
AN ORDINANCE AMENDING ZONING CODE IN RELATION TO CONDITIONAL USES AND SPECIAL EXCEPTIONS, THE REGULATION OF SHORT TERM RESIDENTIAL RENTALS, AND THE REPEAL OF THE A-2 FARMLAND PRESERVATION DISTRICT AND R-MH MANUFACTURED HOME DISTRICT

WHEREAS, in light of the passage of 2017 Wis. Act 67, changes to the City's zoning code are necessary in relation to conditional uses and special exceptions in order to be compliant with the new requirements set forth in 2017 Wis. Act 67; and

WHEREAS, in light of the generalized increase in short term rentals of residential dwellings through the use of websites such as www.vrbo.com and www.airbnb.com, there is a determined need for the City's zoning code to be updated; and

WHEREAS, there is no longer a determined need for the A-2 Farmland Preservation District or the R-MH Manufactured Home District in the City's zoning code; and

WHEREAS, due to the elimination of the R-MH Manufactured Home District in the City's zoning code, all licensing provisions in the City's code related to manufactured and mobile home communities may be repealed; and

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance change, as set forth herein, on August 27, 2019; and

WHEREAS, the City of Berlin Plan Commission has recommended to the Common Council the approval of the ordinance change as set forth herein.

NOW THEREFORE, the Common Council of the City of Berlin do ordain as follows:

Chapter 42 (Manufactured Home Community Operator's License) of the Code of Ordinances of the City of Berlin, and all sections therein, shall be repealed in their entirety, and such chapter shall be reserved.

Section 82-4 of the Code of Ordinances of the City of Berlin shall be amended to add the following definitions:

Bed and breakfast establishment shall have the meaning set forth in Wis. Adm. Code ATCP § 73.04.

Common household means one person or two or more persons using a dwelling as a home, residence or sleeping place, to the exclusion of all others.

Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to

obtain a conditional use permit, a special exception permit, or other special zoning permission issued by the city (excluding a variance), and that reasonable persons would accept in support of a conclusion.

Tourist or *transient* means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business or employment.

and

Tourist rooming house means any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients for more than 10 nights each year. "Tourist rooming house" does not include:

- (a) A private boarding or rooming house, ordinarily conducted as such, not accommodating tourists or transients;
- (b) A hotel; and
- (c) Bed and breakfast establishments.

The following definitions in Section 82-4 of the Code of Ordinances of the City of Berlin shall be amended as follows:

~~*Apartment hotel* means a structure that contains one or more apartments which are primarily used by the occupants as a home, residence or place of abode, and has five or more rooms where sleeping accommodations are offered to transients for pay.~~

Boardinghouse means a building, other than a hotel, bed and breakfast, tourist rooming house, or restaurant, where meals or lodging are regularly furnished by prearrangement for compensation for three or more persons not members of a family, but not exceeding 12 persons, and not open to transient customers.

Dwelling means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place ~~means a building designed or used exclusively as a residence or sleeping place, but does not include boardinghouses, lodginghouses, motels, hotels, tents, cabins or mobile homes.~~

Dwelling unit means a group of rooms constituting all, or part, of a dwelling, which are arranged, designed, used or intended for use ~~exclusively~~ as living quarters for one family common household.

Dwelling, multiple-family, means a residential building which is designed for or occupied by three or more families common households, with the number of families common households in residence not exceeding the number of dwelling units provided.

Dwelling, single-family, means a detached building which is designed for or occupied by one family common household.

Dwelling, two-family, means a detached building which contains two separate dwelling ~~or living~~

units, designed for occupancy by not more than two families common households.

~~*Family* means persons who live together in one dwelling unit as a single housekeeping entity.~~

~~*Farm dwelling* means a structure as defined in section 82-256.~~

Hotel means a building in which lodging, with or without meals, is offered to tourist or transient guests for compensation, and in which there are more than five sleeping rooms, with no cooking facilities in such individual rooms or apartments.

~~*Lodginghouse* means a building where lodging only is provided for compensation for not more than three persons who are not members of the family.~~

~~*Mobile home lot* means a parcel of land for the placement of a single mobile home used exclusively by the occupants of such mobile home.~~

~~*Mobile home park*~~ *Manufactured and mobile home communities* means parcels of land which ~~has~~have been developed for the placement of manufactured homes or mobile homes, and ~~is~~are owned by an individual, firm, trust, partnership, public or private association or corporation, ~~with the Individual~~individual lots ~~located therein~~within a manufactured or mobile home park shall be ~~being~~ rented to individual manufactured home or mobile home users.

~~*Mobile home subdivision* means a land subdivision as defined by Wis. Stats. ch. 236, and any city land division ordinance, with lots intended for the placement of individual mobile home units. Individual homesites shall be in separate ownership as opposed to the rental arrangements in mobile home parks.~~

and

~~*Modular unit* means a factory fabricated transportable building unit which is designed to be used by itself, or to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational or industrial purposes.~~

Section 82-19 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-19. - Conditional uses.

The following provisions shall be applicable to conditional uses within the city:

- (1) Conditional uses and their accessory uses are considered as special uses requiring, for their authorization, review, public hearing and approval by the ~~plan commission~~board of appeals in accordance with article VI of this chapter, except those conditional uses in existence at time of adoption of the ordinance from which this chapter is derived.
- (2) Existing uses which are classified as conditional uses for the districts in which they are located at the time of adoption of the ordinance from which this chapter is derived require no action by the ~~plan commission~~board of appeals for such uses

to continue as valid conditional uses and they shall be deemed to be regular conditional uses.

- (3) A proposed change from a permitted use in a district to a conditional use shall require review, public hearing and approval by the ~~plan commission~~board of appeals in accordance with article VI of this chapter.
- (4) When replaced by a permitted use, a conditional use shall terminate. In such case, the reestablishment of any previous conditional use, or establishment of a new conditional use shall require review, public hearing and approval by the ~~plan commission~~board of appeals in accordance with article VI of this chapter.
- (5) Conditional uses authorized by ~~plan commission~~board of appeals resolution shall be established for a period of time to a time certain, or until a future happening or event at which the conditional use shall terminate.

Section 82-21 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-21. - Site regulations.

...

