
- Assures compatibility between proposed land uses through appropriate development controls.
- Enhances the welfare and economy of the Township by making available a variety of employment opportunities, providers of goods and services as well as providing a variety of housing options for the Township residents.
- Encourages unified development projects that exhibit creative planning and design in ways that cannot be achieved through a standard zoning district, yet are imaginative in architectural design and are consistent with applicable public plans for the area and are compatible with surrounding land uses.

SECTION 15.02 – OVERLAY AREA ESTABLISHED

The BCO encompasses, includes, overlays, and rezones the area shown on the Berlin Commercial Overlay Zoning District Map, which is incorporated herein and is hereby adopted as the official Zoning District Map for the BCO. The zoning regulations and districts in existence at the time of the effective date of the BCO rezoning shall continue to apply to all property within the BCO, unless the Berlin Township Board of Trustees (the “Trustees”), in accordance with Section 15.06, approve an application submitted by a property owner and/or their agent (the “Applicant”), to subject their property to the provisions of the BCO. Such an application shall be made in accordance with the provisions of this Article 15 and all other applicable Articles of the Berlin Township Zoning Resolution (the “Zoning Resolution”).

Berlin Commercial Overlay Zoning District Map



Parcels determined by the Delaware County Auditor’s Office to be in existence as of May 1, 2019

SECTION 15.03: PERMITTED USES

A.) Within the Berlin Commercial Overlay (BCO) the following uses, as described by the North American Industrial Classification System (NAICS), shall be permitted when developed in strict compliance with the approved development plan and the standards of this resolution.

The precise use or type of use of the tract shall be specified in the plan as submitted and approved.

2002 U.S. NAICS CODE #	PERMITTED USES
1114	Greenhouse, Nursery, and Floriculture Production
311811	Retail Bakeries
442	Furniture and Home Furnishings Stores
443	Electronics and Appliance Stores

445	Food and Beverage Stores
446	Health and Personal Care Stores
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book (except Adult-Related Entertainment) and Music Stores
453	Miscellaneous Store Retailers, (except Adult-Related Entertainment establishments and 45393 Manufactured Home Dealers)
491	Postal Service
511	Publishers
512131	Motion Pictures Theaters (except Adult-Related Entertainment establishments)
51224	Sound Recording Studios
5133	Telecommunications
514	Information and Data Processing Services
516110	Internet Publishing
517110	Wired Telecommunications Carriers
517212	Cellular and other Wireless Telecommunications
518111	Internet Service Providers
52	Finance and Insurance
53121	Offices of Real Estate Agents and Brokers
531390	Other activities related to Real Estate
54	Professional, Scientific and Technical Services (includes Medical, Veterinarians, Computer and Related Hardware and Research and Development etc.)
55	Management of Companies and Enterprises
561	Administrative and Support Services
61	Educational Services
621	Ambulatory Health Care Services
622	Hospitals
623	Nursing and Residential Care Facilities
624410	Child Day Care Services
71111	Theater Companies and Dinner Theaters
71112	Dance Companies
71119	Other Performing Arts Companies (except Adult-Related Entertainment)
71211	Museums
71394	Fitness and Recreational Centers
72111	Hotels (except 72112 casino) and Motels
722	Food Services and Drinking Places (except those establishments offering or featuring entertainment including totally nude, topless, bottomless, strippers, male or female impersonators, or similar adult entertainment or services), provided that there shall be a minimum of 300 feet of setback from the property line of any Food and Drink service place and the nearest residential property line or residential zoning district.
812	Personal and Laundry Services (except Adult-Related Entertainment)

813	Religious, Grant making, Civil, Professional and Similar Organizations
92	Public Administration (except 922150 Parole and Probation Offices)

B.) Temporary Structures:

Temporary structures such as manufactured/mobile offices and temporary buildings may be used incidental to construction work on the premises or on adjacent public projects or during a period while the permanent structure is being constructed. The user of said structure shall obtain a permit for such temporary use, which permit shall be valid for twelve (12) months and may be renewed not more than twice for a total combined period of time under all issued permits not exceeding eighteen (18) months. Renewal of the permit shall be at the discretion of the Zoning Inspector on finding of reasonable progress toward completion of the permanent structure or project. The Zoning Inspector may require provisions for sanitary waste disposal, solid waste disposal, and water supply, as he/she deems necessary. The fees for such permit and renewals thereof shall be established by the Board of Township Trustees. Said temporary structure shall be removed not later than ten (10) days after expiration of said permit.

C.) Within the area labeled “Area R” on the BCO Overlay Map, the following uses shall, in addition to the uses permitted in Section 15.03(A) above, be permitted when developed in strict compliance with the approved Development Plan, including the development standards set forth in Section 15.05, and all other applicable Articles of the Zoning Resolution.

