

## ARTICLE XII - EXCEPTIONS AND SPECIAL PROVISIONS

### A. CONDITIONAL/SPECIAL USES PERMITTED

The Zoning Board of Appeals as hereinafter created may authorize the issuance of a conditional/special use permit for any of the following buildings or uses in any district:

1. Planned Unit Developments.
2. A parking lot provided that:
  - (a) The lot is to be used only for the parking of motor vehicles of owner, employees, customers, patrons or guests of the person or firm controlling and operating the lot, who shall be responsible also for its maintenance.
  - (b) No charge is to be made for parking on the lot.
  - (c) The lot is not to be used for sales, repair work or servicing of any kind.
  - (d) Entrance to and exit from the lot to be so located as to do the least harm to the residential district.
  - (e) No advertising sign or material is to be located on the lot.
  - (f) The Zoning Board of Appeals may specify the type of surface and provide for such other conditions as it may deem necessary to protect the surrounding area. The proposed lot will be subject to Article XV-Site Plan Review.

### B. ALTERATION OF EXISTING DWELLINGS

Nothing herein shall prevent alteration of a single family dwelling, existing at the time of enactment of this Ordinance in a Residence-R1A, Residence-R2, and Residence R-3 Districts to be converted to multiple family use, provided:

1. The yard dimensions must meet the yard requirements as required by the zoning regulations for new structures in that district;
2. That no dwelling unit shall have less total floor area than one thousand (1,000) square feet;
3. That no living quarters are placed in a basement or in any other room or space having less than six (6) feet of ceiling clearance above the average outside ground level;
4. That there is no exterior alteration of the building except as may be necessary for safety or improved access to the building;
5. A zoning permit is required prior to conversion. The conversion may also be subject to review and approval by the Boardman Fire Department; and
6. There shall be three (3) parking spaces for each dwelling unit.

### C. HOME OCCUPATIONS

Home occupations, as an accessory use, shall be permitted within single-family dwellings within Agricultural, Residential R-1, Residential R-1A, Residential R-2, and Residential R-3 Districts under the following conditions and requirements:

Performance Standards - The home occupation shall comply with the following:

- a. Customer or client visits to a home occupation are limited to between the hours of 7:00 AM to 8:00 PM. No more than two customers or clients may be present at any given time. If the accessory use involves teaching or instructions, it is restricted to private instructions; classes not permitted
- b. The home occupation shall have no non-resident employees on the premises at any time. The use shall be conducted solely by a person residing on the premises.
- c. The home occupation shall be a personal service with no sale of merchandise and there shall be no change in the appearance of the structure and/or property which would alter or detract from the

residential atmosphere of the neighborhood.

- d. There shall be no commercial display visible from the street except a small professional name plate or announcement sign having maximum area of two (2) square feet;
- e. Off-street parking shall be provided for all vehicles

Permitted Uses - The following uses are permitted home occupations:

- a. Home offices for such professionals as an architect, doctor, broker, engineers, insurance agent, lawyer, realtor, accountant, writer, and salesperson.
- b. Personal services to including a barber shop, beauty parlor, manicurist, and catering service.
- c. Home office for a massage therapist, subject to the regulation of the State of Ohio.
- d. Music, dance, art, and craft classes, tutoring, and studios for artists, sculptors, musicians, photographers, and personal trainers.
- e. Workshops for a tailor, dressmaker, and milliner.
- f. Repair services, limited to watches, clocks, computers, and small electronic devices.

Prohibited Uses - The following uses are expressly prohibited as home occupations:

- a. Kennels.
- b. Hospitals, medical and dental clinics and veterinary clinics.
- c. Any eating and/or drinking establishments.
- d. Automobile, truck, recreation vehicle, boat or small engine repair.
- e. Undertaking and funeral homes.
- f. Retail sale of merchandise.
- g. Adult uses and sexually-oriented businesses.

Conditional Use - Any home occupation not specifically listed may be permitted as a conditional use subject to approval by the Board of Appeals. A home occupation proposed for one dwelling unit of a multi-family structure may be permitted as a conditional use subject to approval by the Board of Appeals. A home occupation proposed for a dwelling unit within an approved residential planned unit development may be permitted as a conditional use subject to approval by the Board of Appeals.