- (b) *Principal structures.* All principal structures shall be located on a lot. A structure used for farming purposes may not be a principal structure on a lot under five acres in size in ~~an A-1 or A-2~~ districts. Except as otherwise provided hereafter, only one principal structure shall be located, erected or moved onto ~~a lot~~ an unimproved lot. On lots of any size within a R-1, R-2 or C district, on lots under two acres within a R-3, and on lots of five acres or more in A-1, B-1 or B-2 district, more than one principal structure on a lot may be allowed only with a conditional use permit. A mandatory condition of such a conditional use permit shall be that all open space and percentage of lot coverage requirements and limitations are met for the lot and all area regulations are otherwise met for each such principal structure. Further, as conditions of such a conditional use permit, the board of appeals may impose additional yard, landscaping or parking requirements, or require a minimum separation distance between structures. On lots of five two acres or more in a R-3, on lots of five acres or more in A-1, B-1 or B-2 ~~A-1 or A-2~~ districts, on lots of any size within a M-1, M-2 or M-3 district, there may be more than one principal structure on a lot so long as all the structures are consistent with permitted uses for the district, and all open space and percentage of lot coverage requirements and limitations are met for the lot and all area regulations are otherwise met for each such principal structure. Also, as a conditional use, the plan commission may permit more than one principal structure per lot in any district where more than one such structure is needed for the orderly development of the parcel. Where additional principal structures are apermitted, the plan commission may impose additional yard, landscaping or parking requirements, or require a minimum separation distance between principal structures.

...

Section 82-22 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-22. - Height and yard exceptions.

- (a) The district height limitations set forth elsewhere in this chapter may be exceeded, but such modification shall be in accordance with the following:
 - ~~(1) Architectural projections, such as spires, belfries, parapet walls, cupolas, domes, flues and chimneys, which exceed height limitations, may be authorized as conditional uses under a conditional use permit granted pursuant to the provisions of article VI of this chapter.~~
 - (21) ~~Special structures, such as elevator penthouses, gas tanks, grain elevators, radio and television receiving antennas, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations and smoke stacks, which exceed height limitations, may be authorized as conditional uses under a conditional use permit granted pursuant to the provisions of article VI of this chapter.~~ Flag poles shall be exempt from the height limitations of this chapter.
 - (32) Essential services, utilities, water towers, electric power and communication transmission lines shall be exempt from the height limitations of this chapter.
 - (43) Communication structures, such as radio and television transmission and relay towers, aerials and observation towers shall not exceed in height three times their distance from the nearest lot line.
 - ~~(54)~~ Public or semi-public facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries, governmental offices and stations may be erected to a height of 75 feet, provided, all required yards are increased not less than one foot for each foot the structure exceeds the district's maximum height requirement. On through lots, the height of the building may be measured from the mean elevation of the finished grade along the front of the building considering the end facing either street as the front.

...

Section 82-27 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-27. - Special exceptions for area and construction regulations for historical lots.

- (a) The board of appeals shall be authorized to grant special exception permits to applicants authorizing deviation from any construction regulation or area regulation established under this chapter for lots which meet one of the following criteria:
 - (1) The lot is within the Huron Street Historic District, the Nathan Strong Park Historic District, or is identified individually, or as part of a proposed district,

as eligible for entry into the National Register of Historic Places in the Berlin Intensive Architectural/Historical Survey 1991-92 prepared by the East Central Wisconsin Regional Planning Commission dated September 1992, a copy of such document being on file in the zoning administrator's office; or

...

(3) The lot is located in a residential district under this chapter, and currently contains, or contained within one year prior to application, a legal nonconforming structure originally designed for residential occupancy that was 100 years or more in age on January 1, 2019 and the application for special exception permit is solely for structural repair or replacement of that legal nonconforming structure.

(4) The lot is either of the following, and currently contains, or contained within one year prior to application, a legal nonconforming structure that was 100 years or more in age on January 1, 2019 and the application for special exception permit is solely for structural repair or replacement of that legal nonconforming structure:

The North ½ of Lot 8 and the South 32 feet of Lot 1 in Block 20 of the Original Plat of the City of Berlin, Green Lake County, Wisconsin, according to the recorded plat thereof; or

The South Eighty (80) feet of Lot No. Seven (7) in Block No. Twenty (20) of the original Plat of the City of Berlin, excepting however, the reservation of a right of way as reserved in that certain deed dated October 5, 1922 running from Andrew Wawrzyniak to L.P. Jensen and Rosannah Jensen which said deed was recorded in the office of the Register of Deeds for Green Lake County, State of Wisconsin on October 12, 1922 at 8:00 o'clock a.m. in volume 85 of Deeds on page 74 as Document No. 112018. And also excepting the land heretofore conveyed by that certain Warranty Deed dated August 6, 1934 running to Walter H. Wells and Helen C. Wells, conveying the East 15 feet, of the South 80 feet of said Lot 7, Block 20, Original Plat, City of Berlin, recorded in the office of the Register of Deeds for Green Lake County, Wisconsin on August 7, 1934 in volume 97 of deeds on page 173.

- (b) The board of appeals is encouraged to grant such special exception permits where the applicant presents ~~sufficient proof~~ substantial evidence that complying with the applicable construction regulation or area regulation would be contrary to the stated purposes and spirit of this chapter. Specifically, the board of appeals is encouraged to grant a special exception permit if an applicant presents ~~sufficient proof~~ substantial evidence that deviating from a stated construction regulation or area regulation would cause the proposed finished structure to be more harmonious and appropriate in appearance with the existing or intended character of the general vicinity than if the applicable construction regulation or area regulation were strictly complied with. For example, if a nonconforming but historic accessory building, such as a carriage barn, is destroyed or is in need of substantial repairs, the board of appeals is encouraged to grant a special exception permit allowing the landowner to rebuild or repair the structure in a fashion which preserves the historic location and appearance of the former structure, so long as doing so would remain harmonious

with the surrounding neighborhood and the application otherwise meets the requirements of this section.

...

- (d) In granting special exception permits hereunder, the board of appeals may impose reasonable and, to the extent practicable, measurable conditions upon the applicant in order to meet the standards of this section. Such conditions may include, but are not limited to, requirements pertaining to lot coverage, lot area, setbacks, off-street parking and loading, pedestrian and vehicular accessways, storage, fencing, screening, landscaping, open space, height limitations, lighting and hours of operation.

Section 82-28 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 82-28. – Mobile homes prohibited.

- (a) Mobile homes, excluding manufactured homes, shall be prohibited in the city.
- (b) Manufactured and mobile home communities shall be prohibited in the city.

Section 82-62 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-62. - Violations; penalties.

...

- (c) Any person who fails to comply with the provisions of this chapter, or any order of the zoning administrator issued in accordance with this chapter, or resists enforcement, upon conviction, shall be subject to a forfeiture and such additional penalties as provided for in section 1-16. ~~The penalties for violations of conditional use permits shall be as set forth in section 82-647.~~

Section 82-92 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-92. - Role of specific city officials in zoning administration.