- 1.) Multi-family residential structures of any type, attached or detached units, including but not limited to attached, modular, patio, common wall or any reasonable variation on the same theme.
- 2.) Accessory buildings and accessory uses incidental to the principal building or use.
- 3.) Multi-Family cluster housing. For purposes of this section, “cluster housing” shall mean a residential development wherein the overall density is consistent with Section 15.05, but modifications are permitted in lot size and shape to concentrate residential development in a portion of the overall tract, thereby retaining the remainder of the tract as permanent, common open space.

D.) Non-residential uses of a religious, cultural, education or recreational nature or character to the extent that they are designed and intended to serve the residents of the surrounding area. Said facilities may be designed to serve adjoining neighborhoods or residents if they are located in such proximity to the major thoroughfares as to permit access without burdening residential streets.

SECTION 15.04: PROHIBITED USES

A.) Uses not specifically authorized by the express terms of this article of the Zoning Resolution shall be prohibited. Such uses, if included in another District(s) in the Berlin Township Zoning Resolution, shall only be approved as a part of a rezoning procedure to the District in which that use is permitted.

B.) Except as approved in the Development Plan, the outdoor storage of inoperable, unlicensed or unused vehicles, including trailers detached from semi-tractors, for a period exceeding fourteen consecutive (14) days is prohibited. Said vehicles, if stored on the premises, shall be enclosed within a building so as not to be visible from any adjoining property or public road. This prohibition shall not apply to new

or used motor vehicles stored or displayed pursuant to a legal sales or repair activity if such activities are carried out in compliance with the approved plan.

- C.) Except as provided in the development plan no trailer of any type; no boats, no motor homes and no equipment of any type shall be parked in front of the established front building line on any lot within this district. If a structure is located on the tract of land or lot, the building line shall be considered to be the front wall of the structure, even if said structure is located behind the minimum setback line established by this code, the restrictions in the plat or deed or the development plan.
- D.) Except as specifically permitted in the approved development plan, no manufactured home, mobile home, or mobile office structure shall be permanently placed or occupied in this district.
- E.) No trash, debris, unused property, or discarded materials which create an eyesore, hazard, or nuisance to the neighborhood or general public shall be permitted to accumulate on any lot or parcel.
- F.) Uses pursuant to NAICS code #711310, Promoters of Performing Arts, Sports, and Similar Events with Outdoor Open-Air Facilities are prohibited.
- G.) No commercial or business activity shall be conducted in a unit designed for residential use except for Home Occupations as provided in Section 24.15 and 24.16.

SECTION 15.05: REQUIRED BCO DESIGN STANDARDS

The development plan shall incorporate the following standards for all uses:

- A.) Industrial/Commercial Uses
 - 1.) **Minimum Tract Size per application:** none.
 - 2.) **Minimum Lot Width:** Shall equal at least one-half (1/2) the lot depth.
 - 3.) **Minimum Side and Rear Yards:** Shall equal one-third (1/3) the sum of the height and depth of the structure, but in no case shall be less than one hundred feet (100') from any Residential Zoning District or Planned Residential District, or as approved per plan.
 - 4.) **Building Height Limits:** No building or structure in this district shall exceed thirty-five (35) feet in height measured from the front door threshold to the highest point on the roof. Chimneys, spires, domes, flag poles, and elevator shafts may be constructed to any safe height, but shall not exceed one-hundred (100) feet in height. No windmill, aerial, antenna, or tower shall be constructed to a height greater than the distance from the center of the base to the nearest property line of said tract and shall not exceed one-hundred (100) feet in height.
 - 5.) **Building Design and Materials:** The physical relationship of buildings and other site improvements to one another and the surrounding area, as created by building size, mass, height, shape and setback, shall result in a harmonious development within the project area and with those areas adjacent to it. The bulk, height, and surface materials of buildings within the proposed development shall be compatible with the area with buildings sufficiently buffered and landscaped in order to mitigate any potential adverse impacts.

Buildings, structures and parking areas shall be designed and located within the development in ways that conserve environmentally sensitive or unique natural, historic or cultural features, and minimize environmental impacts. Buildings and structures shall be designed to enhance

both areas within the development and surrounding areas, giving due regard to building footprints, building orientation, massing, roof shape, pitch and exterior materials. To the greatest extent possible, buildings shall include “four-sided” architectural details to enhance the human scale of larger structures.

The exterior elevations of all proposed buildings shall only consist of any or any combination of natural materials including wood, red or earth-tone brick, native or cultured stone, stucco/EFIS, pre-cast concrete where used as an accent, cementitious siding (such as HardiPlank® or similar) and/or composite siding (such as SmartSide® or similar), and any materials deemed by the Zoning Commission to be acceptable substitutions for the above natural materials. These material requirements shall not be required for vinyl soffits, fascia windows, downspouts, gutters, window glazing and reveals, as well as hardware and similar accents.