#### **D. OIL AND GAS WELL DRILLING**

It is the intent of this section to provide for the regulation of the exploration for, and the drilling and operation of oil and gas or oil and gas wells for the production of oil, gas or other hydrocarbons in gaseous or liquid form within the boundaries of Boardman Township, Mahoning County, Ohio, for the purpose of protecting the public's health, safety and welfare.

#### **DEVELOPMENT**

During the drilling stage, no other improvement or additional use shall be placed on the drilling unit. Following initiation of production, as approved by the Township, such additional improvements and uses as conform to the zoning code may be initiated on the drilling unit, subject to the restrictions of all other applicable laws and regulations of the Township, County and the State of Ohio. No new structure shall be located within 100 feet of any well site within the drilling unit or any land contiguous thereto, until such time as the well is plugged and abandoned in the manner prescribed by the Division. In this instance, new structures are defined as any building intended for habitation or any public building intended for use as a place of resort, assembly, education, entertainment, lodging- trade, manufacture, storage, traffic, or occupancy by the public. Wells regulated by the Division are not included in this definition. The well site shall include the oil and/or gas well, the tank battery,

separators, compressor stations, heating or other equipment, and residual pits or contaminated areas that have been used for the storage of brine and other oil field wastes and where said wastes have been buried on site.

The oil and/or gas well, the tank battery, separators, compressor stations, heating or other equipment shall be buffered with pine trees measuring six (6) feet in height planted six (6) feet on center or arborvitae measuring four (4) feet in height planted four (4) feet on center.

### **E. SWIMMING POOLS**

A receptacle for water having a water surface area of more than one hundred (100) square feet and a depth greater than twenty-four (24) inches shall be considered to be a private swimming pool for the purpose of this ordinance and shall be subject to the following restrictions:

A Zoning Permit shall be required for such pool, and these specifications shall apply to all lands encompassed within zoning ordinance, irrespective of how zoned.

#### **1. PERMANENT IN-GROUND SWIMMING POOL**

- (a) No portion of such pool shall be permitted to be closer than ten (10) feet from any side property line, nor closer than ten (10) feet to the rear property line.
- (b) The pool area shall be entirely enclosed by a fence. All fence openings into the pool area enclosure shall be equipped with doors or gates equipped with self-closing and self-latching devices. The fence and gate shall be not less than four (4) feet and not over six (6) feet in height above ground level, commencing at grade level and extending vertically.
- (c) If pool structure is less than four (4) feet above ground it shall be deemed to be a permanent in-ground pool and the rules of paragraph (a) shall apply.

#### **2. PERMANENT ABOVE GROUND SWIMMING POOLS FOUR FEET (4') OR ABOVE**

- (a) No portion of such pool shall be permitted to be closer than ten (10) feet from any side property line, nor closer than ten feet (10) to the rear property line.
- (b) All entrance gates shall be equipped with self-closing and self-latching devices.

#### **3. TEMPORARY PORTABLE SWIMMING POOLS SUMMER USE ONLY**

- (a) "Summer use only" means the pool cannot be erected before May 1st and must be dismantled by October 1st. If a temporary portable pool is left up beyond the above-mentioned dates it becomes a permanent pool and the rules for permanent above ground pools shall apply.
- (b) No portion of such pool shall be permitted to be closer than ten feet (10') from any side property line, nor closer than ten feet (10') to the rear property line.
- (c) No zoning permit shall be required for a temporary portable swimming pool.
- (d) Temporary pool enclosures must comply with the forty-foot (40) rear yard requirements and cannot be located nearer than twenty (20) feet from any side yard.

### **F. FENCES**

No fence, wall or hedge shall be permitted between the front building line and the street in any business, commercial or industrial district. However, any back or side property line abutting residential areas shall have a wood or vinyl type fence of sufficient height to remove from view any parked cars, inventory, trash containers. All outstanding posts and braces must be placed at the interior side of the fence with the finished side facing outwards towards abutting properties.

