

DANIEL M. MORRIGAN

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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO, EX REL.
BOSTON HILLS PROPERTY
INVESTMENT LLC, ET AL.

Plaintiffs,

vs.

VILLAGE OF BOSTON HEIGHTS, OHIO

Defendant.

CASE NO. CV-2007-07-4696

JUDGE AMY CORRIGALL JONES

**AMENDED AGREED
JUDGMENT ENTRY**

Plaintiff, State of Ohio ex rel. Boston Hills Property Investment LLC ("Plaintiff" or "BHPI"), and Defendant Village of Boston Heights ("Defendant" or "Village"), by and through their respective counsel of record, hereby agree and stipulate to this Amended Agreed Judgment Entry ("Agreed Entry"), which shall supersede and replace the Agreed Judgment Entry entered herein on April 14, 2008. This Agreed Entry resolves all issues arising out of this action and all other issues that may have been raised by the Parties in this action, relating to the development of Plaintiff's approximately +160 acres of undeveloped real estate (the "Property") in the northwest quadrant of the SR 8/E. Hines Road intersection.

The Parties hereby agree, and this Court does so order, that this matter be reduced to a judgment upon the terms of this Agreed Entry.

I. DEFINITIONS

A. "Village": The Village of Boston Heights, Summit County, Ohio.

B. **"Zoning Code":** The Planning & Zoning code of Village of Boston Heights, Summit County, Ohio, as amended through the 2006 Replacement Supplement, all relevant and incorporated provisions of which are attached hereto as Exhibit "B" and incorporated herein.

C. **"Plaintiff":** BOSTON HILLS PROPERTY INVESTMENT LLC, Plaintiff herein and its successors and assigns.

D. **"Developer":** BOSTON HILLS PROPERTY INVESTMENT LLC, Plaintiff herein and its successors and assigns.

E. **"Action":** This lawsuit entitled *State of Ohio ex rel. Boston Hills Property Investment LLC v. Village of Boston Heights, Ohio*, Summit County, Ohio Court of common Pleas Case No. 05 CIV 1680.

F. **"Property":** Refers collectively to the entire approximately +160 acres of undeveloped real estate described and depicted in Exhibit "A" hereto.

G. **"Use Designation Plan":** Refers to the plan prepared by Donald G. Bohning & Associates, Inc., attached hereto as Exhibit "C," generally depicting the intended uses for the primary land areas within the Property.

H. **"Integrated Commerce Center" or "ICC":** A land use designed to integrate retail, medical, hospital, office/warehouse and/or office uses and structures to provide a broad range of goods, services, and commercial activities in one location, for projects requiring a large area of land, proximately to adequate roads, and a marketing area sufficient to support its potential, subject to the provisions of this Agreed Entry.

I. **"Hospital":** An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the

institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

II. DEVELOPMENT GUIDELINES FOR THE PROPERTY

A. General Zoning Requirements: The Parties stipulate and agree that Plaintiff may develop the Property in accordance with the following development guidelines ("Development Guidelines"), including, where indicated, and with only those Zoning Code provisions expressly incorporated herein. No Zoning Code provision is incorporated into this Agreed Entry unless expressly identified as incorporated into this Agreed Entry. Zoning Code provisions that are incorporated by reference within the Zoning Code provisions, which are expressly incorporated in this Agreed Entry, shall be applicable to the Property if and only if those incorporated provisions are themselves expressly identified as also being applicable to the Property.

B. Uses: The Property shall be developed as follows. All uses listed hereunder, including all site and area requirements associated with such uses, regardless of their characterization in the current or any future Zoning Code or otherwise, shall for all future purposes, and except to the extent otherwise expressly qualified herein, be deemed permitted uses of the Property as stated herein, and may hereafter be altered, expanded, completed, constructed, re-constructed, substituted, and/or modified, as a permitted use in accordance with all of the provisions of this Agreed Entry. Notwithstanding the foregoing, although nothing in this Agreed Entry shall, or shall be construed to, deprive the Village of its discretion or authority to rezone the Property legislatively in the future, based upon changed circumstances. Such discretion and authority shall not be used to deprive Plaintiff of the benefits of this Agreed Entry.

1. Development Areas Within the Property. The Property shall for development purposes be segmented into three (3) Development areas, the sizes and boundaries are provided in this Agreed Entry.

a. Development Area 1: shall refer to the approximately sixty five (65) acres situated in the northwest quadrant of the intersection of E. Hines Hill Rd. and SR 8, as reflected as "Area 1" on the Use Designation Plan attached as Exhibit "C" hereto, and,

b. Development Area 2: shall refer to approximately sixty five (65) Acres situated in the northeast quadrant of the intersection E. Hines Hill Rd. and Olde Route Eight, as reflected as "Area 2" on the Use Designation Plan attached as Exhibit "C" hereto, and,

c. Development Area 3: shall refer to the remaining land (i.e., approximately 50 acres) along the western and northern boundaries of the Property, the buffer on E. Hines Hill Rd. and the detention basins, as reflected as "Area 3" and "Area 3 (Easement)" on the Use Designation Plan attached as Exhibit "C" hereto.

2. Uses of the Property: Except as modified in this Agreed Entry, the permitted uses of the property shall include the following:

a. Development Area 1: All "Permitted Uses" and "Conditionally Permitted Uses" described in the Zoning Code in:

i) Zoning Code Chapter 1157 (Office/Professional District), including hospital uses, except that bed and breakfast establishments described in § 157.03(a) shall remain a Conditionally

Permitted Use and that although permitted uses herein, the aggregate floor area of all uses denominated as "Conditionally Permitted Uses" in Chapter 1157.03(a) shall not exceed thirty percent (30%) of the aggregate usable floor area of all office buildings in Development Area 1;

ii) Zoning Code Chapter 1159 (General Business District), except that dry cleaning and laundry services described in § 1159.03(a), quasi-public institutions and organizations and/or operation, instructional and meeting facilities for non-profit uses described in § 1159.03(g), laundromats described in § 1159.03(j), funeral homes described in § 1159.03(1), and other compatible uses described in § 1159.03(m) shall remain Conditionally Permitted Uses, and that temporary buildings for uses incidental to construction work described in § 1159.03(d), although a permitted use herein, may remain on the Property only until substantial completion of construction has occurred, and that sporting goods stores described in § 1159.03(h), are a permitted use herein. Sale of power recreational vehicles shall be included. Outdoor displays of power recreational vehicles shall be permitted. General merchandise stores along with outdoor garden stores shall be permitted. Hotels that include lounges, restaurants and meeting rooms shall be permitted.

iii) Zoning Code Chapter 1160 (Retail Business District), except that taverns described in § 1160(d) and automobile sales described in § 1160(e) shall remain Conditionally Permitted Uses, and

that, although a Permitted Use, only one vehicle service station described in § 1160(a) may be constructed and/or operated in Development Area 1; and,

b. Development Area 2:

i) Zoning Code Chapter 1157 (Office/Professional District), including hospital uses, except that bed and breakfast establishments described in § 157.03(a) shall remain a Conditionally Permitted Use and that although permitted uses herein, the aggregate floor area of all uses denominated as "Conditionally Permitted Uses" in Chapter 1157.03(a) shall not exceed thirty percent (30%) of the aggregate usable floor area of all office buildings in Development Area 2; and,

ii) Zoning Code Chapter 1159 (General Business District), except that dry cleaning and laundry services described in § 1159.03(a), quasi-public institutions and organizations and/or operation, instructional and meeting facilities for non-profit uses described in § 1159.03(g), laundromats described in § 1159.03(j), funeral homes described in § 1159.03(1), and other compatible uses described in § 1159.03(m) shall remain Conditionally Permitted Uses, and that temporary buildings for uses incidental to construction work described in § 1159.03(d), although a permitted use herein, may remain on the Property only until substantial completion of construction has occurred, and that sporting goods stores described in § 1159.03(h), although a permitted use herein, must comply with the provisions of § 1159.03(h); and,

iii) Zoning Code Chapter 1160 (Retail Business District), except that taverns described in § 1160(d) and automobile sales described in § 1160(e) shall remain Conditionally Permitted Uses.

iv) Office/ Warehouse:

Permitted use shall include all office uses as well as distribution and wholesale establishments conducted from wholly enclosed buildings where the main use consists of the receiving and distribution of products for retail sale elsewhere, provided all of the following:

A. All vehicles other than automobiles for employees, customers or company use cars shall be parked, stored, or serviced in an open yard behind the building setback line and shall be completely screened from abutting streets by an evergreen hedge or a landscaped earth mound.

B. Performance Standards.

a. Structures. All permitted main and accessory uses and operations shall be performed wholly within an enclosed structure or buildings provided that:

i. Overnight parking of cargo carriers in the process of loading or unloading may be permitted in the side or rear yard if the yard is screened from the abutting streets as provided in paragraph II (B) (2) (b) (iv) (A), above;

- ii. Roof top equipment shall either be out of sight from the road right-of way or suitably screened from view; and
- iii. Fire prevention. Flammable liquids shall be stored, handled and used in compliance with the regulations set forth in Bulletin No.30L of the National Fire Protective Association: other materials stored in structures or yards shall be accessible to firefighting equipment and shall comply with other fire prevention codes of the Village.