- 6.) **Maximum Ground Coverage by Buildings and Parking (All Impervious Surfaces):** No more than 80% of the total tract acreage of a development, exclusive of public street rights of way shall be covered by impervious surfaces, which includes all parking and commercial buildings (not multi-family dwellings). Land underneath overhead high voltage electric transmission lines may be used for open space, landscaping, parking, and roads with the permission of the electric utility company.
- 7.) **Minimum Required Open Space for Commercial Developments:** Not less than 20% of the total tract acreage of a commercial development shall remain open space. Open spaces may be used for the retention, detention and disposal of storm water drainage. Features which are likely to cause erosion or flooding shall not be permitted. A 15-foot wide “green belt” shall be provided between the edge of any parking area and the adjacent public street right of way and shall be landscaped in accordance with Article 26.
- 8.) **Landscaping:** All yards, front, side and rear, shall be landscaped in accordance with Article 23. All open spaces or non-residential use areas shall be landscaped and shall meet the landscaping requirements of this resolution, unless a variation from these standards is specifically approved as part of the development plan. A landscape plan prepared by a licensed landscape architect showing the caliper, height, numbers, name and placement of all material, shall be submitted and is subject to approval as a part of the development plan. Natural foliage shall be retained as buffers where practicable. The Township may require establishment of such tree cover and/or other foliage to buffer adjacent uses.
- 9.) **Access:** Requires frontage on or direct access to one or more dedicated and improved public arterial roads as shown on the Delaware County Thoroughfare Plan, or to a proposed access road that runs parallel to an arterial road. Provision for future connections to other public roads may be required by the Township, the County Engineer, and/or the Regional Planning Commission. Each project should indicate how it will contribute to regional projects, either through constructed improvements or other commitments.
- 10.) **Pavement Width Standards for Interior Development Streets, Drives and Parking Lots:** All private streets, roads and driveways shall be constructed to a pavement width and cross section that meets the Average Daily Traffic and weights anticipated in the Delaware County Engineer’s Location and Design Manual, or shall have a design life of 20 years. Parking lot pavement does not have to meet street cross section standards, but parking lot drive aisles

that connect to the public streets shall be constructed to public street cross sectional and design life standards within 50 feet of the edge of the public paved road.

- 11.) **Parking:** Off-street parking shall be provided at the time of construction of the main structure or building, with adequate provisions for ingress and egress according to the development plan. In preparing and approving the parking plan, the parking provisions of Article 24 of this Resolution shall be incorporated.
- 12.) **Perimeter Area:** No parking shall be constructed within fifty feet (50') of the lot line of an existing or proposed single family home, or a residentially-zoned district.
- 13.) **Signs:** Signs shall conform to Article 25 of this resolution.
- 14.) **Exterior Lighting:** All exterior lighting shall be as specifically approved as part of the development plan in accordance with Article 24, Section 24.13 of this resolution.
- 15.) **Walkways, Bike Paths, and Street Trees:** The Township may require walkways to connect parking areas with buildings. Where sidewalks or bike paths are required, they shall be separated from the paved street or parking lot surface by at least five feet (5') of landscaped area with trees placed behind the sidewalk.
- 16.) **Environmentally Sensitive Areas:** Jurisdictional wetlands, slopes greater than 20%, and 100-year floodplains shall be preserved to the greatest extent possible. No commercial or office structures shall be constructed within the 100-year floodplain of any stream or river. To the maximum extent possible, all natural drainage courses, vegetation and contours in excess of six percent (6%) shall be maintained.
- 17.) **Underground Utilities:** All utility lines constructed to service the proposed uses shall be located underground.
- 18.) **Water and Sewer:** Centralized water and centralized sewer service shall be utilized. Applicant shall indicate feasibility of water supply and wastewater disposal systems from the appropriate state and/or county agencies with jurisdiction at the time of the development plan review.
- 19.) **Building Size Limits:** Retail or office buildings, including but not limited to NAICS categories and codes 1114, 311811, 44, 45, 511, 52, 53121, 531390, 54, 55, and 561 shall contain no more than 65,000 square feet under one roof for any individual use.
- 20.) **Exception to Retail and Office Building Size Limits:** Retail and office uses permitted within the BCO and not listed above with an individual commercial or office that exceeds 65,000 square feet under one roof for any individual use may be approved at the discretion of the township provided they have direct access to or access to an existing or proposed commercial frontage road located parallel to and within 500 feet of U.S 36. Large commercial buildings shall not be separated from the road with excessive parking and pavement. Unless a divergence is requested and granted, no parking or pavement area shall be more than 275' in depth.
- 21.) **Supplemental Conditions and Safeguards:** The Township Zoning Commission and/or the Board of Township Trustees may impose special additional conditions relating to the development with regard to type and extent of public improvements to be installed. This includes landscaping, development, improvement, and maintenance of common open space as well as any other pertinent development characteristics.