- (a) *Plan commission.* The plan commission, together with its other statutory duties, shall make reports and recommendations relating to the plan and development of the city to the common council, other public officials and other interested organizations and citizens. The plan commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning. For the purposes of this chapter, the functions of the plan commission are primarily recommendatory to the common council, ~~except for issuance of conditional use permits~~, pursuant to guidelines set forth in this chapter as to various matters and, always, being mindful of the intent and purposes of this chapter. All

recommendations shall be in writing, and a recording of such recommendations in the minutes of the plan commission shall constitute the required written recommendation. The plan commission may, in arriving at its recommendation, on occasion of its own volition, conduct its own public hearing.

...

Section 82-119 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-119. - Powers.

In addition to powers enumerated elsewhere in this Code, the board of appeals shall have the following powers:

...

- (2) *Variances.* Hear and ~~grant~~decide appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this chapter shall be observed, and the safety, welfare and justice of the public secured.
- (3) *Special exceptions.* Hear and decide applications for special exceptions to the terms of city zoning and floodplain zoning regulations upon which the board is required to pass.
- (4) *Conditional Use Permits.* Hear and decide applications for conditional use permits pursuant to Article VI of this Chapter.
- (45) *Interpretations.* Hear and decide applications for interpretations of zoning regulations and the boundaries of the zoning districts after the plan commission has made a review and recommendation.
- (56) *Substitutions.* Hear and ~~grant~~decide applications for substitution of more restrictive nonconforming uses for existing nonconforming uses, provided, no structural alterations are to be made and the plan commission has made their review and recommendation. When the board of appeals permits such a substitution, the use may not be changed after such substitution without an application.
- (67) *Unclassified uses.* Hear and ~~grant~~decide applications for unclassified and unspecified uses, provided that such uses are similar in character to the principal uses permitted in the district, and the plan commission has made their review and recommendation.
- (78) *Temporary uses.* Hear and ~~grant~~decide applications for temporary uses in any district, provided that such uses are of a temporary nature, do not involve the erection of a structure and are compatible with the neighboring uses. The permit shall be temporary, revocable, subject to any condition required by the board of appeals and shall be issued for a period not to exceed 12 months. In addition, compliance with all other provisions of this chapter shall be required.

Section 82-123 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-123. - Applications for hearings.

...

- (f) *Fee.* All appeals and applications filed with the zoning administrator shall be accompanied by payment of the required fee as set forth in the applicable fee schedule adopted by the common council on file in the clerk-treasurer's office. ~~If the appellant or applicant elects the contested case method, he shall also pay the amount determined by the board of appeals to cover the additional administrative costs involved.~~

...

Section 82-124 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-124. - Hearings.

- (a) *Notice.* Notice of the time, date and place of the hearing of an appeal or application shall be given in the following manner:

...

- (2) In each case involving a variance, conditional use permit, special exception, planned unit development or public utility exception, the clerk-treasurer shall mail notice to the owners of record of all land within the area included in the application, and within 200 feet of any part of the building or premises affected, not less than ten days prior to the hearing. The names and last known addresses of such owners shall be furnished by the applicant at the time of filing the appeal or application.

...

Section 82-125 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-125. - Decision and disposition of cases.

...

- (d) *Conditions.* Variances or conditions imposed in a permit shall be stated in the decision or order embodying the board of appeal's decision, and shall also be set forth in the building, conditional use, special exception, or occupancy permit issued under such order by the zoning administrator. ~~A permit shall be valid only as long as the conditions upon which it is granted are observed.~~ Whenever the board of appeals grants an application or appeal affecting the use of a premises, such authorization

shall be deemed revoked unless the owner, occupant or his agent shall, upon request, file with the secretary of the board of appeals a written report certifying that all conditions or limitations imposed by the board of appeals have been conformed to and maintained. Variances, substitutions, special exceptions, or conditional use permits approved by the board of appeals shall become null and void within 12 months of the date of the board's action unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six months of the date of issuance of such permit, and which shall not be renewed unless construction has commenced and is being diligently prosecuted. Approximately 45 days prior to the automatic revocation of such permit, the zoning administrator shall notify the permit holder by U.S. First Class mail of such revocation. The board of appeals may extend such variance, substitution, or permit for a period of 90 days for justifiable cause, if application is made to the city at least 30 days before the expiration of the variance, substitution or permit. The approved variance, substitution, or permit as applicable, unless otherwise specified in the conditions of approval, shall otherwise run with the land and shall remain in effect as long as the authorized use continues, conditions upon which the permit was issued are followed, or as otherwise consistent with conditions imposed by the board of appeals as to the permit's duration, transfer, or renewal. Prior to the reestablishment of an abandoned use, a new variance, substitution, conditional use permit, or special exception permit, as applicable, shall be obtained under the terms of this section~~expire six months after their issuance if the performance of work is required and substantial work has not commenced.~~

- (e) *Filing of decision.* Every order or decision of the board of appeals shall be immediately filed with the secretary of the board who shall then forward the decision to the zoning administrator and mail a copy of such decision to the applicant or appellant. Copies of decisions granting conditional uses, special exceptions, or variances in a floodplain, shoreland or wetland district shall be mailed to the district office of the state Department of Natural Resources.

...

Section 82-127 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-127. - Review by court of record.

~~Any person or persons aggrieved by any decision of the board of appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of such illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the offices of the board.~~ Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari pursuant to WIS. STAT. § 62.23(7)(e)(10).

Section 82-151 the Code of Ordinances of the City of Berlin shall be amended to eliminate number

(4) and the reference to A-2 Agricultural Preservation District, as well as number (13) and the reference to the R-MH Manufactured Home District, in the table.

Section 82-226 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-226. - Use regulations.

The A-1 agricultural district is intended to provide for farming and other agricultural activities and related uses in those areas in which nonfarm residential development on the effective date of the ordinance from which this chapter is derived is not of dominant significance, but with adequate regulatory standards to protect the future potential of the area for its most suitable development. The following uses shall be permitted in the A-1 district:

...

- (3a) Except for kennels described under section 10-7(b) which shall be permitted only as a conditional use under section 82-227(~~53~~), keeping or raising non-livestock farm animals on parcels of five acres or more but less than 20 acres, subject to a limit of one animal unit per acre. If livestock animals are present on the same parcel, such livestock animals shall be included in the calculation of the one animal unit per acre limitation for purposes of determining the number of non-livestock animals allowable on such parcel. However, this provision is in no way intended to limit the number of livestock animals allowable on such parcels. For purposes hereof, except for horses, animal units shall be calculated in the same fashion as under Wis. Adm. Code NR § 243.05, including the use of live weight conversion for animal types not listed in the conversion tables. Horses shall have an animal unit equivalency factor of 1.1.
- (4) Keeping or raising non-livestock farm animals (except for large scale non-livestock operations listed specifically as a conditional use under section 82-227(~~75~~), or kennels described under section 10-7(b) which shall be permitted only as a conditional use under section 82-227(~~53~~)), on parcels of 20 acres or more with no animal unit restrictions.
- (5) Single-family ~~residences~~dwellings on lots of five acres or more, unless subdivided into plats or certified survey lots and approved by the plan commission.