C. Development Area 3: Permanently deed or easement restricted green/open space and detention basins, in accordance with paragraph II (C)(3) below.

3. ICC District Uses: The term "ICC District Uses," shall refer collectively to permitted uses of the Property described in paragraph II (B)(2)(a) and (b) above.

4. Accessory Uses: All uses, structures, and activities that are necessarily and customarily incidental and subordinate to the principal (either permitted or conditionally permitted) uses allowed in the ICC District shall be deemed to be included within the meaning of "permitted uses" for purposes of this Agreed Entry.

C. General Area Parameters:

Notwithstanding anything to the contrary in the Zoning Code or the specific provisions of it incorporated in this Agreed Entry, the ICC District shall include and be subject to the following area parameters:

1. Limitation of Area of Retail Business District Uses: Not more than sixty-five (65) acres in Development Area 1 shall be devoted to Retail Business District uses, provided, however, that retail sales and service uses permitted within a hospital or office building shall not be deemed a Retail Business District use for purposes of calculating the aforesaid sixty-five (65) acre Retail Business District use limitation.

2. Building Height: The maximum height of buildings in the ICC District shall be as follows:

a. Retail Store Buildings: The maximum height for any retail store building in the ICC District shall be forty (40) feet measured from finished grade at the first floor level of the main entrance of the building, provided, however, that HVAC and other mechanical equipment and architectural accent features such as skylights, towers, parapet walls and entry features, may extend higher; and,

b. Office Buildings:

i) The height of office buildings shall be governed by Zoning Code Section 1157.05;

ii) The maximum height for any medical office building or hospital in Development Area 1 shall be seventy-five (75) feet measured from finished grade at the first floor level of the main entrance of the building;

iii) HVAC and other mechanical equipment and architectural accent features such as skylights, towers, parapet walls and

entry features, on any building in Development Area 1, may extend higher than the limits stated in this paragraph II C (1) (b).

c. Office/Warehouse:

- i. The maximum height for any Office/Warehouse Building in the ICC District shall be fifty (50) feet measured from finished grade at the first floor level of the main entrance of the building, provided, however, that HVAC and other mechanical equipment and architectural accent features such as skylights, towers, parapet walls and entry features, may extend higher.

3. Intensity of Use: Sections 1157.07, 1159.07, and 1160.07 of the Zoning Code, shall not apply in the ICC District, and the following shall apply:

a. Limitation of Building Coverage: The aggregate area of footprints of all buildings constructed in Development Area 1 shall not exceed thirty-three (33%) of the total land area contained in Development Area 1.

b. Retail Stores:

i) Building Size: One retail store shall be permitted to have a maximum footprint of 125,000 square feet, a maximum of two-stories, and a maximum of 215,000 total square feet, and a second, single-story retail story shall be permitted with a maximum of 160,000 square feet; as modified by and subject to the foregoing;

ii) All remaining retail stores shall be limited to a single-story and shall not exceed 50,000 square feet per store. Multi-

tenant buildings, accommodating multiple stores, shall be expressly permitted; and,

iii) Notwithstanding the foregoing, if and only if a full-service hospital facility is constructed in Development Area 1, then Building Size regulations in Development Area 1 shall be modified to delete permission for a second, single-story retail store with a maximum of 125,000 square feet.

c. Office Buildings Other Than Hospitals:

i) Building Size: Office buildings, except for hospitals, shall be governed by Zoning Code Section 1157.07(c); and,

ii) Hospital/Medical Office Buildings: The maximum occupiable area of a hospital or hospital/medical office complex shall be 450,000 square feet, and no more than one such hospital or hospital/medical office complex shall exist in Development Area 1. Notwithstanding the foregoing, other buildings may exist in Development Area 1 devoted to similar medical and medically related purposes, which comply with this Agreed Entry and the provisions of the Zoning Code, where applicable.

d. Office/Warehouse Buildings (in Development Area 2):

i) Required lot area, width and setback from streets.

1. Minimum lot area shall be five (5) acres.

2. Minimum lot width shall be three hundred (300) feet.

3. The minimum setback from the right-of-way shall be not less than one hundred (100) feet.

4. The minimum setback of off street parking areas from the right-of-way shall be not less than seventy-five (75) feet.

5. All yards fronting on a public street shall be landscaped and maintained in a condition satisfactory to the village.

6. The minimum between any building and the side yard lot line shall not be less than fifty (50) feet.

7. No off-street parking, service or loading facilities shall be permitted within a minimum twenty-five (25) foot side yard.

8. The minimum distance between any building and the rear lot line shall not be less than seventy-five (75) feet.

9. No off-street parking, service or loading facilities shall be permitted within a minimum twenty-five (25) foot rear yard

4. Open Space:

a. Approximately fifty (50) acres of the Property shall be devoted to permanent open space and detention basins by deed restriction (the "Deed Restriction"), as shown approximately on the Use Designation Plan attached hereto as Exhibit "C" and referred to herein as Development Area 3. Except as provided below, the Deed Restriction shall limit the use of Development Area 3 to parkland and detention basins including only passive recreational activities such as walking paths. The Deed Restrictions shall not prohibit the Village and/or the Developer from mounding earth, planting or trimming trees, installation of an access drive, bike paths and utilities on the

property in Development Area 3 after the completion of the mounding as described herein. BHPI and the Village will negotiate in good faith to determine the precise language of the Deed Restrictions. In the event the Village, after such time as BHPI obtains a building permit for the construction of any building in Development Area 1 and/or 2, desires to own the property comprising Development Area 3, BHPI shall, upon the Village's written request, contribute to the Village the property comprising Development Area 3 by delivering to the Village either a Permanent Easement or a General Warranty Deed conveying such property, free and clear from all encumbrances, except easements, covenants, restrictions of record, taxes and assessments not yet due and payable, and the Deed Restrictions, whereupon the Village shall acknowledge receipt, in form reasonably satisfactory to BHPI, of the voluntary contribution of such property.

b. Notwithstanding the foregoing, the Village and BHPI agree that they will negotiate in good faith to determine a location or locations on the property in Development Area 3 in which BHPI may deposit and permanently mound top soil, provided that the mounding will not result in a diversion of water from the drainage areas in which such mounds are located, and provided further, that upon completion of such mounding, BHPI will plant ground cover.

5. Setbacks and Yards:

a. Front Yards: No buildings shall be constructed within seventy-five (75) feet from the right-of-way line of any dedicated roadway adjoining or within the ICC District. Parking shall be permitted in front yards.

b. Interior Roads: Subject to paragraph IIC(4)(a) above, Sections 1157.06, 1159.06, and 1160.06 of the Zoning Code shall have no application to the yards around buildings or structures adjacent to private interior roads within the ICC District, except that Sections 1157.06(d), 1159.06(d), and 1160.06(d) the Zoning Code shall apply in such District.

c. Setback of Buildings From the Westerly Boundary of Development Area 1: No retail building shall be constructed within four hundred (400) feet from the westerly boundary of Development Area 1 as depicted on Exhibit "C" (the "Western Boundary Setback"), and in the event that any office, office/warehouse or hospital building exceeds fifty (50) feet in height, measured from finished grade at the first floor level of the main entrances of the building, such building shall be setback three (3) feet from the westerly boundary of Development Area 1 for each one (1) foot of height of such building in excess of fifty (50) feet.

6. Streets: Private streets shall be permitted, but not required and, in either case, streets shall be designed within a minimum Right-of-Way width of sixty (60) feet, except for circulation drives in parking lots, and constructed in accordance with applicable engineering standards.

7. Off Street Parking: The following parking regulations shall apply in the ICC District, and shall be in lieu of the regulations under Sections 1151.07 and 1151.08 of the Zoning Code.

a. Parking shall be provided at the minimum ratio of five (5) spaces for every 1,000 square feet of aggregate floor space of sales area of all retail store and office buildings in Development Area 1;

b. Parking shall be provided at the rate of one (1) space for each bed in any hospital and at the minimum ratio of five (5) spaces for every 1,000 square feet of gross floor area of all medical office space in medical office buildings or hospitals, excluding stairwells, elevators, restrooms, janitorial storage space, and mechanical rooms;

c. The width of any parking unit consisting of two traffic lanes and two adjacent 90 degree-angle parking stalls shall be at least sixty (60) feet.

d. All parking stalls shall be nine (9) feet by eighteen (18) feet; and,

e. Zoning Code Section 1157.09 shall not apply in the ICC District.