B.) Residential uses

- 1.) **Minimum Tract Size:** 10 acres
- 2.) **Density:** Maximum of fourteen (14) dwelling units per net developable acre.
- 3.) **Arrangement of Structures:**
 - a.) Setbacks: all residential and related structures shall be not closer than one hundred feet (100') to any property line or public right-of-way.
 - b.) Building Height Limits: No buildings developed for residential uses shall exceed forty-five (45) feet in height measured from the elevation of the threshold plate at the front door to the highest point of the roof. Chimneys, barns, silos, grain handling conveyors, church spires, domes, flag poles, and elevator shafts are exempted from the height regulation and may be erected to any safe height, not to exceed one-hundred (100) feet in height. No windmills, antennas, or towers shall be constructed to a height greater than the distance from the center of the base thereof to the nearest property line of said tract and not to exceed one hundred (100) feet in height.
- 4.) **Living Area Dimensions:** All structures constructed within this district shall contain the following minimum living area:
 - a.) One (1) bedroom unit: 800 square feet
 - b.) Two (2) bedroom unit: 900 square feet
 - c.) Three or more bedroom units: 1000 square feet
- 5.) **Building Design and Materials:** The physical relationship of buildings and other site improvements to one another and the surrounding area, as created by building size, mass, height, shape and setback, shall result in a harmonious development within the project area and with those areas adjacent to it. The bulk, height, and surface materials of buildings within the proposed development shall be compatible with the area with buildings sufficiently buffered and landscaped in order to mitigate any potential adverse impacts.

Buildings, structures and parking areas shall be designed and located within the development in ways that conserve environmentally sensitive or unique natural, historic or cultural features, and minimize environmental impacts. Buildings and structures shall be designed to enhance both areas within the development and surrounding areas, giving due regard to building footprints, building orientation, massing, roof shape, pitch and exterior materials. Buildings shall include “four-sided” architectural details to enhance the human scale of larger structures.

The exterior elevations of all proposed buildings shall only consist of any or any combination of natural materials including wood, red or earth-tone brick, native or cultured stone, stucco/Efis, pre-cast concrete where used as an accent, cementitious siding (such as HardiPlank® or similar) and/or composite siding (such as SmartSide® or similar), and any materials deemed by the Zoning Commission or Trustees to be acceptable substitutions for the above natural materials. These material requirements shall not be required for vinyl soffits,

fascia windows, downspouts, gutters, window glazing and reveals, as well as hardware and similar accents.

- 6.) **Materials:** All exterior sides of all units shall be sheathed in brick, stucco, stucco-stone, stone, wood, or cementitious lap siding.
- 7.) **Roof Pitch and Materials:** All residential roofs shall be a minimum of 8:12 pitch. Shingles shall be of the dimensional type, no three-tab shingles are to be used.
- 8.) **Maximum Ground Coverage by Buildings and Parking (All Impervious Surfaces):** No more than 80% of the total tract acreage of a development, exclusive of public street rights of way shall be covered by impervious surfaces, which includes all parking and buildings. Land underneath overhead high voltage electric transmission lines may be used for open space, landscaping, parking, and roads with the permission of the electric utility company.
- 9.) **Common Open Space:** Not less than 10% of the total tract acreage must be set aside as useable common open space, meaning areas exclusive of landscape islands and berms for parking lots and yards or courts immediately adjacent to the dwelling units. The township shall determine if the open space configuration meets the intent of these standards during Development Plan review. Open spaces may be used for the retention, detention and disposal of storm water drainage. Features which are likely to cause erosion or flooding shall not be permitted.
- 10.) **Landscaping:** All yards, front, side and rear, shall be landscaped in accordance with Article 26. All open spaces or non-residential use areas shall be landscaped and shall meet the landscaping requirements of this resolution, unless a variation from these standards is specifically approved as part of the Development Plan. A landscape plan prepared by a licensed landscape architect showing the caliper, height, numbers, name and placement of all material, shall be submitted and is subject to approval as a part of the Development Plan. Natural foliage shall be retained as buffers where practicable. The Township may require establishment of such tree cover and /or other foliage to buffer adjacent uses.
- 11.) **Access:** Requires frontage on or direct access to one or more dedicated and improved public arterial roads as shown on the Delaware County Thoroughfare Plan, or to a proposed access road that runs parallel to an arterial road. Provision for future connections to other public roads may be required by the Township, the County Engineer, and/or the Regional Planning Commission. Each project should indicate how it will contribute to regional projects, either through constructed improvements or other commitments.
- 12.) **Pavement Standards** for Intra-Development Streets, Drives and Parking Lots: All private streets, roads and driveways shall be constructed to a pavement width and cross section that meets the average daily traffic and weights anticipated in the Delaware County Engineer's Location and Design Manual, or shall have a design life of 20 years. Parking lot pavement does not have to meet street cross sectional standards, but parking lot drive aisles that connect to the public streets shall be constructed to public street cross-sectional and design life standards within 50 feet of the edge of the public paved road.
- 13.) **Parking:** Off-street parking shall be provided at the time of construction of the main structure or building, with adequate provisions for ingress and egress according to the Development Plan. In preparing and approving the parking plan, the parking provisions of Article 24 of this Resolution shall be incorporated.