...

Section 82-227 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-227. - Conditional uses.

The following shall be conditional uses in the A-1 agricultural district:

- ~~(1) Extraction of sand, gravel and other raw materials.~~

- (21) Wind energy systems, subject to the requirements set forth in section 82-718.
- (32) Kennels, as described in section 10-7(b), on parcels of no less than 20 acres. Any conditional permit granted for a kennel may only be issued if the applicant presents substantial evidence that the physical conditions of the property, or specific improvements to be installed by the applicant, will allow for the applicant to be able to reasonably control smell, noises, or other nuisances in relation to neighboring properties. Further, any conditional use permit granted for a kennel hereunder shall be subject to the mandatory condition that if the parcel upon which such kennel is placed is subdivided, causing the remaining parcel to be less than the required 20 acres, the conditional use permit shall terminate. Further, the permit applicant must consent to a memorandum of such condition being recorded upon the title to the parcel at the applicable county register of deeds office on a form approved by the city attorney.
- (43) Siting of new livestock facilities of 500 or more animal units, or expansion of a pre-existing or previously approved livestock facility if the number of animal units kept at the expanded livestock facility will be:
- a. Five hundred or more animal units; and
 - b. Higher than the maximum number previously approved or, if no maximum number was previously approved, a number that is 20 percent higher than the number kept on the effective date of this subsection.

A conditional use permit for this use shall only be granted pursuant to the requirements and standards of Wis. Adm. Code ATPC § 51 subch. II, and shall be pursuant to the application procedures and requirements of Wis. Adm. Code ATPC § 51 subch. III. All conditional use permits granted for this use shall be subject to the mandatory conditions specified in Wis. Adm. Code ATPC § 51.08. Further, notwithstanding the above, any livestock facilities specifically stated as exempt from a local approval under Wis. Adm. Code ATPC § 51 shall be exempt from requiring a conditional use permit hereunder, and such exempt livestock facilities shall accordingly be considered permitted uses under this division.

- ~~(5) Large scale non-livestock operations, such as mink farms, which involve potential nuisance or conditions requiring special waste disposal and treatment facilities (i.e. lagoons and/or overhead irrigation disposal systems).~~

Division 5 (A-2 Farmland Preservation District), and all sections therein, of Article III of Chapter 82 of the Code of Ordinances of the City of Berlin shall be repealed in their entirety, and such division shall be reserved.

Section 82-287 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-287. - Conditional uses.

In the R-1 district, conditional uses shall be as follows:

- (1) A bed and breakfast establishment. A mandatory condition of approval for a bed and breakfast establishment shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Bed and breakfast establishments granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access. Any conditional use permit granted for a bed and breakfast establishment shall specify whether rentals of less than seven consecutive days are allowed as an exception to section 82-290.
- (2) Adaptive reuse of churches for any use identified as a permitted or conditional use in B-1 or B-2 business districts, or any mixture of such uses with permitted or conditional uses in the R-1 district.
- (3) A tourist rooming house. A mandatory condition of approval for a tourist rooming house shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Tourist rooming houses granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access. Any conditional use permit granted for a tourist rooming house shall specify whether rentals of less than seven consecutive days are allowed as an exception to section 82-290.

Section 82-289 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-289. - Area regulations.

Area regulations in the R-1 district shall be as follows:

- (1) *Front yard.* There shall be a front yard having a depth of not less than 25 feet on each lot, provided ~~a special exception permit may be granted by the board of appeals allowing that~~, for situations where 40 percent or more of the frontage of one side of the block is less than 25 feet, buildings ~~to~~may be erected or structurally altered to conform to the average front yard depth for ~~the~~that block, ~~or another depth in the board's discretion, but such permit shall only be granted for situations where 40 percent or more of the frontage of one side of the block is less than 25 feet.~~

...

Section 82-290 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 82-290. – Rentals of dwellings for less than seven consecutive days prohibited in R-1 District without conditional use permit.

In the R-1 District, the owner of a dwelling unit may not rent out such dwelling for occupancy of less than seven consecutive days, unless pursuant to a conditional use permit authorized pursuant to section 82-287.

Section 82-311 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-311. - Use regulations.

The R-2 residential district is intended to provide for a quality residential development of a higher density than the R-1 district. The following uses shall be permitted in the R-2 district:

...

- (2) Two-family dwellings, ~~including manufactured homes~~. Mobile homes, excluding manufactured homes, shall not be permitted.

...

Section 82-312 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-312. - Conditional uses.

In the R-2 district, conditional uses shall be as follows:

- (1) A bed and breakfast establishment. A mandatory condition of approval for a bed and breakfast establishments shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Bed and breakfast establishments granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access. Any conditional use permit granted for a bed and breakfast establishment shall specify whether rentals of less than seven consecutive days are allowed as an exception to section 82-315.
- (2) Adaptive reuse of churches for any use identified as a permitted or conditional use in B-1 or B-2 business districts, or any mixture of such uses with permitted or conditional uses in the R-2 district.
- (3) A tourist rooming house. A mandatory condition of approval for a tourist rooming house shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Tourist rooming houses granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access. Any conditional use permit granted for a tourist rooming house shall specify whether rentals of less than seven consecutive

days are allowed as an exception to section 82-315.

Section 82-314 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-314. - Area regulations.

Area regulations for the R-2 district shall be as follows:

- (1) *Front yard.* There shall be a front yard having a depth of not less than 20 feet on each lot, provided ~~a special exception permit may be granted by the board of appeals allowing that, for situations where 40 percent or more of the frontage of one side of the block is less than 20 feet, buildings to~~ may be erected or structurally altered to conform to the average front yard depth for ~~the~~that block, ~~or another depth in the board's discretion, but such permit shall only be granted for situations where 40 percent or more of the frontage of one side of the block is less than 20 feet.~~

...

Section 82-315 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 82-315. – Rentals of dwellings for less than seven consecutive days prohibited in R-2 District without conditional use permit.

In the R-2 District, the owner of a dwelling unit may not rent out such dwelling for occupancy of less than seven consecutive days, unless pursuant to a conditional use permit authorized pursuant to section 82-312.

Section 82-336 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-336. - Use regulations.

The R-3 residential district is intended to provide for a pleasant residential development of a higher density than the R-2 district. The following uses shall be permitted in the R-3 district:

...

- (2) Multiple-family dwellings ~~housing, including manufactured homes~~. Mobile homes, excluding manufactured homes, shall not be permitted.

...

- ~~(4) — Lodginghouses.~~

Section 82-337 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-337. - Conditional uses.