8. Architectural Standards for Retail and Office Buildings

a. Style and Character

i) The architectural pattern for all development areas within this area shall reflect the character of the Connecticut Western Reserve style. This architectural style includes a variety of features lifted from a broad range of Early American styles, from Greek Revival, through Federal and Georgian to Queen Anne often referred to as 'farmhouse Colonial'.

ii) Significant buildings might feature solid brick construction, embellished with decorative stone coursings, caps and details, while the more utilitarian might consist of nothing more than simple log cabin type construction, or timber framing clad in lap siding of "roughly sawn boards." The overall architectural style may also incorporate formal balustrades, pediments, friezes, domes and spires

typical of churches, courthouses and city halls around the traditional New England town square or green. Accessory buildings may give way to the gabled-shingled roofs typical of homes and inns found in farmland settings.

iii) Colors of most structures shall range from the earthy brick reds, oranges and browns to the muted painted wood tones of gray, tan, white and barn-red.

iv) Both single and multi-story buildings should attempt to reflect the horizontal building pattern of the Reserve. The siting of the building should appear united with the surrounding landscape, and the appearances of homes and outbuildings should tend to fuse to a common style and landscape treatment. Style and character clues can be taken from historic examples without being literal duplications, and be applied to buildings and structures in a New England village or farmstead pattern.

b. Details. The use of architectural detailing is strongly encouraged to provide scale and interest to the building. Examples of detailing include stone foundations, masonry water tables, masonry window trim or surrounds, frieze boards, decorative cornices, quoins, shutters, columns, balusters, awnings and similar items.

c. Mass/Scale. Mass and scale should emulate the Connecticut Western Reserve Style. Façade treatment should be used to create visual interest

and patterns. Detail elements (as outlined above) should be used to create a pedestrian scale as appropriate.

d. Building Materials.

i) Wall surfaces (not including windows and glazing (fenestration)) of buildings adjacent to the main thoroughfares should consist of 100 percent traditional or natural materials. Traditional or natural materials shall include, brick, stone or engineered stone, wood, or cement composite, and metal. The balance of the building's elevations not directly visible from public view shall include materials consistent with those on the front in varying percentages with a minimum of 50% traditional or natural materials.

ii) Brick shall be earth tone colors (reddish tones are preferred) in sizes that are proportional to the building size and shall be laid in a traditional masonry pattern.

iii) Stone shall be natural or engineered with a smooth or natural finish (natural finish is preferred). Split face stone is acceptable in limited situations. Stone shall be laid in a traditional pattern indicative of the Connecticut Western Reserve Period.

iii) Siding should be of traditional profiles such as 4 - 8" horizontal beveled. Siding shall be wood or simulated; vinyl siding shall be prohibited.

iv) Glass openings shall be a minimum of 15% of the entire wall.

e. Building Elements.

i) Awnings, canopies, etc. can consist of fabric coverings. Plastic is not an acceptable covering.

ii) Columns, cornices, and similar elements should be natural or simulated natural materials such as wood, steel or stone.

iii) Building accents can include metal panels, glazed tiles, or similar items if less than 15% of the building wall on non-primary facades (excluding glass).

iv) Building elements are encouraged to be based on traditional historic examples.

v) All downspouts on the front elevation of the building shall be concealed or constructed of a decorative metal such as copper or commercial quality painted metal. The view through scuppers shall be screened.

g. Building Colors.

i) Color schemes shall tie building elements together, relate separate (freestanding) buildings within the same development to each other, and shall be used to enhance the architectural form of a building.

ii) Color schemes should utilize earth and other natural tones, or as justified the Connecticut Western Reserve Period.

iii) All building projections, including, but not limited to, chimneys, flues, vents, and gutters, shall match or complement in color the permanent color of the surface from which they project.

9. Landscaping Standards.

a. Intent. Landscaping is a visible indicator of quality development and must be an integral part of the project, and not merely located in leftover portions of the site. Landscaping is intended to visually tie the entire development together, define major entryways and circulation (both vehicular and pedestrian) and parking patterns, and, where appropriate, help buffer less intensive adjacent land uses. Landscaping in this area should incorporate both formal, and natural landscape patterns with large areas of tall grass prairie and hardwood stands indicative of the Cuyahoga Valley.

b. Plant Materials.

i) Intent. Incorporate plant species found throughout the region into the planting plan, and visually soften paved areas and buildings. Use and repeat plant materials throughout the development to visually tie the commercial center together.

ii) Design Guidelines and Standards: Each area required to be landscaped shall be covered in live material. Live material includes trees, shrubs, ground cover, and sod.

iii) Shade Trees: All shade trees shall be a minimum caliper of two and one half inches (2 1/2") at the time of plating. Street trees shall be of a variety, which will attain an average mature, spread greater

than twenty feet (20') unless a columnar variety is specified to meet design criteria.

iv) Ornamental Trees: Ornamental trees shall be a minimum of one and three quarter inches (1 3/4") in caliper upon planting.

v) Evergreen Trees: Six feet (6') minimum height upon planting.

vi) Shrubs: All shrubs shall have a minimum size at planting of twenty four inches (24") in height for plants with vertical growth habits and eighteen inches (18") spread for plants with horizontal growth habits. Evergreen shrubs shall be spaced not more than thirty-six inches (36") apart so as to form a continuous visual screen under normal growing conditions.

vii) Prairie Grasses: Prairie grasses and wildflowers may be planted in combination and must consist of species found native to the northeast Ohio region.

viii) Installation: All landscape materials shall be installed in accordance with the current planting procedures established by the American Nursery and Landscape Association.

ix) Maintenance: The owner or assigned responsible party of the premises shall be responsible for the maintenance, repair and replacement of all landscaping materials, structures, plants and trees in accordance with these design guidelines. All landscape materials shall be maintained in a healthy, neat appearance.

c. Interior Parking Lot Landscaping.

i) Use parking lot landscaping to minimize the expansive appearance of parking lots, provide shaded parking areas, and mitigate any negative acoustic impacts of motor vehicles. The interior of all uncovered parking blocks containing twenty (20) or more spaces shall be landscaped according to this subsection. These requirements for interior parking area landscaping are in addition to the requirements set forth below for perimeter parking area landscaping.

ii) Design Guidelines and Standards:

a. Planting islands shall be a minimum of one hundred (100) square feet in area and shall be a minimum of eight feet (8') in width as measured from back of curb to back of curb.

b. Interior landscape islands shall be dispersed so as to define aisles and limit unbroken rows of parking to a maximum of two hundred feet (200') in length.

c. Parking lots shall be planted with a minimum of one (1) shade tree per twenty (20) parking spaces.

d. Parking lot islands shall be landscaped with shade trees, lawn, shrubs, ground cover or perennials. Mulched islands are discouraged.

d. Perimeter Parking Area Screening. All parking areas shall be screened from public roads. Screening may include an evergreen hedge (either a minimum of three feet in height) or by natural vegetation such as prairie grass or natural areas.

e. Building Setback Landscaping. Building setback areas along thoroughfare, collector, or residential streets, or along private drives, shall be landscaped with natural plant material and include a minimum of one (1) tree per forty feet (40') of linear frontage. Trees shall be planted in a natural flowing pattern or in clusters, as opposed to a traditional street tree pattern with equal spacing.

f. Building foundation landscaping.

i) Intent: Utilize Plant material to break down the visual mass and scale of buildings while softening the architecture and highlighting specific features of the building. Use and repeat plant materials throughout the development to visually tie the districts together.

ii) Design Guidelines and Standards.

a. Building foundations where possible shall be planted with ornamental plant material, such as ornamental trees, flowering shrubs and perennials, and ground covers.

b. Landscaping should break down in scale and increase in detail, color, and variety to mark entryways into developments.

c. Plant material should be placed intermittently against long expanses of building walls, fences and other barriers to create a visually softening effect.

d. The scale of the plant material should be appropriate to the size of the facade being softened.

e. A minimum of one shade or evergreen tree and ten shrubs per ten thousand (10,000) square feet of building ground

coverage should be located per side of building that faces a public road. Trees should be planted between the Right of Way and the building facade.

g. Service area screening.

i) Intent: These standards visually screen on-site service areas, including loading docks, trash collection areas, outdoor storage, and similar service uses, from public rights-of-way and adjacent uses.

ii) Design Guidelines and Standards.

a. To the maximum extent feasible, areas for outdoor storage, truck parking, trash collection or compaction, loading, or other such service areas shall not be visible from abutting streets and shall be oriented toward on-site service corridors.

b. No areas for outdoor storage, trash collection or compaction, loading, or other such uses shall be located within twenty feet (20') of any public street, public sidewalk, or internal pedestrian walkway.

c. Loading docks, truck parking, outdoor storage, trash collection, trash compaction, and other service functions shall be incorporated into the overall design. Screening materials shall be the same as, or of equal quality to, the materials used for the primary building and landscaping.

h. Mechanical/Utility Equipment Screening.

i) **Design Guidelines and Standards:**

a. Mechanical/utility screening shall be an integral part of the building structure and architecture and not give the appearance of being "tacked on" to the exterior surfaces. The building parapet shall be the primary means of screening roof top equipment.

b. All mechanical equipment and utilities shall be screened.

i. **Fencing and Walls.**

i) **Intent:** These standards provide fencing and walls that are visually-appealing, complement the design of the overall development and surrounding properties, and provide visual interest to pedestrians and motorists, and help define and image and brand for the development and Village as a whole.

ii) **Design Guidelines and Standards.**

a. All external public street frontages shall include a fence or wall, the following guidelines and standards apply:

b. The maximum height of a fence or wall shall be six feet (6').

c. Fences and walls shall be decorative in nature and be constructed as either stacked split rail, post and rail styles, or dry stack stone wall or approved alternate.

d. Fences and walls shall be set back from the property line to allow a landscape setback area. Such setback area shall be

landscaped with natural vegetation, shrubs, and/or trees, using a variety of species to provide seasonal color and plant variety.