- 14.) **Perimeter Area:** No parking shall be constructed within one hundred feet (100') of the lot line of an existing or proposed single family home, or a residentially-zoned district.
- 15.) **Signs:** Signs shall conform to Article 25 of this resolution.
- 16.) **Exterior Lighting:** All exterior lighting shall be as specifically approved as part of the Development Plan in accordance with Section 24.13 of the zoning resolution.
- 17.) **Walkways and Street Trees:** The trustees may require walkways to connect all dwelling areas with open space and to interconnect the open spaces. Where sidewalks or bike paths are required, they shall be separated from the paved street or parking lot surface by at least five feet (5') of landscaped or grassed tree lawn with trees planted behind the sidewalk.
- 18.) **Environmentally Sensitive Areas:** Jurisdictional wetlands, slopes greater than 20% and 100-year floodplains shall be preserved to the greatest extent possible. No structures shall be constructed within the 100-year floodplain of any stream or river. To the maximum extent possible, all natural drainage courses, vegetation and contours in excess of 6% shall be maintained.
- 19.) **Underground Utilities:** All utility lines constructed to service the proposed commercial uses shall be located underground.
- 20.) **Water and Sewer:** Centralized water and sewer service shall be utilized. The applicant shall indicate feasibility of water supply and wastewater disposal systems from The appropriate state and/or local agencies with jurisdiction at the time of Development Plan submission.
- 21.) **Supplemental Conditions and Safeguards:** The Zoning Commission and Trustees may require additional conditions be met with regard to the type and extent of the public improvements to be installed; landscaping; improvements and maintenance of open space areas; and other development characteristics.

SECTION 15.06: PROCESS FOR PLAN APPROVAL IN THE BERLIN COMMERCIAL OVERLAY (BCO)

- A.) **Pre-Application Meeting.** The Applicant shall engage in informal consultations with staff from the Township. Such consultations may also include the Delaware County Regional Planning Commission, and Delaware County Engineer, and other departments prior to submission of an application for approval of a Development Plan. No statement or action by Township or County officials in the course of these informal consultations shall be construed to be a waiver of any legal obligation of the Applicant or of any procedure or formal approval required by Township or County statutes or rules. Ohio's Open Meetings Law (Section 121.22 of the Ohio Revised Code) is required to be observed at all meetings involving a quorum of members of the Zoning Commission or Trustees.

The application should provide a conceptual layout of the proposed development to allow discussion of the existing features of the site, environmental limitations of the site, and any utility and transportation-related issues.

- B.) **Application and Development Plan:** Applicant shall prepare and submit a formal application and Development Plan, with twenty (20) copies and fees, to the Zoning Commission. The Zoning Commission shall review the Development Plan and provide a written recommendation to the Board of Trustees based upon the plan's compliance with the regulations and standards within this Article and any other development and design standards applicable to the Development Plan.

The written recommendation shall list specific findings of fact. For example, if the recommendation is for denial, the recommendation shall list specific sections of the zoning resolution for which the proposal does not comply. The Zoning Commission may request the DCRPC to review and provide comments.

- 1.) A survey plat and legal description signed by a registered Ohio surveyor showing the size and location of the proposed development.
 - 2.) A finished grading plan drawn at a scale of 1"=100', showing all information pertaining to surface drainage.
 - 3.) An exhibit demonstrating environmentally-sensitive areas such as the 100-year floodplain, wetlands, and slopes greater than 20%.
 - 4.) A Development Plan drawn to a scale of at least 1"=100' demonstrating the details listed herein.
- C.) **Development Plan Contents:** The Development Plan shall include in text and map form the following proposed features:
- 1.) The general development character and the permitted and accessory uses to be located on the tract including the limitations or controls to be placed on all uses, with proposed lot sizes, and minimum setback requirements. Other development features, including landscaping, entrance features, signage, pathways, sidewalks, recreational facilities, common open space areas, and all commonly owned structures shall be shown in detail identifying the quantity and type and typical section of each.
 - 2.) Architectural design criteria including materials, colors and elevations for all structures and criteria for proposed signs, with proposed control procedures.
 - 3.) Building heights and dimensions.
 - 4.) Off-street parking.
 - 5.) Landscape Plan identifying each plant, shrub, or tree by name, its size at planting, and rendering of how that area of the development would look in elevation.
 - 6.) Signage plan, showing all proposed signage and dimensions.
 - 7.) Exterior Lighting Plan to show how exterior lighting fixtures will be shaded whenever necessary to avoid casting direct light upon any adjoining property.
 - 8.) The proposed provisions for water, fire hydrants, sanitary sewer, and surface drainage with engineering feasibility studies or other evidence of reasonableness. Line sizes and locations, detention basins and drainage structures shall be drawn. A copy of letters from the County Engineer and Sanitary Engineer stating general feasibility road geometries, surface drainage, and the provision of sewer shall be included.
 - 9.) A Traffic Impact Analysis by a competent traffic engineer, based upon new trip generation as estimated by the Delaware County Engineer's standards and showing the proposed traffic