The Boardman Township Zoning Inspector may utilize discretion in approving, in place of a solid type fence, a living fence that has staggered plant materials of no less than six (6) feet in height that will grow to be a solid,

living fence within three (3) years. There is no maximum height restriction on a living fence. Said living fences and related trees and/or landscaping must be replaced at an owner's expense if, in the opinion of the Zoning Inspector, said living fence is determined to be dead, diseased or dying and not accomplishing the purpose of a living fence.

The requirements for solid and living fences set forth in Article XV, "Site Plan Review", Part Three, "Model Design Guidelines and Performance Standards", Sections C-6 and C-7 must also be adhered to when site plan review procedures are applicable to a permit application.

No solid or living fence shall be placed in such a manner as to obstruct the view of motorists and/or pedestrians.

### G. FRONTAGE UPON STREET

Every dwelling unit hereafter constructed shall have full lot frontage upon a dedicated and improved right-of-way. Every main building hereafter built, erected or altered, shall have a clear and unobstructed frontage upon a street, amounting to not less than half the width of the building.

### H. SIGNS AND BILLBOARDS

#### A. PERMITS REQUIRED

1. No signs shall be erected that do not conform to these regulations.
2. A zoning permit is required prior to the erection of any sign unless specifically excepted by this regulation.
3. In addition to any submissions otherwise required by these regulations, an application for a sign permit must contain:
  - (a) A drawing showing the location of the sign and the measurements to the property lines for the lot on which the sign is to be located.
  - (b) A detail of the sign structure showing the size of sign, area of the sign face and the clearance of the sign face above grade.
4. Signs erected by the Township or other government units for the control of traffic safety and street identification or civic affairs may be erected without the issuance of a permit.

#### B. IN A RESIDENCE DISTRICT

1. No signs shall be permitted except as hereafter set out in this section:
2. The following signs are permitted:
  - (a) Professional signs not larger than two (2) square feet.
  - (b) Rooming and boarding house signs, not larger than two (2) square feet.
  - (c) Tourist home signs not larger than four (4) square feet.
  - (d) Signs appropriate to a public or quasi-public building.
  - (e) Signs identifying a building or use permitted under this zoning classification.
  - (f) Signs incident to legal process and necessary for the public welfare.
  - (g) Political campaign signs as further set out in these regulations.

#### C. IN ALL OTHER DISTRICTS

There shall be no limitation upon the size, character and placement of signs and billboards except that:

1. All signs, billboards or other advertising devices of any kind, in addition to conforming to all provisions of this ordinance, shall otherwise conform to all other pertinent ordinances of Mahoning County and all statutes and regulations of the State of Ohio.
2. No sign, billboard or advertising device of any kind, otherwise permitted in any district, shall be so located as to constitute a traffic or safety hazard.

3. No signs, billboard or advertising device of any kind are permitted which contain statements, words or pictures of obscene, pornographic, immoral character or which contain advertising that is false.
4. No signs, billboard or advertising device of any kind are permitted which are designed to imitate or resemble official traffic signs or traffic control devices.
5. No signs or advertising device of any nature are permitted to be posted on trees or utility poles.
6. Exclusive of time and temperature signs, no signs are permitted using projectors to display on a screen or signs with flashing lights, running lights or sequential lights.
7. No signs shall contain noise and/or odor emitting devices.
8. No signs, billboard or advertising device of any kind may be placed on public property of any kind including highway right-of-way.

#### D. ON PREMISES SIGNS

1. One (1) pole sign or one (1) monument sign may be installed on the premises advertising the product or services provided thereon.
2. Each parcel may erect one monument sign or pole sign. However, said signs must be positioned so as NOT TO BLOCK THE VIEW OF THE MOTORISTS OR PEDESTRIANS. No sign shall be affixed to the roof of any building.
3. Pole signs shall not exceed 25 feet in height. No pole sign more than sixteen (16') feet in height shall be placed closer to the front property line than the total vertical dimension of its height, and shall not be placed closer than two (2) feet to the side property line.
4. Pole signs less than 16 feet in height shall not be placed closer than two (2) feet from a property line.
5. A projecting sign or pole sign when installed, shall maintain a minimum clearance of eight (8) feet off grade.
6. No portion of the sign may extend into the street right-of-way.
7. On-premises signs, excluding wall signs, shall not exceed 200 square feet per side.
8. Community shopping centers, plazas, strip plazas, malls, automobile dealerships, and all other similar properties shall be permitted only one (1) pole sign or monument sign for identification purposes on a commercial parcel.
9. Community shopping centers, plazas, strip plazas, malls, automobile dealerships, and all other similar properties located on a corner lot shall be permitted to place two identification signs on a commercial parcel, one sign on each street frontage at an entrance.