In the R-3 district, conditional uses shall be as follows:

- (1) A bed and breakfast establishment. A mandatory condition of approval for a bed and breakfast establishments shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Bed and breakfast establishments granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access. Any conditional use permit granted for a bed and breakfast establishment shall specify whether rentals of less than seven consecutive days are allowed as an exception to section 82-340.
- (2) Adaptive reuse of churches for any use identified as a permitted or conditional use in B-1 or B-2 business districts.
- (3) A tourist rooming house. A mandatory condition of approval for a tourist rooming house shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Tourist rooming houses granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access. Any conditional use permit granted for a tourist rooming house shall specify whether rentals of less than seven consecutive days are allowed as an exception to section 82-340.

Section 82-340 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 82-340. – Rentals of dwellings for less than seven consecutive days prohibited in R-3 District without conditional use permit.

In the R-3 District, the owner of a dwelling unit may not rent out such dwelling for occupancy of less than seven consecutive days, unless pursuant to a conditional use permit authorized pursuant to section 82-337.

Section 82-360 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-360. - Use regulations.

The B-1 business district is intended to accommodate retail and office uses which are characteristic of the major shopping streets of the downtown area. To preserve the B-1 district for its intended use, no residential occupancy of first floor or ground floor stories shall be permitted. The following are permitted uses in the B-1 district:

...

- (3) ~~Hotels and motels.~~

...

Section 82-361 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-361. - Conditional uses.

In the B-1 district, conditional uses shall be as follows:

- (1) Churches.
- (2) A bed and breakfast establishment. A mandatory condition of approval for a bed and breakfast establishments shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Bed and breakfast establishments granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access.
- (3) A tourist rooming house. A mandatory condition of approval for a tourist rooming house shall be that such establishment must provide a minimum of one improved off-street parking space for each room offered for occupancy. Tourist rooming houses granted a conditional use permit hereunder shall not otherwise be subject to the other requirements of this chapter with respect to traffic, parking and access.

Section 82-365 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-365. - Special exceptions from front yard, side yard and rear yard area regulations for certain lots.

- (a) The board of appeals shall be authorized to grant special exception permits to applicants authorizing deviation from the front yard, side yard and rear yard area regulations established under subsections 82-363(1), (2) and (3) for lots located within ~~the B-1 business district~~the city's business improvement district created under Wis. Stats. § 66.1109, or if the city's business improvement district is ever terminated, then lots located within the area formerly designated as the city's business improvement district on the date of the district's termination.
- (b) The board of appeals is encouraged to grant such special exception permits where the applicant presents ~~sufficient proof~~substantial evidence that complying with the applicable area regulation would be contrary to the stated purposes and spirit of this chapter. Specifically, the board is encouraged to grant a special exception permit if an applicant presents ~~sufficient proof~~substantial evidence that deviating from the applicable area regulation would cause the proposed finished structure to be more

harmonious and appropriate in appearance with the existing or intended character of the general vicinity than if the applicable area regulation were strictly complied with. For example, if a nonconforming but historic building in the designated downtown area is destroyed or is in need of substantial repairs, the board of appeals is encouraged to grant a special exception permit allowing the landowner to rebuild or repair the structure in a fashion which preserves the historic location and appearance of the former structure, so long as doing so would remain harmonious with the surrounding neighborhood and the application otherwise meets the requirements of this section.

...

- (d) In granting special exception permits hereunder, the board of appeals may impose reasonable and, to the extent practicable, measurable conditions upon the applicant in order to meet the standards of this section. Such conditions may include, but are not limited to, requirements pertaining to lot coverage, lot area, setbacks, off-street parking and loading, pedestrian and vehicular accessways, storage, fencing, screening, landscaping, open space, height limitations, lighting and hours of operation.

Section 82-386 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-386. - Use regulations.

The B-2 business district is intended to provide for the orderly and attractive grouping of commercial activities of a more general retail and wholesale nature. The following shall be permitted uses in the B-2 district:

...

(13) Adult and child day care facilities.

(14) Filling stations.

(15) Hospitals of all types.

~~(13)~~16 Accessory buildings and uses customarily incidental to the uses set forth in subsections (1)—~~(12)~~15 of this section.

Section 82-387 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-387. - Conditional uses.

In the B-2 district, conditional uses shall be as follows:

~~(1) Adult and child day care facilities.~~

~~(2) Filling stations.~~

~~(3) Wholesale fish markets.~~

~~(4) Mental or psychiatric hospitals.~~

~~(5) General hospitals of all types.~~

~~(6) Public or private utility structures. An application for a conditional use permit for such structures shall not be approved unless it complies with the conditions and standards set forth in other provisions of this chapter.~~

~~(7) Cellular and microwave relay structures. An application for a conditional use permit for such structures shall not be approved unless it complies with the conditions and standards set forth in Article VI of this Chapter.~~

~~(8) Commercial miniwarehousing (nonindustrial).~~

Section 82-411 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-411. - Use regulations.

The M-1 light manufacturing district is intended to provide for light manufacturing uses which would not be detrimental to the surrounding area or to the community as a whole by reason of noise, smoke, odor, traffic, physical appearance or other factors deemed appropriate for the type of use involved; and subject to such regulatory controls as will reasonably ensure compatibility in such respect. The following shall be authorized uses in the M-1 district:

...

(15) Manufacturing of wood products, not including painting or coating of the product.

(16) Plastic injection molding and 3D Printing, not including the chemical mixture or production of the plastics.

~~(17)~~ Other uses of a similar character to the uses set forth in subsection (a)(1)—~~(1416)~~ of this section, but no more objectionable by reason of odor, dust, smoke, gas fumes, noise or vibration.

~~(18)~~ Miniwarehousing (commercial, nonindustrial, unless as an accessory use which is customary and in connection with any other authorized use under this division).

~~(19)~~ Accessory uses customary and in connection with the uses set forth in subsection (a)(1)—~~(18)~~ of this section.

Section 82-412 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-412. - Conditional uses.

In the M-1 light manufacturing district, conditional uses shall be as follows:

- (1) Retail dDay care centers.
- (2) Retail fFilling stations.
- (3) Hospitals of all types.
- (4) Utility offices, installations and structures which are not appurtenant or accessory to an authorized use under this division.
- (5) Schools of all types.
- ~~(6) Extraction of sand, gravel, and other raw materials.~~
- ~~(7) Health clinics.~~
- ~~(8) Manufacturing of wood products, not including painting or coating of the product, and the manufacturing of paper pulp and plastics.~~

Section 82-414 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-414. - Height regulations.