patterns, public and private streets, and other transportation facilities, including their relationship to existing conditions, topographical and otherwise.

- 10.) The relationship of the proposed development to existing and probable uses of surrounding areas during the development timetable.
- 11.) Location of all uses within the site and the location of schools, parks and other public facility sites within or adjacent to the site.
- 12.) The proposed time schedule for development of the site including streets, buildings, utilities, and other facilities.
- 13.) If the proposed timetable for development includes developing the land (including open space) in phases, all phases developed after the first, which in no event shall be less than five (5) acres or the whole tract (whichever is smaller), shall be fully described in textual form in a manner calculated to give Township Officials definitive guidelines for approval of future phases.
- 14.) The ability of the applicant to carry forth this plan by control of the land and the engineering feasibility of the plan.
- 15.) Evidence of the applicant's ability to post a bond or an irrevocable letter of credit if the plan is approved assuring completion of public service facilities to be constructed within the project by the developer.
- 16.) All drawings that are a part of the Development Plan shall respectively bear the seals of the preparing architect, landscape architect, and/or professional engineer. The respective professional attaching his or her seal to the drawings must be licensed to practice in the state of Ohio.
- 17.) The manner and method to be utilized in order to achieve and maintain compliance with the general criteria for the BCO district.
- 18.) The manner in which the applicant will mitigate any nuisance effects of the proposed uses such as, but not limited to:
 - a.) **Fire and Explosion Hazards:** All activities, including storage, involving flammable or explosive materials shall include the provision of adequate safety devices against the hazard of fire and explosion. All standards enforced by the Occupational Safety and Health Administration shall be adhered to. Burning of waste materials in open fire is prohibited, as enforced by the Ohio Environmental Protection Agency.
 - b.) **Air Pollution:** No emission of air pollutants shall be permitted which violate the Clean Air Act Amendments of 1977 or later amendments as enforced by the Ohio Environmental Protection Agency.
 - c.) **Glare, Heat and Exterior Lighting:** Any operation producing intense light or heat, such as high temperature processing, combustion, welding, or other, shall be performed within an enclosed building and not be visible beyond any lot line bounding the property whereon the use is conducted.

- d.) **Dust and Erosion:** Dust or silt shall be minimized through landscaping or paving in such a manner as to prevent their transfer in objectionable quantities by wind or water to points off the lot.
 - e.) **Liquid or Solid Wastes:** No discharge at any point into any public sewer, private sewage disposal system, or stream, or into the ground, of any materials of such nature or temperature as can contaminate any water supply or interfere with bacterial processes in sewage treatment, shall be permitted. The standards of the Ohio Environmental Protection Agency shall apply.
 - f.) **Vibrations and Noise:** No uses shall be located and no equipment shall be installed in such a way as to produce intense, earth shaking vibrations which are discernible without instruments at or beyond the property line of the subject premises.
 - g.) **Odors:** No use shall be operated so as to produce the continuous, frequent, or repetitive emission of odors or odor-causing substances in such concentrations as to be readily perceptible at any point at or beyond the lot line of the property on which the use is located. The applicable standards of the Environmental Protection Agency shall be met.
- 19.) **Divergences:** The Zoning Trustees may grant divergences from any standard or requirement in this Article except use and density. An applicant requesting such divergence(s) shall specifically list each requested divergence with the Development Plan submittal, with a request that the proposed divergence be approved as part of and as shown on the Development Plan. Otherwise, the development shall comply with the requirements contained in this Article, the General Development Standards, and any other Article applicable to all standard zoning districts, as set forth in the Berlin Township Zoning Resolution.
- 20.) The Township Zoning Commission and Township Trustees may impose special additional conditions relating to the development with regard to type and extent of public improvements to be installed. This includes landscaping, development, improvement, and maintenance of common open space as well as any other pertinent development characteristics.
- D.) **Zoning Commission and Trustee Action.** After receipt of a completed Application including Development Plan(s), related materials and required fees, the Zoning Commission shall schedule a meeting on a date not less than twenty (20) nor more than forty (40) days after the filing of such application and shall give the applicant and all owners of property within, contiguous to, and directly across the street from the area subject to the Application written notice of the hearing at least ten (10) days before the date of the hearing. Notice shall be sent by regular, first class mail to the addresses of those owners as they appear on the County Auditor’s current tax list. The failure of delivery of that notice shall not invalidate any action the Zoning Commission may take on the Application. The Zoning Commission shall render a recommendation to the Trustees on the Application and Development Plan at the conclusion of the hearing and shall forward the recommendation to the Berlin Township Trustees.