#### E. WALL SIGNS

1. Wall signs are any signs affixed to any wall of a building.
2. Advertising display upon a barn or other building or surface shall be regarded as coming within these regulations.

#### F. OFF PREMISES SIGNS-BILLBOARDS

1. Said signs shall be located only on land, which is zoned agricultural, business, commercial or industrial.
2. Said signs shall conform to the following size and height limitations:
  - (a) Setback Front: such signs shall have a minimum setback of thirty-five (35) feet from front property line, measured from the point of sign structure or leading edge closest to the street.
  - (b) Other Setbacks: such sign shall be placed no closer than twenty-five (25) feet from all other property lines.
  - (c) Size: such signs may have two opposing sign faces each sign face not to exceed two hundred and fifty (250) square feet in area.
  - (d) Height: the highest point on the sign shall not exceed 25' above grade of street.
  - (e) Clear Area: clear area below sign face shall be a minimum of eight (8') feet.

- (f) Lighting: all lighting shall be located so as not to interfere with motorists or adjoining properties. Flashing, running or sequential lights are not permitted.
- (g) No sign shall be erected in such a manner as to cause the property to fall below the minimum required parking spaces.
- (h) Spacing:
  - (1) The placement of signs shall be so as to maintain a spacing distance of one thousand (1,000) feet between signs, along any single road corridor.
  - (2) In the event of intersecting streets, roads, or highways, billboard signs shall in no case be spaced closer than one thousand (1,000) feet from one another as measured from the base of each sign.
  - (3) No sign shall be placed closer than fifty (50) feet from any on-premise monument sign or pole sign.
  - (4) No sign shall be placed closer than Two hundred (200) feet from a residential district as measured from the base of the sign to the closest point of any residential district.
  - (5) No sign shall be placed closer than five hundred (500) feet of any publicly owned or maintained parkland, forest preserve, picnic ground, playground, swimming beach, elementary or secondary playground.
- 3. No off-premises sign shall be affixed to the roof of any building.

G. TEMPORARY SIGNS

- 1. All signs not constructed on permanent foundations and permitted, as here above set out shall be classified as temporary signs.
- 2. No temporary signs shall be erected on any public property, highway right of way, or utility pole.
- 3. No temporary sign shall be erected on any private parcel of real property without the express permission of the owner of such parcel of real property.

BANNERS AND FESTOONS

- 1. Banners and festoons are prohibited with the exception that one (1) banner, not to exceed sixty (60) square feet in dimension, may be displayed on any business, commercial or industrial building in conjunction with an allowable use.
- 2. Such banner sign must be affixed to the building. No banner signs are permitted to be displayed in any other manner.

PORTABLE SIGNS

- 1. No person shall place or park any vehicle, trailer or portable message sign on public or private property advertising the services or products at that or any other location or directing traffic to same.
- 2. This restriction is not intended to prohibit the use of signs painted on passenger vehicles, uses or trucks, which are used, in normal delivery or transportation.
- 3. Temporary portable signs may be used by churches, parks, libraries, schools and other public institutions for promotion of special events. Such use shall be limited to ten (10) days prior to the special event.

CASUAL SALES

- 1. Signs for sales of miscellaneous items of personal property may only be located on the premises of the sale.
- 2. Such signs shall be limited to four square feet in area.
- 3. Signs shall not be erected on utility poles or be placed in right-of-way limits.
- 4. Such signs shall be removed within three (3) days after date of advertised sale by the person erecting said sign.
- 5. No permits are required.