In the M-1 district, no building shall be erected or structurally altered to exceed 50 feet in height, ~~unless such height shall have been approved by the board of appeals after a public hearing, and any such decision by the board shall be consistent with the purpose, spirit and intent of this chapter.~~

Section 82-436 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-436. - Use regulations.

- (a) The M-2 medium manufacturing district is intended to provide for more intensive uses than found in the M-1 light manufacturing district, but less intensive than is found in the M-3 heavy manufacturing district. As in the M-1 district, the uses are designated in this section on the basis of actual physical and operational characteristics which would not be detrimental to the surrounding area or community as a whole by reason of noise, dust, smoke, odor, traffic, physical appearance or other factors deemed appropriate for the type of use involved, and subject to such regulatory controls as will reasonably ensure compatibility in such respect. The following are permitted uses for the M-2 district:

...

- (7) Leather assembly and manufacturing, with no tanning.

- ~~(8)~~ Storage of explosives, flammable gases and liquids in accordance with all state and federal licensing and other requirements.
 - ~~(79)~~ Other uses of a similar character to the uses set forth in subsection (a)(1)—(6) of this section, but no more objectionable by reason of odor, dust, smoke, gas, fumes, noise or vibration.
 - ~~(810)~~ Accessory uses customary and in connection with any authorized use under this division.
 - ~~(911)~~ Manufacturing of food products, including bakeries and candy manufacturers, but excluding meat, sauerkraut, cabbage by products, vinegar, yeast and the rendering of fats and oils.
 - ~~(1012)~~ All uses permitted in the M-1 district as set forth in [section 82-411](#).
-

Section 82-437 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-437. - Conditional uses.

In the M-2 medium manufacturing district, conditional uses shall be as follows:

- ~~(1)~~ Drop forge and foundries.
- ~~(2)~~ Leather and tanning industries.
- ~~(3)~~ Manufacturing of paper, pulp and plastics.
- ~~(41)~~ Storage of wrecked and dismantled vehicles and junk, explosives, flammable gases and liquids in quantities. Any conditional permit granted for storage of wrecked or dismantled vehicles or junk, explosives, flammable gases or liquids in quantities may only be issued if the applicant presents substantial evidence that the physical conditions of the property, or specific improvements to be installed by the applicant, will allow for the applicant to be able to reasonably control smell, noises, vibration, or other nuisances in relation to neighboring properties.
- ~~(52)~~ Retail dDay care centers.
- ~~(63)~~ Retail fFilling stations.
- ~~(74)~~ Hospitals of all types.
- ~~(85)~~ Utility offices, installations and structures which are not appurtenant or accessory to an authorized use under this division.
- ~~(96)~~ Schools of all types.

- (10) ~~Extraction of sand, gravel and other raw materials.~~
- (117) Health clinics.
- (128) Painting and coating facilities. Any conditional permit granted for painting or coating facilities may only be issued if the applicant presents substantial evidence that the physical conditions of the property, or specific improvements to be installed by the applicant, will allow for the applicant to be able to reasonably control smell, noises, vibration, or other nuisances in relation to neighboring properties.
- (139) Storage of and warehousing to store fuel and materials in accordance with all state and federal licensing and other requirements. The term "materials" includes recyclable materials as such term is defined in Wis. Stats. § ch. 287 and Wis. Admin. Code ch. NR 544, as it pertains to tires, shredded tires, yard waste and other compostable materials, but shall not include wrecked and/or dismantled vehicles or junk. Further, any conditional permit granted for storage of and warehousing to store fuel and materials may only be issued if the applicant presents substantial evidence that the physical conditions of the property, or specific improvements to be installed by the applicant, will allow for the applicant to be able to reasonably control smell, noises, vibration, or other nuisances in relation to neighboring properties.
- (14) ~~The rendering of fats and oils and the distillation of bones or related uses which are allowed only in Section 11 of the Town of Berlin, Green Lake County, Wisconsin.~~

Section 82-439 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-439. - Height regulations.

In the M-2 district, no building shall be erected or structurally altered to exceed 50 feet in height, ~~unless such height shall have been approved by the board of appeals after a public hearing, and any such decision by the board shall be consistent with the purpose, spirit and intent of this chapter.~~

Section 82-462 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-462. - Conditional uses.

In the M-3 heavy manufacturing district, there shall be no conditional uses~~all other manufacturing uses shall be conditional uses which may be regulated in order to control odor, dust, smoke, gas, fumes, noise and vibration, in addition to other factors deemed appropriate for the type of use involved.~~

Section 82-464 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-464. - Height regulations.

In the M-3 district, no building shall be erected or structurally altered to exceed 50 feet in height, ~~unless such height shall have been approved by the board of appeals after a public hearing, and any such decision by the board shall be consistent with the purpose, spirit and intent of this chapter.~~

Division 14 (R-MH Manufactured Home District), and all sections therein, of Article III of Chapter 82 of the Code of Ordinances of the City of Berlin shall be repealed in their entirety, and such division shall be reserved.

Section 82-560 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-560. - Outdoor lighting.

...

- (b) *Special exception permit for recreational lighting.* The board of appeals shall be authorized to grant special exception permits authorizing applicants to deviate from the height restrictions established in paragraph (a) for recreational uses, such as athletic fields, if the applicant presents substantial evidence that such deviation is reasonably necessary to accommodate the proposed recreational usage. However, the board of appeals shall not grant special exception permits under this section if the board finds that deviating from the applicable standards would:
- (1) Be hazardous or unreasonably disturbing to existing or future neighboring uses;
 - (2) Be unreasonably detrimental to property in the immediate vicinity or the community as a whole;
 - (3) Cause any interference with traffic, traffic safety, or traffic visibility, on surrounding public streets, alleys, roads or sidewalks; or
 - (4) Be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

In making a determination involving the above-mentioned standards, the board of appeals shall give greater deference to recreational facilities that serve the general public as opposed to purely private facilities. In granting special exception permits hereunder, the board of appeals may impose reasonable and, to the extent practicable, measurable conditions upon the applicant in order to meet the standards of this section. Such conditions may include, but are not limited to, requirements pertaining to setbacks, fencing, screening, landscaping, height limitations, light hooding and shielding, wattage or lumen limitation, and hours of operation.

...

Section 82-567 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-567. - Fences.

...

(c) *Height.*

- (1) In residential districts, only open or lattice type fences or hedges shall be permitted. Residential fences in side and rear yards shall not exceed six feet in height, with the exception of any portion of side yard fences within the front yard setback area, which shall not exceed four feet in height, without a conditional use permit. Residential fences and hedges located in the front yard or in the front yard setback area shall not exceed four feet in height, without a ~~conditional use~~ special exception permit. A ~~conditional use~~ special exception permit for residential fences and hedges located in the front yard or within the front yard setback area may only permit the fence to be increased to a maximum of six feet in height, and may only be issued if the applicant presents substantial evidence that compliance with a lower height requirement would be unreasonably burdensome and that the increased height will not unreasonably interfere with traffic or pedestrian visibility or safety and otherwise complies with all requirements of article VI of this chapter.