The Berlin Township Trustees shall, upon receipt of such application and recommendation, set a time for a meeting to consider approval of the Development Plan, which date shall not be more than thirty (30) days from the date of the receipt of such recommendation from the Zoning Commission and shall give the applicant and all owners of property within, contiguous to, and directly across the street from the area subject to the Application written notice of the hearing at least ten (10) days before the date

of the hearing. Notice shall be sent by regular, first class mail to the addresses of those owners as they appear on the County Auditor's current tax list. The failure of delivery of that notice shall not invalidate any action the Trustees may take on the Application. The Trustees shall render a decision on the Application and Development Plan at the conclusion of the hearing, unless the applicant requests a delay of action (tabling) for a specific period of time.

E.) **Basis of Approval.** In determining whether or not to approve an Application and Development Plan, the reviewing authorities shall consider the following:

- 1.) That the proposed development is consistent in all aspects with the purpose, criteria, intent, and standards of this Zoning Resolution.
- 2.) That the proposed development meets all applicable requirements of this Article and Zoning Resolution.
- 3.) That the proposed development is in conformity with the comprehensive plan as adopted or concurrently amended or portion thereof as it may apply.
- 4.) That the proposed development promotes the health, safety, and general public welfare of the township and the immediate vicinity.
- 5.) That the proposed plan meets all of the design features required in this Resolution.
- 6.) That the proposed development will be compatible in appearance with surrounding existing or proposed land uses.
- 7.) That the development promotes the efficient use of land and resources, promotes greater efficiency in providing public utility services and encouraging innovation in the planning and building of all types of development.

F.) **Effect of Approval.**

- 1.) The Zoning Commission and Trustee determination shall not be considered to be an amendment to the Township Zoning Resolution for purposes of Section 519.12 of the Revised Code, but may be appealed pursuant to Chapter 2506 of the Revised Code. If the Trustees make a final determination that the Development Plan included in the Application complies with this Article, or if the Trustees' final determination is one of noncompliance, then if a court of competent jurisdiction makes a final non-appealable order finding compliance, the Trustees shall approve the Application and upon approval shall cause the Zoning Map to be changed so that any other zoning district that applied to the property that is the subject of the Application no longer applies to that property. The removal of the prior zoning district from the Zoning Map is a ministerial act and shall not be considered to be an amendment to the Township Zoning Resolution for the purposes of Section 519.12 of the Revised Code and may not be appealed pursuant to Chapter 2506 of the Revised Code.
- 2.) **Approval Period:** The approval of the Development Plan shall be effective for a period of five (5) years (or for such other time period as may be approved as part of the Development Plan) in order to allow for the preparation and recording of a subdivision plat (if required under applicable law) and the commencement of construction following the issuance of a zoning permit(s). If no plat has been recorded within this approval period (or, if platting is not required, if construction has not commenced) and unless the Trustees approve an extension

of this time limit, the Development Plan shall expire. Upon the expiration of the Development Plan, the subject parcel(s) shall remain zoned Berlin Commercial Overlay (BCO), but no use shall be established or changed and no building, structure or improvement shall be constructed until a new Application accompanied by a new Development Plan have been filed with and approved by the Zoning Commission and Trustees using the procedures and approval process for an initial Development Plan.

- 3.) **Plat Required.** The Development Plan as approved by the Board of Trustees shall be the subject of a subdivision plat to be approved by the Delaware County Regional Planning Commission if required by the Ohio Revised Code. Where the land is to be developed in phases, plans for phases subsequent to the first phase shall be submitted in accordance with the timetable in the approved Development Plan. If required by applicable law, no use shall be established or changed, and no structure shall be constructed or altered until the required subdivision plat has been prepared and recorded in accordance with the Subdivision Regulations for Delaware County, Ohio, and this Zoning Resolution. The subdivision plan and plat shall be in accordance with the approved Development Plan.
- 3.) **Zoning Certificate:** No zoning certificate shall be issued for any structure in any portion of the Berlin Commercial Overlay (BCO) for which a plat is required by the Delaware County Regional Planning Commission unless the subdivision plat for that portion has been approved by the applicable platting authorities and recorded with the Delaware County Recorder in accordance with the approved Development Plan and with the Subdivision Regulations of Delaware County, Ohio.
- 4.) **Extension:** An extension of the time limit for either recording the approved subdivision plat or the commencement of construction may be granted by the Trustees upon Application of the owner(s), provided the Trustees determines that such an extension is not in conflict with the public interest, that there is a legitimate purpose and necessity for such extension, and that the applicant shows evidence of a reasonable effort toward the accomplishment of the recordation of the plat and the completion of the development of the project. The length of time permitted for an extension shall be determined based upon the Application submitted and at the discretion of the Trustees. A request for extension shall be filed prior to the expiration of the established approval period.
- 5.) **Modifications:** Upon submittal of a written Application requesting approval for changes to an approved Development Plan, the Trustees shall designate whether such changes represent Minor or Major Modifications to the plan. This may occur at any public meeting. Minor Modifications may be approved or denied during the meeting. Major Deviations shall be forwarded to the Zoning Commission.
 - a.) Minor Modifications include, but are not limited to, changes in the location of buildings, structures, streets or parking areas. The Trustees may choose to impose conditions, safeguards, or other restrictions to carry out the intent of this District. The decision of the Trustees shall represent final approval or denial of such deviation.
 - b.) Major Modifications shall be considered at a public hearing by the Zoning Commission. Major deviations include but are not limited to:
 - i.) A change in the use or character of the development;