**REAL ESTATE SIGNS**

1. Signs advertising the sale or rental of real estate, where developed or undeveloped, must meet the following requirements:
  - a. If a sign is erected in a commercial, business or industrial district, it shall be limited to thirty-two square feet (32) in area.
  - b. The installation of such signs shall conform to other provisions of the Township Zoning Ordinance as to sign location, height and setback from property lines.
  - c. All such signs shall be maintained by the person advertised as agent, realtor, seller or owner.
  - d. The Zoning Inspector may order the removal of any sign that is not adequately maintained. Said order of removal shall be in writing and served by regular mail, on the person advertised as agent, realtor, seller or owner, and if said notice is not complied with within ten (10) days of the mailing of said notice, the Zoning Inspector may remove said sign at owner's expense.
  - e. If such signs are erected or installed in an R-1, R-1A, R-2, R-3 District, or Plan Unit Development, advertising the sale or rental of individual lots or residential units, said signs shall be limited to the size of 60 inches horizontal and 60 inches in height. Signs of this portable nature shall be maintained by the person or firm erecting the sign.
2. No permits are required for real estate signs.

**POLITICAL CAMPAIGN SIGNS**

1. Political Campaign Signs shall not be displayed earlier than thirty (30) days before a primary, general, or special election.
2. Political Campaign Signs shall be removed within five (5) days after the election for which they were posted.
3. Political Campaign Signs shall be posted only on private property.
4. Political Campaign Signs shall be limited to six (6) square feet in Residential Districts and twelve (12) square feet in all other districts.
5. Permits are not required for political signs.

**I. HEIGHT EXCEPTIONS**

Nothing herein contained shall be interpreted to limit or restrict the height of a church spire, radio or wireless tower, belfry, clock tower, chimney flue, water tank, elevator bulkhead, stage tower, scenery lift or similar structures.

**J. CONTINUANCE OF NON-CONFORMING USES**

Uses, not conforming to the regulations of the District in which they are located at the time of enactment of this ordinance, shall be known and regarded as "non-conforming". A non-conforming building or use may be continued subsequent to adoption of this ordinance provided there shall thereafter be no structural extension of, or addition to, such nonconforming building or use exceeding; (1) twenty-five percent (25%) of the cubical contents of the building or buildings as existing at the time of enactment of this ordinance, or (2) twenty-five percent (25%) of the existing service capacity if the use is conducted all or partly in the open. Subsequent to such allowable addition to building or expansion of use, there shall be no further additions or expansion except in accordance with the regulations for the district in which such non-conforming building or use is located.

A non-conforming use may not be changed to another non-conforming use disallowed by this ordinance in a district in which the original non-conforming use would be permitted.

**K. REVERSION OF NON-CONFORMING BUILDINGS AND USES**

A non-conforming building or use may not be altered, rebuilt or resumed, except in conformity with the regulations for the district in which it is located if: (1) It has once been changed to a conforming use; (2) Subsequent to the enactment of this ordinance, it has voluntarily been discontinued for a consecutive period of two (2) years or more, which shall be deemed an abandonment of the non-conforming use; and (3) if it has been destroyed by fire, explosion or other cause, and to the extent of seventy-five percent (75%) or more of either its value or its bulk. However, if a non-conforming building or use is destroyed by fire, explosion or other cause to the extent of less than seventy-five percent (75%) of either its value or its bulk, it may be rebuilt and reoccupied as a non-conforming building or use only if reconstructed with the same cubical content and upon the same plan as that of the original structure. The provisions in this paragraph shall not apply in respect to non-conformity in side and rear yards.

**L. PERMANENCE OF YARDS AND OTHER OPEN SPACES**

No space applied or necessary under this ordinance to satisfy the yard requirements in relation to any building, whether now or subsequently built, shall be counted as part of a yard or required open space in relation to any other building.

**M. TEMPORARY PERMITS**

Temporary permits may be authorized by the Board of Appeals for a period not to exceed one (1) year, for non-conforming uses incidental to housing and construction projects and including such structures and uses as storage of building supplies and machinery, and a real estate office located on the tract being offered for sale; provided such permits are issued only upon agreement by the owner to remove the structure or structures upon expiration of permit. Such permits are annually renewable over a period not to exceed three years.

**N. FIRE ESCAPES**

Nothing herein contained shall prevent the projection of an open fireproof fire escape or stairway into a rear or side yard for a distance not to exceed eight (8) feet.