D. Other Zoning Standards: The following additional standards from the Zoning Code shall apply to the development of the Property:

1. Site Plan Review: Except to the extent modified in this Agreed Entry, site plans for a proposed ICC District or any change thereto shall be submitted for review and approval in accordance with Sections 1151.05 and 1151.06 of the Zoning Code.

a. Conformity with the Agreed Entry: Notwithstanding anything to the contrary in this Agreed Entry, any site plan that is found to substantially conform to the provisions of this Agreed Entry shall be deemed in compliance with and as satisfying all discretionary standards stated in Sections 1151.05 and 1151.06, and/or any other standards deemed applicable to the site plan under the Zoning Code. No site plan that substantially complies with this Agreed Entry shall require or be deemed to require any variance or legislative accommodation as a condition to its approval.

2. Other Provisions: The ICC District shall be subject to the provisions of Zoning Code Chapter 1171 (Additional Use, Height, and Area Regulations), Zoning Code Chapter 1177 (Trees and Timber Cutting regulations and Restrictions), and Zoning Code Chapter 1181 (Riparian Setbacks) except that the Village agrees that the requirements of Zoning Code Chapter 1181 shall be deemed satisfied by the issuance to BHPI of any required environmental permits issued by the United States Army Corp of Engineers ("Army Corp") and the Ohio Environmental Protection Agency ("OEPA"), and that the Village will not

oppose the issuance by the Army Corp or OEPA of any environmental permits required for the development of Development Areas

E. Central Water and Sanitary Sewer Facilities: The Parties intend that the Property shall be serviced by central water and central sanitary sewer facilities. Accordingly, the Parties covenant to exercise due diligence and to cooperate fully in undertaking, in a timely manner, all actions required or helpful to secure the provision of central sanitary sewer and water services to the Property.

III. MISCELLANEOUS PROVISIONS

A. Hierarchy of Governing Regulations: This Agreed Entry shall prevail over any conflicting provisions in the Zoning Code and shall be liberally construed to affect the ICC District Uses contemplated herein. A conflict between the Zoning Code and this Agreed Entry shall be deemed to exist whenever any provision of the Zoning Code not incorporated into this Agreed Entry would, if applied to development of the Property, prohibit, impair, diminish, condition, limit, or otherwise reduce the effect of any right conferred under this Agreed Entry. If no such conflict exists, and if this Agreed Entry is silent on the issue, the Zoning Code shall control.

B. Permitted Uses and Structures: The uses and structures authorized under this Agreed Entry, including but not limited to all of the provisions of Article II(B) hereof, are and shall be regarded as permitted uses and structures. However, nothing contained herein shall preclude the Plaintiff, or its successors or assigns, from obtaining any variance in the future for any proposed future use of any part or all of the Property, and neither the existence nor the content of this Agreed Entry shall create or be deemed to create self-created unnecessary hardship or self-created practical difficulties with respect to such future variances.

C. Development Authorized by This Agreed Entry:

Development and construction activities undertaken by Plaintiff, and its successors and assigns, which conforms to, and is reviewed and approved in accordance with, this Agreed Entry, shall not require any further or additional administrative or legislative review, approval, recommendations, or action by the Village, or its boards and commissions, to be deemed authorized. So long as development of and construction on the Property complies with this Agreed Entry and these Development Guidelines, the Village shall issue as warranted all certificates authorized or required under its Codified Ordinances, including its Zoning Code, with respect to such development, construction, and ultimate occupancy of the ICC District Uses.

D. Succession: This Agreed Entry shall be binding upon and inure to the benefit of the Parties hereto and to their successors in interest to, or in jurisdiction over, the Property. Such successors shall be deemed fully vested as Parties to this Agreed Entry.

E. Interpretation, Application, Modification of this Agreed Entry: The following procedures shall constitute the exclusive remedial framework to resolve all questions concerning the interpretation, application, and/or modification of this Agreed Entry and concerning the use of the Property, or any portion thereof, pursuant hereto:

1. Consensual modifications to this Agreed Entry, including all consensual resolution of questions or interpretation and/or application hereof, may be executed at any time by a stipulation signed by both Plaintiff and the Zoning Inspector, which shall be submitted to the Court for approval and filing with the Clerk of Courts.

2. All questions involving the interpretation and/or application of this Agreed Entry, as to which the Parties hereto are unable to agree, shall first be submitted in writing to the Zoning Inspector. The Zoning Inspector may confer with any persons, parties, officials,

boards, or others deemed necessary to assist in responding to any submitted questions. The Zoning Inspector shall within twenty-one (21) calendar days of submission to him/her issue to the Parties a decision concerning any such unresolved question(s).

3. Any Party hereto aggrieved by a decision of the Zoning Inspector made under paragraph (E)(2) of Article III of this Agreed Entry shall seek redress as follows:

a. First, by appealing the matter to the Village's Board of Zoning appeals, pursuant to Chapter 1145 of the Zoning Code; and,

b. Then thereafter by motion to this Court seeking enforcement of this Agreed Entry.

4. If redress concerning the Zoning Inspector's decision is first sought from the Board of Zoning Appeals under paragraph (E)(3)(a) of Article III of this Agreed Entry, then any Party hereto aggrieved by the Board of Zoning Appeals' decision may seek redress by way of motion to this Court, in accordance with the provisions of this Agreed Entry, filed within thirty (30) days from the date the minutes of the Board of Zoning Appeals' decision are formally approved and adopted.

5. The Parties hereto agree that this Court, in addition to and without limiting all other relief it is empowered to grant, may at either Party's request modify any part of this Agreed Entry in a manner the Court deems reasonable in order to effect the ICC District Use objectives hereof, and to hold in contempt any Party that fails to comply with the terms of this Agreed Entry. All modification(s) hereof by this Court shall be binding upon the Village and the Plaintiff.

6. All decisions by this Court concerning this Agreed Entry and the use of all or any part of the Property hereunder shall be final.

7. The rights and remedies set forth in this Agreed Entry are in lieu of all other rights and remedies otherwise available to the Parties, including without limitation all rights under Revised Code Chapter 3506. To the extent not specifically provided for in this Agreed Entry, all other and further rights of appeal are hereby expressly waived by the Parties.

F. Dismissal of Claims: Except as provided elsewhere in this Agreed Entry, all claims asserted by the Plaintiff against the village in this action, including all claims for declaratory relief and all claims which could have been asserted against the Village, including any claims for loss or damage resulting from a deprivation of Plaintiff's use of the Property, are hereby released by Plaintiff and are dismissed with prejudice. This Agreed Entry resolves all remaining claims by the Plaintiff against the Village.

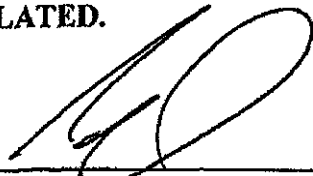
G. Continuing Jurisdiction: The Court of Common Pleas for the County of Summit, Ohio, shall retain jurisdiction concerning all matters relating to or arising out of the validity, interpretation, breach, and/or enforcement of this Agreed Entry.

H. Waiver of Appeal: The Parties hereto expressly waive all rights of appeal from this Agreed Entry.

IT IS SO STIPULATED.

/s/ Sheldon Berns per approval - 12/17/13


Sheldon Berns (0000140)
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216.831.8838
216.464.4489 fax
ATTORNEYS FOR PLAINTIFF


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222 South Main Street
Akron, Ohio 44308
330.849.6698
330.376.4457 fax
Marshal M. Pitchford

ATTORNEYS FOR DEFENDANT
VILLAGE OF BOSTON HEIGHTS

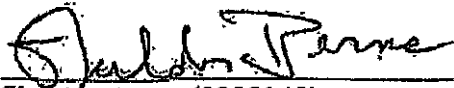

Dave Krock
VILLAGE ZONING INSPECTOR

IT IS SO ORDERED


Hon. Amy Corrigan Jones
Judge, Court of Common Pleas
Summit County, Ohio

Date: 12/17/13

IT IS SO STIPULATED.



Sheldon Berns (0000140)
sberns@bernsockner.com
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ATTORNEYS FOR DEFENDANT
VILLAGE OF BOSTON HEIGHTS

Dave Krock
VILLAGE ZONING INSPECTOR

IT IS SO ORDERED.