...

Section 82-604 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-604. - Changes and substitutions.

...

- (b) The order of classification of uses, from highest to lowest, for purposes of this section, shall be as follows: C-1 and C-2 conservancy districts, A-1 ~~and A-2~~ agricultural districts, R-1, R-2 and R-3 residence districts, B-1 and B-2 business districts, M-1, M-2 and M-3 manufacturing districts, as such districts are permitted under this chapter. ~~Notwithstanding other provisions in this section to the contrary, no permitted or conditional uses shall be authorized in the A-2 agricultural preservation district which are not specifically authorized, permitted or conditional uses as set forth in article III, division 5, of this chapter.~~

...

Chapter 82, Article VI, of the Code of Ordinances of the City of Berlin shall be amended as follows:

ARTICLE VI. - CONDITIONAL USE AND SPECIAL EXCEPTION PERMITS

Sec. 82-636. - Purpose.

The development and execution of this article shall be based upon the division of the city ~~and the extraterritorial zoning area~~ into districts, within which districts the use of land and buildings, and the bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use of a particular location. Such uses, however, may be necessary or desirable to be allowed in a particular district, provided that due consideration is given to the location, development and operation of such uses. Such uses shall be classified as either conditional uses or special exceptions. All conditional uses and special exceptions shall require the approval by the board of appeals~~common council, and, in A-2 agricultural preservation districts, such approval shall be made only after the required findings as set forth in Wis. Stats. § 91.75(5) are made.~~

...

Sec. 82-638. - Permit procedure.

- (a) *Application.* Any person having a freehold or possessory interest entitled to exclusive possession, a contractual interest which may become a freehold interest or an exclusive possessory interest, and which is specifically enforceable on the land for which a conditional use or special exception is sought, may file an application for a permit to use such land for one or more of the conditional uses or special exceptions in the zoning district in which such land is located.
- (b) *Hearing.* Each application for a conditional use permit shall be heard by the board of appeals~~plan commission. The plan commission shall make a recommendation to the common council for adoption, denial or adoption with conditions attached. Final action on the application for a conditional use permit shall be taken by the common council.~~

Sec. 82-639. - Application required.

An application for a conditional use permit or a special exception permit shall be filed, in duplicate, on a form prescribed by the city. Application requirements shall be as generally prescribed in division 3 of article II of this chapter, unless other more specific procedures are expressly set forth in this Article. Upon receipt by the city, applications shall be administered as provided for all board of appeals matters as generally described in division 3 of article II of this chapter, unless other more specific procedures are expressly set forth in this articles~~such application shall be forwarded to the plan commission.~~ Such application shall include, where applicable:

- (1) A statement in writing by the applicant and ~~adequate~~substantial evidence showing that the proposed conditional use shall conform to the standards set forth in section 82-642 and any other requirement set forth in this Chapter.
- (2) Names and addresses of the applicant, owner of the site, architect, professional engineer, contractor and all property owners of record within 100 feet of the subject site.
- (3) Description of the subject site by lot, block and recorded subdivision, or by metes and bounds; address of the site; type of structure; proposed operation or use of the structure or site; number of employees; and the zoning district within which the site lies.
- (4) Plat of a survey, prepared by a registered land surveyor, showing all of the information required for a building permit, and existing and proposed landscaping.
- (5) Additional information as may be required by the ~~plan commission or other boards, commissions or officers~~zoning administrator or any other officer of the city, and/or by the board of appeals. The ~~plan commission~~board of appeals may require such other information as may be necessary to determine and provide for the enforcement of this chapter, including a plan showing contours and soil types; high water mark and groundwater conditions; bedrock, vegetative cover, specifications for areas of proposed filling, grading and lagooning; location of buildings, parking areas, traffic access, driveways, walkways, open spaces and landscaping; plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations.
- (6) Any pertinent information required to make a proper determination on such application.

Sec. 82-640. - Notice of application hearing.

Notice of the time, place and purpose of the hearing on an application for a conditional use permit shall be as described in section 82-124, except that given by publication for conditional use permit applications shall be of a class 2 notice rather than as a class 1 notice as provided in subsection 82-124(a)(3) for all other board of appeals matters~~under statute in the official city newspaper. Such notice shall also be sent to the applicant, zoning administrator, members of the common council and plan commission~~board of appeals, and the owners of record as listed in the office of the city assessor who are owners of property, in whole or in part, situated within 100 feet of the boundaries of the properties affected, and such notice shall be sent at least five days prior to the date of such public hearing. Failure to comply with the provision of this section shall not, however, invalidate any previous or subsequent action on the application.

Sec. 82-641. - Consideration of factors in granting permit.

- (a) When granting a conditional use or special exception permit, the ~~common council~~board of appeals shall take into consideration, in addition to the specific conditions provided in this article, the effect of the proposed use upon the health, safety and general welfare of occupants of surrounding lands. The ~~common~~

~~council~~board of appeals shall consider, among other things, the particular facts and circumstances of each proposed use in terms of the following standards, and shall find ~~adequate~~substantial evidence that such use on the proposed location will:

- (1) Be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the area.
 - (2) Not be hazardous or disturbing to existing or future neighboring uses.
 - (3) Not be detrimental to property in the immediate vicinity or to the community as a whole.
 - (4) Be adequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to adequately provide any such service.
 - (5) Have vehicular approaches to the property which shall be designed not to create interference with traffic on surrounding public streets, alleys, roads or sidewalks.
 - (6) Not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - (7) Not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 - (8) Not violate state or federal floodplain or wetland areas.
- (b) The applicant for a conditional use permit or special exception permit must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use, or special exception permit as applicable, are or shall be satisfied, both of which must be supported by substantial evidence. The board of appeal's decision to approve or deny the permit must be supported by substantial evidence. The ~~common council~~, with the recommendation of the ~~plan commission~~, board of appeals may require additional ~~standards~~requirements and conditions that may be deemed necessary in order for the conditional use or special exception requested to meet the standards of this article. Such additional ~~standards~~requirements and conditions may include, but not limited to, requirements pertaining to lot coverage, lot area, setbacks, off-street parking and loading, pedestrian and vehicular accessways, storage, fencing, screening, landscaping, open space, height limitations, lighting and hours of operation. However, any requirement or condition imposed by the board of appeals must be related to the purpose of the ordinance and be based on substantial evidence. All requirements and conditions imposed by the city must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. If an applicant for a conditional use permit or special exception permit

meets or agrees to meet all of the requirements and conditions specified in this article and those imposed by the board of appeals, the board of appeals shall grant the conditional use permit, or special exception permit as applicable.