**O. TRASH CONTAINERS**

In all business, commercial and industrial districts, and for all multiple dwelling units, trash dumpsters, whether permanent or portable, shall be placed within an enclosure consisting of three (3) walls no less than six (6) feet in height or no less than two (2) feet above the height of the container. This enclosure shall have the open end facing the rear wall of the structure or main use on the property. Trash enclosures and containers of sufficient size must be provided for each business to be serviced. All garbage and trash must be contained inside the container and not inside the enclosure. All containers for recyclable materials shall be contained inside a three (3) sided enclosure.

**P. ACCESS DRIVES**

In all business, commercial and industrial districts and for all multiple dwelling units, driveways and accesses to such properties shall be limited. Each access to such properties from main and secondary streets shall not exceed thirty-five feet (35') in width and shall be at least one hundred feet (100') from each other. In no case shall the public street, either main or secondary, be part of the traffic pattern of the establishment. If any such access drive is to be used in a "one-way" traffic pattern, lighted indicators no more than thirty-six inches (36") high shall be installed within the traffic lanes inside the property lines, and such access lane shall be provided with at least ten-foot (10') candles of illumination during the hours of operation.

**Q. PARKING**

In all agricultural, residence and business districts, no parking shall be permitted in the front yard except on the driveway; no trucks in excess of three-quarter (3/4) ton and no trailers in excess of twenty feet (20) in length shall be parked on the premises. Trailers less than twenty (20) feet in length, self-contained trailer vehicles; pick up trucks with self contained camper tops and boats and boat trailers may be parked on the premises but only in the rear yard between the side yard lines. At no time shall any trailers or self-contained motor homes be used as living quarters.

A motor home is hereby defined as a self-propelled vehicle, which can be used as a second vehicle and is governed by the provisions of these regulations only if said vehicle is to be stored on the premises.

**R. BOATS AND CAMPERS**

Boats, campers and trailers that are pulled by another vehicle may be parked on the premises but only on a hard surface of either concrete or asphalt. At no time shall boats campers and trailers be parked on a yard in any district. This section of the Ordinance is to be observed only between May 1st and October 1st. After October 1st, boats and boat trailers, and campers must be either stored in garage or stored off the property or stored in the rear yard.

**S. ABANDONMENT OF EQUIPMENT**

No abandoned, unlicensed, wrecked or dismantled automobiles, motorcycles, trucks, trailers, farm equipment, aircraft, furniture or other miscellaneous materials, shall be permitted to remain exposed on the premises in any district. "Not exposed" means out of sight such as inside a building not just covered by a tarpaulin.

**T. SATELLITE ANTENNAS****GROUND -MOUNTED SATELLITE DISH ANTENNAS**

- a. The maximum diameter of any ground-mounted satellite dish shall not exceed twelve feet;
- b. The maximum, height of any ground-mounted satellite dish shall not exceed fifteen (15) feet above the finished grade;
- c. The "Dish" portion of the apparatus shall have a surface of open mesh construction, and shall not have a solid surface;
- d. The satellite dish apparatus shall be painted a color, which complements its environment, and shall bear no advertisement, lettering, picture, or visual image;
- e. The apparatus shall not be located in a side yard or a front yard;
- f. The apparatus shall be mounted upon a solid concrete slab, and shall be constructed in such manner that it will withstand wind forces of up to 100 miles per hour;
- g. Any guide wires attached to a satellite dish apparatus shall be enclosed by an approved fence;
- h. Any driving motor shall be limited to 110-volt maximum power and shall be encased in a protective guard;
- i. All wiring between the apparatus and any other structure shall be placed underground in approved conduit;
- j. The apparatus shall be bonded to an approved (8) foot-grounding rod.
- k. All wiring and ground of the apparatus shall be in accordance with NEC;

**ROOF -MOUNTED SATELLITE DISH ANTENNAS**

- a. The maximum diameter of any roof-mounted satellite dish shall not exceed three (3) feet;
- b. The height of any roof-mounted satellite dish shall not exceed the roof height of the building upon which it is mounted by more than four (4) feet;

- c. The "Dish" portion of the apparatus shall have, a surface of open mesh construction, and shall not have a solid surface;
- d. The apparatus shall be painted a color, which complements its environment, and shall bear no advertisement, picture, lettering or visual image;
- e. All wiring and ground of the apparatus shall be in accordance with NEC;
- f. The apparatus, it's mounting and all supporting devices shall be constructed and erected in accordance with Mahoning County Building Department regulations directly upon the roof of the principal building, and shall not be mounted upon a spire, tower, turret, chimney, pole, or any appurtenances thereto attached;
- g. The satellite dish apparatus shall be so designed and installed as to withstand wind forces up to 100 miles per hour.