Date: _____

Hon. Amy Corrigall Jones
Judge, Court of Common Pleas
Summit County, Ohio

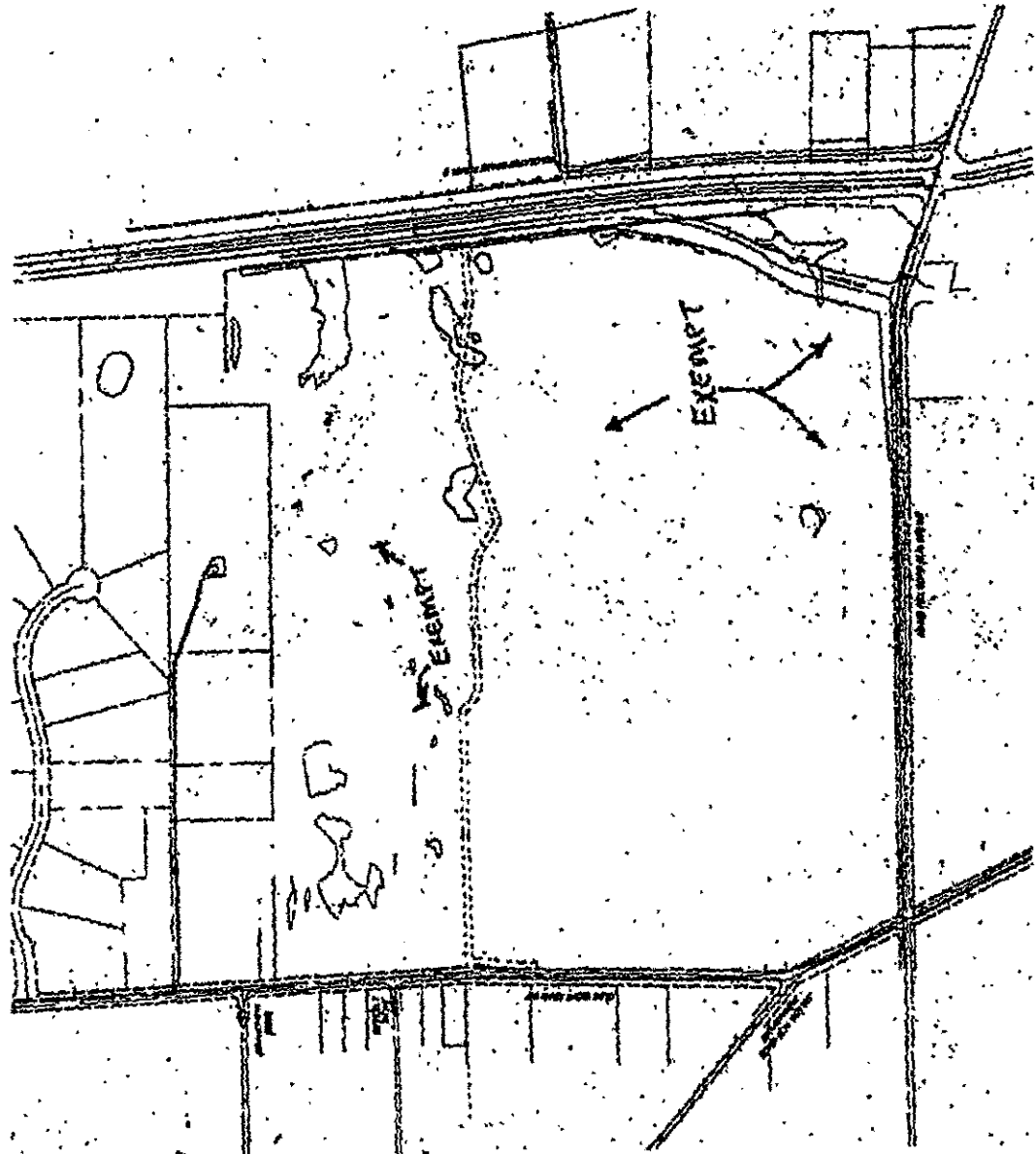
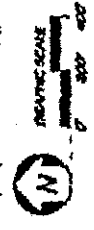
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**BOSTON HEIGHTS VILLAGE
SUMMIT COUNTY, OHIO**

Developer:
Boston Hills Property Investments LLC
12714 Depueville Road
Bromfield Heights, Ohio 44147
(440) 846-5000

Prepared By:
DONALD G. BORRINO & ASSOCIATES, INC.
2970 HISS PARKWAY
VALLEYVIEW, OHIO 44125
(216) 642-1100
DGB:JMS:JMS
JUL 15, 2009



COPY



Village of Boston Heights OH, Planning and Zoning Code

CHAPTER 1157 Office/Professional District (OP)

1157.01 Purpose.

1157.02 Permitted uses.

1157.03 Conditional uses.

1157.04 Prohibited Uses.

1157.05 Height regulations.

1157.06 Yard Requirements.

1157.07 Intensity of Use.

1157.08 Storage and Waste Removal.

1157.09 Off-street Parking Requirements.

CROSS REFERENCES

General Provisions - see P. & Z. 1151.04

Bond Requirements - see P. & Z. 1151.06(d)

Design and fireproofing of buildings - see P. & Z. 1151.04(c)(3)

Height extensions - see P. & Z. 1171.02

Signs - see P. & Z. 1179

EDITOR'S NOTE:

Ordinance 5-2003 replaced former O-1 district (1160) with OP district.

1157.01 PURPOSE.

This district is established to provide for uses principally to accommodate offices such as company headquarters and research centers, and professionals such as doctors, dentists, and lawyers, rather than the sale of goods. It is intended that this district will have a much lower impact both visually and from a traffic standpoint than other business uses, and so act as a transitional district between the residential district and the other business districts.

(Ord. 12-2005. Passed 3-9-05.)

1157.02 PERMITTED USES.

In the Office/Professional District, no building or premises, unless otherwise provided in this Zoning Ordinance, shall be erected which is arranged, intended or designed to be used except for the following:

- (a) Administrative, executive, legal, financial, accounting, clerical, design, engineering, drafting, medical, dental, orthodontia, ophthalmological.
- (b) Offices and sales offices, provided the display areas or showrooms do not exceed twenty percent (20%) of the usable floor area of the building.
- (c) Accessory uses which do not exceed thirty percent (30%) of the usable floor area of the



building and which are clearly incidental to the principal uses permitted in this section.

(Ord.12-2005. Passed 3-9-05.)

1157.03 CONDITIONAL USES.

The Board of Zoning Appeals may issue conditional zoning certificates for uses listed herein and subject to the general requirements of Section 1145.04 and Chapter 1151:

- (a) Restaurants, barbers, hair dressers and other services supporting an office complex, also bed and breakfast establishments.
- (b) All accessory or conditional uses as permitted in the section Office/Professional District shall satisfy the following conditions:
 - (1) Such use shall serve employees in office development.
 - (2) Such use shall not be the principal use or primary use of any free standing building.
 - (3) Such use shall not occupy more than 30% of the usable floor area of the building.
 - (4) Such use shall not have an entrance leading directly outside of its building.

(Ord. 12-2005. Passed 3-9-05.)

1157.04 PROHIBITED USES.

- (a) Adult entertainment Establishments as defined in Section 1162.02.
- (b) Crematorium.
- (c) Pinball and mechanical electronic games are not permitted except in incidental entertainment use in bars, night clubs, and taverns holding a valid hard liquor license. They are also permitted when allowed by Chapter 711 of the Codified Ordinances regulating amusement devices.
- (d) Sale of fireworks and like items.

(Ord. 12-2005. Passed 3-9-05.)

1157.05 HEIGHT REGULATIONS.

Except as provided in Chapter 1171, no building shall be erected in the Office/Professional District to a height in excess of forty feet, measured from the natural grade of the building line to the highest point on the roof, except that these provisions shall not apply to the height of a clock tower, wireless tower, chimney stack tower, scenery loft, or to the mechanical appurtenances part of such building. The above such projections shall not exceed ten feet above roof peak. All other projections in excess of ten feet must be approved by the Planning Commission.

(Ord. 12-2005. Passed 3-9-05.)

1157.06 YARD REQUIREMENTS.

- (a) Setback Lines. The setback line for any building or structure erected shall be a minimum of seventy-five feet from the public right of way subject to Section 1151.04.
- (b) Front Yard. The front yard shall be landscaped in accordance with Section 1151.09. A sidewalk with a minimum width of six feet shall be contiguous with those sides which contain the entrances to the building.
- (c) Side and Rear Yards. Every building or structure intended for business use, shall have a rear and side yard each of which shall have a width of at least fifty feet from the rear and side lot lines. On the street side of a corner lot, such side yard shall be the same in width as that required for front yards.
- (d) Storm Drainage. Drainage shall discharge into a common closed conduit which is to be located

in the right of way of streets, alleys or easements. In no case shall the Planning Commission approve a storm drainage system which involves swales, roadside ditches, etc. as a means of conveying surface drainage from the sites.

(Ord. 12-2005. Passed 3-9-05.)

1157.07 INTENSITY OF USE.

(a) Minimum Lot Area. The minimum lot area shall be four acres. Structures and buildings shall not occupy more than thirty-three percent (33%) of the total lot area. The minimum lot area required herein may be reduced by Council after receiving a report from the Planning Commission.

(b) Open Areas. Exclusive of driveways, parking and building areas, each lot shall contain twenty-five percent (25%) of its total lot area in landscaped open area. Any buffer of undeveloped land required by Section 1151.04(a) of the Planning and Zoning Code shall be included in the calculation of the 25% required by this subsection.

(Ord. 12-2005. Passed 3-9-05.)

(c) Size of Building. No building constructed for use in the Office/Professional District shall exceed 30,000 sq. ft.

(Ord. 22-2005. Passed 9-14-05.)

1157.08 STORAGE AND WASTE REMOVAL.

Ample inside or enclosed storage space must be provided for commercial debris, waste and garbage. Storage space must be contiguous to the main building and all storage items shall be screened from the parking lot and roadway. Removal and disposal by owner of the debris, waste or garbage is required to maintain a neat and orderly premises.

(Ord. 12-2005. Passed 3-9-05.)

1157.09 OFF-STREET PARKING REQUIREMENTS.

Parking lots shall not be closer than fifteen feet to side or rear lot lines, which shall be devoted to green space. Parking lots shall be so constructed or landscaped as to make parked vehicles inconspicuous from the street. Off-street parking in the Office/Professional District shall also be subject to the regulations of Section 1151.07.