~~Sec. 82-642. - Validity of permit.~~

~~If the common council approves or conditionally approves an application for a conditional use permit, such approval shall become null and void within 12 months of the date of the common council's action unless the use is commenced, construction is underway or the current owner possesses a valid building permit under which construction is commenced within six months of the date of issuance of such permit, and which shall not be renewed unless construction has commenced and is being diligently prosecuted. Approximately 45 days prior to the automatic revocation of such permit, the zoning administrator shall notify the permit holder by certified mail of such revocation. The common council may extend such permit for a period of 90 days for justifiable cause, if application is made to the city at least 30 days before the expiration of the permit. The approved conditional use permit, unless otherwise specified in the conditions of approval, shall otherwise run with the land and shall remain in effect as long as the authorized use continues. Prior to the reestablishment of an abandoned use, a new conditional use permit, or special exception permit as applicable, shall be obtained under the terms of this section.~~

~~Sec. 82-643. - Fees.~~

~~A request for a conditional use permit shall be accompanied by plans indicating the location and plan of operation for the intended use, together with a fee as set forth in the fee schedule approved by the common council on file in the clerk-treasurer's office. Further, applicants shall be responsible to reimburse the city for all reasonable engineering, consulting and legal fees incurred as part of the permit review process.~~

~~Sec. 82-643. - Reserved.~~

~~Sec. 82-645. - Allowed conditional uses.~~

~~The uses allowed in each district by conditional use permit are enumerated throughout this chapter.~~

~~Sec. 82-646. - Bed and breakfast establishments.~~

- ~~(a) — Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

~~Bed and breakfast establishment means a place of lodging which provides six or fewer rooms for rent for more than ten nights in a 12-month period, is the owner's personal residence, is occupied by the owner at the time of rental and in which the only meal served to guests is breakfast.~~

- ~~(b) — Use. Bed and breakfast establishment shall comply with the requirements of this article.~~

- ~~(c) — Regulations.~~

- (1) ~~Compliance with state standards. All bed and breakfast establishments and licensees within the city shall be subject to and comply with all applicable statutes and administrative regulations governing bed and breakfast establishments.~~
- (2) ~~Register. Each bed and breakfast establishment shall provide a register, and require all guests to register their true names and addresses before quarters shall be assigned to such guests. The register shall be kept intact and available for inspection by a city representative for a period of not less than one year.~~
- (d) ~~Off-street parking. Bed and breakfast establishments shall provide a minimum of one improved off-street parking space for each room offered for occupancy. Establishments otherwise qualifying under this section regulating bed and breakfast establishments shall not be subject to the other requirements of this chapter with respect to traffic, parking and access.~~

Sec. 82-647. - Violation; penalties.

~~Any person who violates any provision of this article shall be subject to section 1-16.~~

Section 82-682(f) the Code of Ordinances of the City of Berlin shall be amended to eliminate the use of the term “motel” in the table. Specifically where it states, “Hotels, motels”, it shall now state, “Hotels”.

Section 82-716 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-716. - Satellite earth stations.

...

- (a) *Permit required; exemptions.* No owner shall build, construct, use or place any type of satellite earth station upon his premises until a permit shall has first been obtained from the zoning administrator. Small satellite dish antennas which are 24 inches or less in diameter are exempt from the regulations of this article, except that they shall still not be installed or extend in any public right-of-way, and shall be limited to no more than one unit per recorded lot in R-1 districts, and no more than one per dwelling unit in R-2 and R-3 districts, ~~except additional units may be permitted upon application for a special exception permit in nonresidential districts.~~

...

- (d) *Installation restrictions.* Satellite earth stations installed in any zoning district within the city shall comply with the following provisions:

...

(2) *Location and setbacks.*

- a. A satellite dish mounting post shall only be located in the rear yard of a residential lot, and at least 15 feet from any property line. ~~Placement of a satellite dish in a business or industrial district shall not be allowed unless a special exception is granted by the plan commission.~~

Article IX (Manufactured Home Communities), and all sections therein, of Chapter 82 of the Code of Ordinances of the City of Berlin shall be repealed in their entirety, and such article shall be reserved.

Section 82-797 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-797. - Definitions and rules for sign groups, categories and types.

This section provides the definitions and rules related to signs groups, sign categories, and sign types. Additionally, Figure 82-800a lists the permitted signs by zoning district. Figure 82-800b and Figure 82-800c provide the regulations related to the number and size for these signs as they are applicable to each zoning district and/or sign type. Any sign type not addressed by this article shall be construed to be prohibited.

...

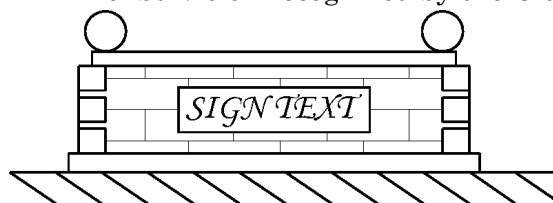
- (d) *Permanent miscellaneous signs group.* A permanent sign that is available to all sites in the city regardless of land use, with the exception of the community information sign, which is not permitted in R-1 Residential and R-2 Residential zoning districts.

...

- (3) *Optional miscellaneous sign category.* A sign category that conveys information which the City of Berlin finds essential to encourage place making, particularly related to officially-recognized historic places, officially-designated neighborhoods, and communication of information to the general public.

...

- b. *Neighborhood sign.* A type of optional miscellaneous sign typically indicating the name of a neighborhood, neighborhood association, or subdivision recognized by the City of Berlin. See illustration below.



Neighborhood Sign

~~1. Neighborhood signs shall require a conditional use permit.~~

~~21.~~ Neighborhood signs shall be configured as monument signs or dual post signs.

~~32.~~ Permitted sign lighting: See Figure 82-800d.

Section 82-800(b)(3), and Figures 800a and 800b in Section 82-800, of the Code of Ordinances of the City of Berlin shall be amended to eliminate all references to the R-MH Manufactured Home District in such tables. Also, the footnotes (specifically footnotes 1, 3, 5 and 6) to Figure 800d in Section 82-800 of the Code of Ordinances of the City of Berlin shall be amended to eliminate all references to the R-MH Manufactured Home District. Section 82-800(b)(3) of the Code of Ordinances of the City of Berlin shall also be amended to eliminate all references to the A-2 Farmland Preservation District in the table.

This ordinance shall then take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances.

Passed, approved and adopted this ____ day of _____, 20__.

ROLL CALL VOTE:

CITY OF BERLIN

____ AYES
____ NAYS
____ ABSENT

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: _____
Jodie Olson, City Clerk

Matthew G. Chier, City Attorney