**U. SEXUALLY ORIENTED BUSINESS**

**WHEREAS**, the Boardman Township Trustees find that there is convincing documented evidence that **SEXUALLY ORIENTED BUSINESSES**, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

**WHEREAS**, it is recognized that **SEXUALLY ORIENTED BUSINESSES**, due t their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area: and

**WHEREAS**, the Boardman Township Trustees desire to minimize and control thee adverse effects and thereby protect the health, safety, and morals of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, the Board of Township Trustees has determined that location criteria alone do not adequately protect the health, safety and morals of the people of this Township; and

**WHEREAS**, it is not the intent of this amendment to suppress any speech activities protected by the First Amendment, but to enact a content neutral amendment which addresses the secondary effects of **SEXUALLY ORIENTED BUSINESSES**; and

**WHEREAS**, it is not the intent of the Boardman Township Trustees to condone to legitimize the distribution of obscene material, and the Trustees recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statues against any such illegal activities in the Township.

**BE IT ENACTED BY THE TRUSTEES OF BOARDMAN TOWNSHIP, OHIO;**

SECTION 1. PURPOSE AND FINDINGS.

- (1) Purpose. It is the purpose of this amendment to regulate **SEXUALLY ORIENTED BUSINESSES** in order to promote the health, safety, morals, and morals of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of **SEXUALLY**

ORIENTED BUSINESSES within the Township. The provisions of this amendment do not have the purpose or effect of imposing a limitation or restriction on the content of any communicative materials including sexually oriented materials. Further, it is not the intent of this amendment to restrict to deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is the intent nor effect of this amendment to condone or legitimize the distribution of obscene material.

Findings. The Township Trustees have received substantial evidence concerning the adverse secondary effects of adult uses of the community in finding incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986) and *Young v. American Mini Theatres*, 426 U.S. 50 (1976); in evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented in hearings before the Township Trustees; and on studies in other cities including New York, New York; Indianapolis, Indiana; and the State of Minnesota.

## SECTION 2. DEFINITIONS.

- (1) ADULT ARCADE means any place to which the public is permitted or invited where either or both (i) motion picture machines, projectors, video or laser disc players, or (ii) other video or image-producing devices are available, run via coin, token, or any form of consideration, to show images to five or fewer persons at one time; and where the images shown and/or live entertainment presented are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
  - (a) books, magazines, periodical or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - (b) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be characterized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purpose will not serve to exempt such commercial establishments from being characterized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- (3) ADULT CABARET has the meaning defined in the Resolution adopted by the Township Trustees on September 9, 2002, and titled "A RESOLUTION TO REGULATE AND REQUIRE THE REGISTRATION OF ADULT CABARETS AS AUTHORIZED BY O.R.C. § 503.52 et seq".
- (4) ADULT MOTION PICTURE THEATER means a commercial establishment where for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproduction are

regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

- (5) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (6) COVERING means any clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such as paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.
- (7) ESTABLISHMENT means and includes any of the following
  - (a) the opening or commencement of any Sexually Oriented Business as a business;
  - (b) the conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;
  - (c) the additions of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
  - (d) the relocation of any Sexually Oriented Business.
- (8) NUDE MODEL STUDIO means any place where a person who appears semi-nude or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.  
Nude Model Studio shall not include:
  - (a) a proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation.
  - (b) a private college or university that offers educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
  - (c) an establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; where in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one semi-nude model is on the premises at any one time.
- (9) NUDITY or STATE OF NUDITY or NUDE means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a full opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume, or covering that gives the appearance of or simulated any of these anatomical areas.
- (10) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (11) PRINCIPAL BUSINESS PURPOSE means forty percent (40%) or more of the stock in trade of business offered for sale or rental for consideration measured as a percentage of either the total linear feet of merchandise for sale or rental for consideration on display or the gross receipts of merchandise for sale or rental for consideration, whichever is the greater.