- ii.) An increase in overall lot coverage of structures and off-street parking.
- iii.) An increase in the density;
- iv.) A change in traffic circulation or usage of public utilities;
- v.) A reduction in approved open space;
- vi.) A reduction of off-street parking and loading space;
- vii.) A reduction in required pavement widths;
- viii.) A change of the acreage in the planned development;
- ix.) Any other departure from the approved Development Plan which is deemed substantial by the Trustees.

- c.) The Zoning Commission, at a meeting duly called and held, may modify the approved Development Plan without being subject to the same procedures as the original Application. Any approval may be with such conditions or modifications as the Zoning Commission may determine.

The request for modification shall include a showing of a compelling reason and necessity for the same and a showing that the owner(s) has made reasonable and diligent efforts toward the accomplishment of the original Development Plan, and that such modification is not in conflict with the intent and purpose of the Berlin Commercial Overlay (BCO). The Zoning Commission shall render a recommendation at the conclusion of the meeting.

- c.) For Major Deviations, the recommendation of the Zoning Commission shall be forwarded to the Board of Trustees for a duly scheduled final public hearing.

- G.) **Fees.** A fee in an amount established by the Board of Trustees shall accompany an Application requesting approval of the Development Plan, as well as any request for extension or modification. In addition, the applicant shall also be responsible for all reasonable and necessary expenses incurred by Berlin Township in using professional consulting services to review the Development Plan. These expenses may include, without limitation, costs for professional consultants such as attorneys, architects, landscape architects, planners and engineers utilized by the Township in connection with reviewing the Development Plan and related Application materials. As soon as reasonably practicable following the submission of an Application for approval of a Development Plan, the Zoning Commission shall decide if it needs a professional consultant(s) to assist it in reviewing the application. If the Zoning Commission decides it needs professional consulting services, it shall, in its sole discretion, designate the person(s) to be consulted and make an initial estimate of the expenses anticipated to be incurred in reviewing the Application materials. The Zoning Commission shall provide the applicant with notice of its initial estimate of such expenses.

This initial estimate will be reviewed, and may be revised, from time to time during the review process, and, if such review results in an increase in the estimated professional consulting fees and charges which will be incurred in the Township's review of the Application materials, the Zoning Commission shall send the applicant written notice of the revised estimate of fees and charges. Within fourteen (14) days of the date of the notice of the initial estimate of fees and charges (and, if applicable, within

fourteen (14) days of the date of the notice of any revised estimate), the applicant shall deposit in the office of the Township Fiscal Officer or the Fiscal Officer's designee, an amount equal to the estimated cost of the Township's expenses. In making the estimate of the professional consulting fees and charges anticipated to be incurred, the Zoning Commission shall consider the reasonable commercial rates of qualified professionals. Upon request, the Township shall provide the Applicant with an itemized copy of any consultant(s) bill paid for in accordance with this Section. Notwithstanding the foregoing, bills for legal services shall only disclose the costs incurred and narrative descriptions shall not be disclosed, in that these are privileged communications and protected from disclosure under attorney-client privilege.

- H.) **Failure to Maintain.** If the approved Development Plan is not adhered to, or the open space is not properly maintained, the Township Zoning Inspector may serve written notice of the deficiencies and demand that corrective action be taken. The Township may pursue noncompliance with the plan as a zoning violation which will be dealt with under Penalties for Violation within this Zoning Resolution.

- I.) **Administrative Review.** All plats, construction drawings, restrictive covenants and other necessary documents shall be submitted to the Zoning Inspector, Zoning Commission, and/or their designated technical advisors for an administrative review to ensure substantial compliance with the development plan as approved, prior to issuance of a zoning certificate. The Board of Trustees may establish a fee to be deposited with each administrative review in order to defray the costs associated with such a review.

End of Article