(Ord. 12-2005. Passed 3-9-05.)

Boston Heights Overlook





Village of Boston Heights OH, Planning and Zoning Code

CHAPTER 1159
General Business District (GB)1159.01 Purpose.1159.02 Permitted Uses.1159.03 Conditional Uses.1159.04 Prohibited Uses.1159.05 Height Regulations.1159.06 Yard Requirements.1159.07 Intensity of Use.1159.08 Storage and Waste Removal.

CROSS REFERENCES

General Provisions - see P. & Z. 1151.04

Bond Requirements - see P. & Z. 1151.06(d)

Design and fireproofing of buildings - see P. & Z. 1151.04(c)(3)

Height extensions - see P. & Z. 1171.02

Signs - see P. & Z. 1179

EDITOR'S NOTE:

Ordinance 5-2003 replaced former B-1 district (1159) with GB and RB districts.

1159.01 PURPOSE.

This district is established to provide for uses principally to accommodate the sale of convenience retail goods and personal services purchased frequently for daily and weekly needs servicing the residents of the Municipality. It is intended that this district will encourage the development of small businesses in wholly enclosed buildings located in a uniform manner.

(Ord. 12-2005. Passed 3-9-05.)

1159.02 PERMITTED USES.

- (a) All uses permitted in the Office/Professional District.
- (b) Art, photo, stationery, notions toy, book, music and gift sales. Souvenirs or souvenir-oriented materials shall not exceed five percent (5%) of total display area.
- (c) Banks or financial institutions where drive-in facilities are incidental to the operation of the facilities.
- (d) Barber or Beauty shops.
- (e) Clothing, apparel, shoe, and variety stores. Souvenirs or souvenir-oriented material shall not exceed five percent (5%) of total display area.
- (f) Florist and gift shop. Souvenirs or souvenir-oriented materials shall not exceed five percent (5%) of total display area.
- (g) Grocery store, drug store.

- (h) Jewelry store.
- (i) Shoe repair store.
- (j) Tailor and dress maker shops.
- (k) Non-paid, off-street parking lot.
- (l) Medical supplies.
- (m) Computer sales and service.
- (n) Building trades.

(Ord. 12-2005. Passed 3-9-05.)

1159.03 CONDITIONAL USES.

The Board of Zoning Appeals may issue conditional zoning certificates for uses listed herein and subject to the general requirements of Section 1145.04 and Chapter 1151:

- (a) Dry cleaning and laundry in which non-explosive and non-flammable solvents are extensively used and in which not more than five persons are engaged and in which no work shall be done on the premises for retail outlets elsewhere.
- (b) Drive in Banking facilities subject to regulation of Section 1151.07.
- (c) Public utility rights of way and appurtenant structures subject to regulation of Section 1151.07.
- (d) Temporary buildings for the uses incidental to construction work subject to regulations of Section 1151.07.
- (e) Eating and drinking establishments, but excluding drive in food and beverage establishments defined as follows:

(1) "Drive-in restaurant" means any eating establishment where the primary function is the service of food, frozen dessert, or beverages prepared for consumption away from the premises regardless of limited table service outdoor service or places being provided for consumption on or off the premises or on a self service basis. All restaurants having less than thirty-five percent (35%) of the gross floor area in an enclosed building dining area or lacking waiter or waitress service shall be considered a drive-in restaurant.

(Ord. 12-2005. Passed 3-9-05.)

(2) "Restaurant" means an eating establishment where food, frozen dessert or beverages are prepared and served by a waiter or waitress at tables or counters for consumption in a wholly enclosed building, any provision for take out service of food being incidental.

(Ord. 22-2005. Passed 9-14-05.)

- (f) Stores for the preparation and processing of food and drink to be retailed on premises including bakery, delicatessen, meat market, confectionary, ice cream parlor, and soda fountains.
- (g) Quasi-public institution, organization, and/or operation, instructional and meeting facilities for non-profit use such as those developed and used by the YMCA, YWCA, Boy Scouts, or various fraternal or community service groups. All activities, programs, and other events shall be adequately and properly supervise so as to prevent any hazard, disturbance, or nuisance to surrounding properties, residents, or to the community in general.
- (h) Sporting goods store subject to:
 - (1) Sale of powered recreational vehicles shall be incidental to the total sales of stores, such incidental sales not to exceed ten percent (10%) of total sales volume.
 - (2) Outdoor displays of power recreational vehicles shall be prohibited.
- (i) Cultural and educational facilities.
- (j) Laundromats.
- (k) Hospitals, convalescent, nursing and health homes, including training and teaching facilities.
- (l) Funeral Homes.
- (m) Other compatible uses.
- (n) Conditional uses permitted in the Office/Professional District.

(Ord. 12-2005. Passed 3-9-05.)

1159.04 PROHIBITED USES.

- (a) Adult entertainment Establishments as defined in Section 1162.02.
- (b) Crematorium.
- (c) Pinball and mechanical electronic games are not permitted except in incidental entertainment use in bars, night clubs, and taverns holding a valid hard liquor license. They are also permitted when allowed by Chapter 711 of the Codified Ordinances regulating amusement devices.
- (d) Sale of fireworks and like items.

(Ord. 12-2005. Passed 3-9-05.)

1159.05 HEIGHT REGULATIONS.

Except as provided in Chapter 1171, no building shall be erected in the General Business District to a height in excess of two and one half stories or an excess of thirty-five feet, measured from the natural grade of the building line to the highest point on the roof, except that these provisions shall not apply to the height of a clock tower, wireless tower, chimney stack tower, scenery loft, or to the mechanical appurtenances part of such building. The above-such projections shall not exceed ten feet above roof peak. All other projections in excess of ten feet must be approved by the Planning Commission.

(Ord. 12-2005. Passed 3-9-05.)

1159.06 YARD REQUIREMENTS.

- (a) Setback Lines. The setback line for any building or structure erected shall be a minimum of twenty feet from the public right of way subject to Section 1151.04.
- (b) Front Yard. The front yard shall be landscaped in accordance with Section 1151.09. No parking will be permitted in the front yard. A sidewalk with a minimum width of six feet shall be contiguous with those sides which contain the entrances to the building.
- (c) Side and Rear Yards. Every building or structure intended for business use, shall have a rear and side yard, each of which shall have a width of at least ten feet from the rear and side lot lines except when adjacent to a Residential District use, the width shall be one hundred feet from the lot line adjacent to the Residential District; provided that the building and site arrangements also comply with the regulations set forth above and Section 1151.04.
- (d) Storm Drainage. Drainage shall discharge into a common closed conduit which is to be located in the right of way of streets, alleys or easements. In no case shall the Planning Commission approve a storm drainage system which involves swales, roadside ditches, etc. as a means of conveying surface drainage from the sites.

(Ord. 12-2005. Passed 3-9-05.)

1159.07 INTENSITY OF USE.

- (a) Minimum Lot Area. The minimum lot area shall be one acre. A business structure, a church or place of general assembly in a General Business District shall have a lot whose total area is not less than three times the ground area covered by the main structure or building.
- (b) Minimum Lot Width. The lot width at the building and street right of way must be at least 200 feet.
- (c) Size of Building. No building constructed for use in the General Business District shall exceed 30,000 square feet.

(Ord. 12-2005. Passed 3-9-05.)

1159.08 STORAGE AND WASTE REMOVAL.

Ample inside or enclosed storage space must be provided for commercial debris, waste and garbage. Storage space must be contiguous to the main building and all storage items shall be screened from the parking lot and roadway. Outside storage of various sundry items such as business equipment and rental or lease equipment, trade-in or salvage merchandise, construction material and containers or cases are prohibited. Removal and disposal by owner of the debris, waste or garbage is required to maintain a neat and orderly premises.

(Ord. 12-2005. Passed 3-9-05.)

Boston Heights Overlook





Village of Boston Heights OH, Planning and Zoning Code

CHAPTER 1160
Retail Business District (RB)

1160.01 Purpose.

1160.02 Permitted Uses.

1160.03 Conditional Uses.

1160.04 Prohibited Uses.

1160.05 Height Regulations.

1160.06 Yard Requirements.

1160.07 Intensity of Use.

1160.08 Storage and Waste Removal.

CROSS REFERENCES

General Provisions - see P. & Z. 1151.04

Bond Requirements - see P. & Z. 1151.06(d)

Design and fireproofing of buildings - see P. & Z. 1151.04(c)(3)

Height extensions - see P. & Z. 1171.02

Signs - see P. & Z. 1179

1160.01 PURPOSE.

This district is established to provide for uses principally to accommodate large retail business operations for retail or hotels. It is intended that this district will encourage the development of businesses in wholly enclosed buildings located in a uniform manner.

(Ord. 12-2005. Passed 3-9-05.)

1160.02 PERMITTED USES.

- (a) All uses permitted in the Office/Professional District and General Business District.
- (b) Hardware, paint, floor coverings, wall paper, materials and objects for interior decorating, outdoor accessories, and repair of household items, building supplies and bicycles.
- (c) Retail sales of furniture, appliances, and other major household articles.
- (d) Amusement and recreational uses such as a bowling alley, theater, indoor racquetball court, indoor tennis court, but excluding drive-in theaters and other drive-in uses such as miniature golf and driving ranges and other uses where the recreation is primarily outdoors.
- (e) Sidewalk sales and service uses such as galleries, sales and garden shops subject to regulations of Section 1151.07.