- (12) SEMINUDITY or SEMINUDE CONDITION or SEMINUDE means exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, a bathing shirt, or other clothing, provided that the areola is not exposed in whole or in part.
- (13) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers any form of consideration:
- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - (b) activities between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.
- (14) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.
- (15) SPECIFIED ANATOMICAL AREAS means:
- (a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  - (b) less than completely and opaquely covered human genitals, public region, buttocks or a female breast below a point immediately above the top of the areola.
- (16) SPECIFIED SEXUAL ACTIVITIES means any of the following:
- (a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
  - (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
  - (c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.
- (17) SUBSTANTIAL ENLARGEMENT of a Sexually Oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this amendment takes effect.

### SECTION 3.

SEXUALLY ORIENTED BUSINESSES are classified as follows:

- (1) adult arcades;
- (2) adult bookstores; adult novelty stores, or adult video stores;
- (3) adult cabarets;
- (4) adult motion picture theaters;
- (5) adult theaters;
- (6) nude model studios; and
- (7) sexual encounter centers.

### SECTION 4. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

- (1) A Sexually Oriented Business may be located only in accordance with the restrictions contained in (2) through (7) below.
- (2) A Sexually Oriented Business may be located only in an Industrial District or on a lot wholly contained in that portion of a Commercial District located on the south side of South Commons Place, beginning at a point 780 feet east of the South Avenue-South Commons Place intersection,
- (3) No Sexually Oriented Business may be established on any lot which abuts Market Street, South Avenue or U.S. Rte. 224.
- (4) No Sexually Oriented Business may be established within 500 feet of:
  - (a) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  - (b) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school included the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
  - (c) A boundary of a residential district as defined in the Zoning Regulation;
  - (d) A public park or recreational area has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Township which is under the control, operation, or management of either the Township or which is operated or managed by another public entity; or
  - (e) An entertainment business which is oriented primarily towards children or family entertainment.
- (5) No Sexually Oriented Business may be established within 500 feet of the property of a lot devoted to a residential use as defined in the Zoning Resolution.
- (6) No Sexually Oriented Business may be established, operated or enlarged within 500 feet of another Sexually Oriented Business.
- (7) Not more than one Sexually Oriented Business shall be established or operated in the same building, structure, or portion thereof, and the floor area of any Sexually Oriented Business in any building, structure, or portion thereof containing another Sexually Oriented business may not be increased.
- (8) For the purpose of subsections (4) & (5) of the Section, measurement shall be made in a straight line, without regard to the intervening structures, or objects, from the nearest portion of the building or structure used as the part of the premises where a Sexually Oriented Business is operated, to the nearest property line off the premises of a use listed in subsection (4) & (5).
- (9) For purposes of subsection (6) of this Section, the distance between any two Sexually Oriented Business shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

SECTION 5. ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENTAL REQUIREMENTS

- (1) Yard area and height provisions for a Sexually Oriented Business are those specified in Article X, §C of the Zoning Resolution.
- (2) Parking requirements for a Sexually Oriented Business are those specified in Article X, § D of the Zoning Resolution.

SECTION 6. SIGN REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

- (1) All signs shall be "wall signs" as defined in Article XII, §F of the Zoning Resolution, with a maximum allowable sign area of 40 square feet and shall comply with the standards specified in Article XII, §F, subsections C & D of the Zoning Resolution.
- (2) Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the procedures specified in Article XII, §F, Subsection A of the Zoning Resolution.
- (3) No merchandise or pictures of the products or entertainment n the premises shall be displayed in window areas or any area they can be viewed from the sidewalk or street in front of the building.
- (4) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

SECTION 7. SEVERABILITY

If any section, subsection, or clause of this amendment shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected. All amendments or parts of amendments in conflict with the provisions of this amendment are hereby repealed.

SECTION 8.

This amendment shall be enforced from and after November 27, 2002.

SECTION 9.

That it is found and determined that all formal actions of the Trustees concerning and related to the adoption of this amendment were adopted in an open meeting of the Trustees and that all deliberations of the Trustees were in me meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code Zoning Resolution, as amended.