(Ord. 12-2005. Passed 3-9-05.)

1160.03 CONDITIONAL USES.

The Board of Zoning Appeals may issue conditional zoning certificates for uses listed herein and subject to the general requirements of Section 1145.04 and Chapter 1151:

- (a) Vehicle service stations subject to the following:
 - (1) No vehicle service station shall be located closer than 400 feet from any other vehicle

service station.

(2) Locations shall be on major thoroughfares and at intersection of major and/or collector thoroughfares.

(3) Site location should be preferred that offer natural or manmade barriers that would lessen the effect of intrusion into an area. Further site selection should be compatible to surrounding area and the following factors should be considered for site selection:

- A. Appearance of proposed station.
- B. Existence of nearby service stations.
- C. Character of surrounding land.
- D. Proximity to residential users.
- E. Distance from places of public assembly.

(4) Such uses shall be permitted under the following conditions:

A. Provided that such facilities be located at the extremity of the business district so as not to interfere with the pedestrian exchange interchange between stores in the complex and provided further that it would not limit expansion of pedestrian oriented facilities.

B. No more than two driveway approaches shall be permitted directly from any thoroughfare and shall not exceed thirty feet in width at the the property line.

C. If the property fronts on two or more streets, the driveway shall be located as far from the street intersection as is practical.

D. At least six-inch high pedestrian safety curbs shall be installed along all street right of way lines except at driveway approaches.

E. Rental, leasing, storage or permitting of parking of any vehicles such as trailers or tools except for servicing and/or emergency purposes, shall not be permitted.

(b) Car washes.

(c) Motels and Hotels.

(d) Taverns.

(e) Automobile sales.

(f) Other commercial venues housed in buildings which are not in conflict with the general commercial makeup of the adjacent area and are compatible with the aforementioned conditional uses.

(g) Conditional uses permitted in the Office/Professional and General Business Districts.

(Ord. 12-2005. Passed 3-9-05.)

1160.04 PROHIBITED USES.

(a) Crematorium.

(b) Pinball and mechanical electronic games are not permitted except in incidental entertainment use in bars, night clubs, and taverns holding a valid hard liquor license. They are also permitted when allowed by Chapter 711 of the Codified Ordinances regulating amusement devices.

(c) Sale of fireworks and like items.

(Ord. 12-2005. Passed 3-9-05.)

1160.05 HEIGHT REGULATIONS.

Except as provided in Chapter 1171, no building shall be erected in the Retail Business District to a height in excess of two and one half stories or an excess of thirty-five feet, measured from the natural grade of the building line to the highest point on the roof, except that these provisions shall not apply to the height of a clock tower, wireless tower, chimney stack tower, scenery loft, or to the mechanical appurtenances part of such building. The above such projections shall not exceed ten feet above roof peak. All other projections in excess of ten feet must be approved by the Planning Commission.

(Ord. 12-2005. Passed 3-9-05.)

1160.06 YARD REQUIREMENTS.

- (a) Setback Lines. The setback line for any building or structure erected shall be a minimum of twenty feet from the public right of way subject to Section 1151.04.
- (b) Front Yard. The front yard shall be landscaped in accordance with Section 1151.09. No parking will be permitted in the front yard. A sidewalk with a minimum width of six feet shall be contiguous with those sides which contain the entrances to the building.
- (c) Side and Rear Yards. Every building or structure intended for business use, shall have a rear and side yard, each of which shall have a width of at least ten feet from the rear and side lot lines except when adjacent to a Residential District use, the width shall be one hundred feet from the lot line adjacent to the Residential District; provided that the building and site arrangements also comply with the regulations set forth above and Section 1151.04.
- (d) Storm Drainage. Drainage shall discharge into a common closed conduit which is to be located in the right of way of streets, alleys or easements. In no case shall the Planning Commission approve a storm drainage system which involves swales, roadside ditches, etc. as a means of conveying surface drainage from the sites.

(Ord. 12-2005. Passed 3-9-05.)

1160.07 INTENSITY OF USE.

- (a) Minimum Lot Area. The minimum lot area shall be one acre. A business structure, a church or place of general assembly in a Retail Business District shall have a lot whose total area is not less than three times the ground area covered by the main structure or building.
- (b) Minimum Lot Width. The lot width at the building and street right of way must be at least 200 feet.
- (c) Open Areas. Exclusive of driveways, parking and building areas, each lot shall contain twenty-five percent (25%) of its total lot area in landscaped open area. Any buffer of undeveloped land required by Section 1151.04(a) of the Planning and Zoning Code shall be included in the calculation of the 25% required by this subsection.
- (d) Size of Building. No building constructed for use in the Retail Business District shall exceed 50,000 square feet.

(Ord. 12-2005. Passed 3-9-05.)

1160.08 STORAGE AND WASTE REMOVAL.

Ample inside or enclosed storage space must be provided for commercial debris, waste and garbage. Storage space must be contiguous to the main building and all storage items shall be screened from the parking lot and roadway. Outside storage of various sundry items such as business equipment and rental or lease equipment, trade-in or salvage merchandise, construction material and containers or cases are prohibited. Removal and disposal by owner of the debris, waste or garbage is required to maintain a neat and orderly premises.

(Ord. 12-2005. Passed 3-9-05.)

Boston Heights Overlook





Village of Boston Heights OH, Planning and Zoning Code

CHAPTER 1171
Additional Use, Height and Area Regulations

1171.01 Provisions are supplementary.

1171.02 Height extensions.

1171.03 Lots of record, noncompliance with area or yard requirements.

1171.04 Rear yard variation.

1171.05 Accessory buildings.

1171.06 Basement houses; time limit.

1171.07 Projections into yards; fences; porches; terraces.

1171.08 Mobile homes.

1171.09 Private group recreation areas.

1171.10 Junk yards.

1171.11 Rubbish dumps.

1171.12 Construction prior to this Zoning Ordinance.

CROSS REFERENCES

Accessory building defined - see P. & Z. 1141.02

Basement house defined - see P. & Z. 1141.06

Height - see P. & Z. 1141.10

1171.01 PROVISIONS ARE SUPPLEMENTARY.

The regulations in this chapter qualify or supplement, as the case may be, the district regulations appearing elsewhere in this Zoning Ordinance.
(Ord. 87-1951. Passed 7-10-51.)

1171.02 HEIGHT EXTENSIONS.

(a) Public, semi-public or public service buildings or schools, when permitted in a district, may be erected to a height of not more than sixty feet and churches and temples may be erected to a height of not more than seventy-five feet if the building is set back from each lot line at least one foot for each foot of additional building height above the height limit otherwise provided in the district in which the building is built.

(b) Chimneys, cooling towers, elevator bulkheads, fire towers, belfries, monuments, stacks, tanks, water towers, silos, farm buildings or necessary mechanical appurtenances may be erected to any lawful

and safe height. (Ord. 87-1951. Passed 7-10-51.)

1171.03 LOTS OF RECORD, NONCOMPLIANCE WITH AREA OR YARD REQUIREMENTS.

(a) Any lot of record or lot for which a land contract has been issued or any lot within an unrecorded allotment of which at least one-half of the lots are of record or have been sold on land contract on the effective date of this Zoning Ordinance (Ordinance 87-1951, passed July 10, 1951), may be used for a single or a two family dwelling in existence prior to May, 1995 irrespective of the area or the width of the lot; the width of the side yard of any such lot need not exceed ten percent (10 %) of the width of the lot; the depth of the rear yard need not exceed twenty percent (20 %) of the depth of the lot. However, in no instance shall the minimum dimensions of the side and the rear yards be less than five and twenty feet, respectively. The building lines established on lots within a recorded allotment shall prevail over those established in this Zoning Ordinance.
(Ord. 21-2000. Passed 10-11-00.)

(b) Any lot of record on the effective date of Ordinance No. 87-1951 known as the Zoning Ordinance Passed July 10, 1951, containing 4 or more acres of land, may be used and subdivided to provide for two single-family dwellings irrespective of the width of the lot; the width of the side yard of any such lot need not exceed ten percent (10%) of the width of the lot; the depth of the rear yard need not exceed twenty percent (20%) of the depth of the lot; however, in no instance shall the minimum dimensions of the side and rear yards be less than 5 feet and 20 feet, respectively; provided however, that each lot shall have an area of not less than 2 acres of land for each dwelling. Ingress and egress to such dwellings may be by easement of not less than 9 feet in width from a duly dedicated street.
(Passed by Initiative 7-9-81. aka "Donley Initiative")

1171.04 REAR YARD VARIATION.

Buildings on through lots extending from street to street may waive the requirements for a rear yard by furnishing an equivalent space in lieu of such required rear yard.
(Ord. 87-1951. Passed 7-10-51.)

1171.05 ACCESSORY BUILDINGS.

(a) Accessory buildings which are not a part of the main building may be built in a rear yard within five feet of the rear and side lot lines. An accessory building which is not a part of the main building shall not occupy more than thirty percent (30%) of the required rear yard and shall not be located nearer than sixty feet from any front lot line.

(b) Accessory buildings which are to be used for storage purposes only may be erected on a lot prior to the construction of the main building, but no accessory building shall be used for dwelling purposes, except by hired help employed on the premises.

(Ord. 87-1951. Passed 7-10-51.)

1171.06 BASEMENT HOUSES; TIME LIMIT.

A basement house having more than one-third its height above the grade of the surrounding land, may be used for residence purposes for a period of two years from the time a permit is secured therefor. Thereafter, sleeping rooms and kitchen must be provided above the basement. Such basement houses shall have two means of ingress or egress.

(Ord. 87-1951. Passed 7-10-51.)

1171.07 PROJECTIONS INTO YARDS; FENCES; PORCHES; TERRACES.

(a) Every part of a required yard shall be open to the sky unobstructed, except for accessory buildings in a rear yard, and except for the ordinary projections of skylight, sills, beltcourse, cornices and ornamental features projecting not more than twelve inches. This requirement shall not prevent the construction of fences with openings and not more than six feet in height except on that portion of lots within thirty feet of the intersection of two or more streets.

(b) Terraces, uncovered porches, platforms and ornamental features which do not extend more than three feet above the level of the ground (first) story may project into a required yard, provided these projections are distant at least two feet from the adjacent lot line. The ordinary projections of chimneys or flues are permitted into the required side and front yards.

(c) An open unenclosed or screened porch, or paved terrace may project into the front yard for a distance not to exceed ten feet.

(Ord. 87-1951. Passed 7-10-51.)

1171.08 MOBILE HOMES.

No motor homes, travel trailers, cabin cars, camp cars, railroad cars or mobile homes shall be permitted on any lots or lands in any district except as follows:

(a) The owner of any occupied land may keep, maintain or park a motor home, travel trailer or personal recreational vehicle upon his own property. However, such vehicles shall number not more than two and shall not be occupied for living purposes while so parked upon his land.

(b) The owner of any occupied land may permit visiting relatives or friends to park a motor home, travel trailer or other recreational vehicle upon his own land for a period of time not to exceed thirty days and during such period of time the recreational vehicle shall not be used or occupied for living purposes. The Board of Zoning Appeals upon application may extend such allowable time as it may determine to be reasonable under the circumstances advanced.

(Ord. 27-1972. Passed 6-21-72.)

1171.09 PRIVATE GROUP RECREATION AREAS.

A camp or grounds for a private club, church group, fraternal organization or service group, the chief activity of which is not a business, and where no liquor is sold on the premises, may be established for picnic or recreational purposes in any of the districts herein created if the total area of such camp or grounds is at least two acres in area. The facilities thereon may include seasonal cottages and structures for recreational purposes. An established camp or grounds for commercialized recreational purposes may expand its facilities with the approval of the Board of Zoning Appeals. (Ord. 87-1951. Passed 7-10-51.)

1171.10 JUNK YARDS.

No automobile dismantling yard, discarded motor vehicle dump or the storage of junk metal, paper, rags, rubber, glass or other discarded or salvaged articles shall be permitted on lands in the Residential, Office/Professional, General Business or Retail Business Districts. (Ord. 22-2005. Passed 9-14-05.)

1171.11 RUBBISH DUMPS.

Rubbish dumps may be permitted by the Board of Zoning Appeals at a public hearing after approval by Council where such use of property may be made without undue injury to neighboring properties and proper safeguards have been required.

1171.12 CONSTRUCTION PRIOR TO THIS ZONING ORDINANCE.

Nothing contained in this Zoning Ordinance shall hinder the construction of a building or prohibit its use where construction has started before the effective date of this Zoning Ordinance (Ordinance 87-1951, passed July 10, 1951), provided the ground story framework including structural parts of the second floor were completed before such effective date. (Ord. 87-1951. Passed 7-10-51.)

Boston Heights Overlook



Village of Boston Heights OH, Planning and Zoning Code

CHAPTER 1177
Trees and Timber Cutting Regulations and Restrictions

1177.01 Prohibition of tree or timber removal without permit, exceptions. 1177.05 Permits.

1177.02 Use exemptions.

1177.06 Conditions to issuing permit.

1177.03 Definitions.

1177.07 Buffer zone.

1177.04 Penalties.

1177.01 PROHIBITION OF TREE OR TIMBER REMOVAL WITHOUT PERMIT, EXEMPTIONS.

(a) No person shall timber, log, commercial cut, clear cut or excessively prune any tree that is presently attached to the ground on any public or private property without obtaining a permit from the Zoning Inspector for the removal or excessive pruning of trees.

(b) A property owner who owns less than five acres in a residentially zoned district shall be exempt from the provisions of these regulations.

(Ord. 10-2003. Passed 7-9-03.)

1177.02 USE EXEMPTIONS.

The activities listed below shall be exempt from this Ordinance:

(a) Emergency activities necessary to remedy an immediate threat to public health, safety, or welfare.

(b) Routine maintenance of trees necessary to maintain the health of cultivated plants, to contain noxious weeds, or to remedy a potential fire or health hazard or threat to public safety.

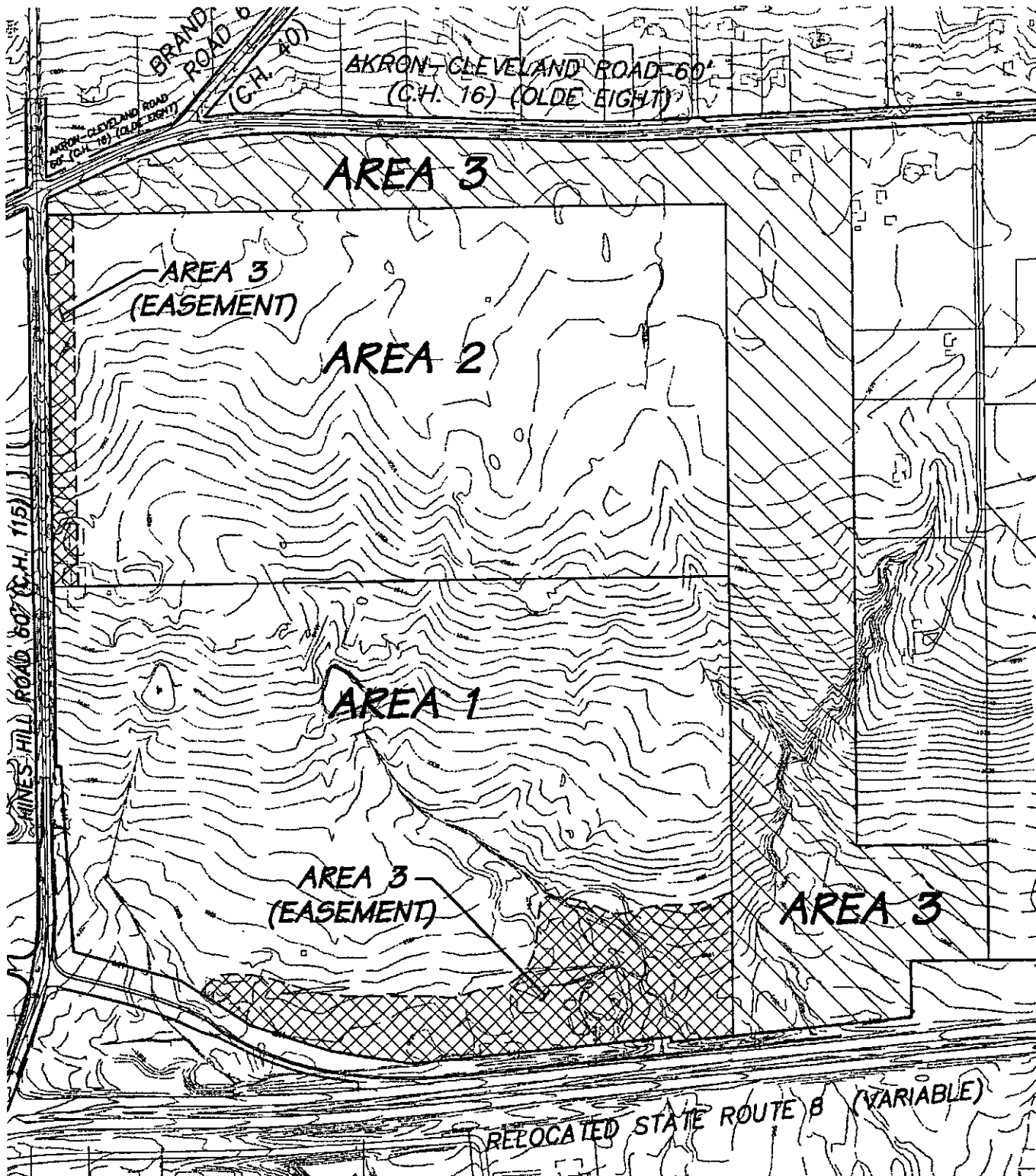


EXHIBIT "C"

VILLAGE OF BOSTON HEIGHTS
SUMMIT COUNTY, OHIO

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GRAPHIC SCALE



DONALD G. BOHNING & ASSOCIATES, INC.

CIVIL ENGINEERING & SURVEYING

7879 HUB PARKWAY • VALLEY VIEW, OHIO 44125

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DATE	CHK	DATE	1
L.R.	E.K.	DEC., 2013	1
FILE NO.	ORDER NO.		
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