

CHAPTER 40

ZONING CODE

ARTICLE I – GENERAL

40-1-1 **PURPOSE.** This Zoning Code has been prepared in accordance with a comprehensive plan and is adopted in order to protect and to promote adequate light, pure air, and safety from fire and other dangers; that the taxable value of land and buildings throughout the municipality may be conserved; that congestion in the public streets may be lessened or avoided; and that the public health, safety, comfort, morals, and welfare may otherwise be promoted. Specifically, the powers of the Zoning Code are as follows:

(A) To regulate and limit the height and bulk of buildings hereafter to be erected.

(B) To establish, regulate and limit the buildings, or setback lines on or along any street, traffic-way, drive or parkway.

(C) To regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings.

(D) To regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses.

(E) To divide the entire municipality, and all of that area extending **one and one-half (1 1/2) miles** beyond the corporate boundaries, into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lots area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Article.

(F) To fix standards to which buildings or structures therein shall conform.

(G) To prohibit uses, buildings, or structures incompatible with the character of such districts.

(H) To prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Article.

40-1-2 **COMPLIANCE WITH REGULATIONS.**

(A) Except as hereinafter provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.

(B) No building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.

(C) No part of a yard or other open space required about any building for the purpose of complying with the provisions of this Code shall be included as a part of a yard or other open space similarly required for another building.

40-1-3 **NATURE.** The Zoning Code consists of a zoning map describing certain districts and a set of regulations set forth in this Code.

40-1-4 DEFINITIONS. Except where specifically defined herein, all words used in this Code shall carry their customary meanings. Words used in the present tense include the future tense, and the plural includes the singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot" or "parcel"; the word "building" includes the word "structure"; the word "shall" is always mandatory; the word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged", or "designed to be used or occupied".

Accessory Use: A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of building.

Agriculture: The growing, harvesting and storing of crops, including but not limited to legume, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, nurseries, orchards, vineyards and commercial wine production facilities, forestry and greenhouses; buildings used for growing, harvesting and preparing agricultural products for market, buildings for storing and protecting farm machinery and equipment, and retail operations for selling produce, wine and other agricultural products produced on the same zoning lot. **(Ord. No. 13-12; 06-26-13)**

Alley: A narrow service way providing a secondary public means of access to abutting properties.

Alteration: Any change in size, shape, character, occupancy, or use of a building or structure.

Animal Agriculture: The keeping, raising and feeding of poultry (including but not limited to chickens, ducks, geese, pheasants, peacocks, quail and turkeys, and whether kept for eggs, as pets or otherwise) livestock (including but not limited to, poultry, swine, sheep, beef cattle, ponies, goats, and horses, asses and mules, and including such animals kept as pets); bees, fur farms, and fish farms, and the breeding of cats and dogs, and buildings used in connection therewith. **(Ord. No. 13-12; 06-26-13)**

Apartment: A room or suite of rooms in a multiple or two-family dwelling, or where more than **one (1) living unit** is established above non-residential uses, a room or suite of rooms intended or designed for use as a residence by a single family.

Area, Building: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

B-Truck: "B-Truck" is a vehicle with an Illinois B-Truck license plate, or an unlicensed vehicle which, if licensed in Illinois, would qualify for an Illinois B-Truck license plate as a Second Division Vehicle weighing **eight thousand (8,000) pounds** or less. **(Ord. No. 08-13; 09-17-08)**

Basement: A story partly underground but having less than half of its clear height below finished grade.

Building: Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

Building, Accessory: A supplemental building, the use of which is incidental to that of a main or principal building and located on the same lot therewith.

Building, Detached: A building surrounded by open space on the same lot.

Building, Front Line of: The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches whether enclosed or unenclosed, but does not include steps.

Building Height of: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line on mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

Cellar: A story partly underground and having more than **one-half (1/2)** of its clear height below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories.

Coverage: That percentage of the plot or lot area covered by the building area.

Curb Level: The officially established grade of the curb in front of the mid-point of the lot.

Dog Kennel: The keeping of more than **three (3) dogs** that are more than **six (6) months** old.

Dump: A lot or land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles, or parts thereof, or waste material of any kind.

Duplex: A building with **two (2)** dwelling units. **(Ord. No. 13-12; 06-26-13)**

Dwelling: A building used wholly for habitation.

Dwelling, Multiple-Family: A building used or designed as a residence for **three (3)** or more families living independently of each other and doing their own cooking therein, including apartment houses, apartment hotels, flats and group homes.

Dwelling Unit: A building or portion thereof providing complete housekeeping facilities for **one (1) family**.

Family: One or more persons living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

Filling Station: Buildings or premises or a portion thereof arranged, intended or designed to be used for the retail sale of gasoline or other motor vehicle or motor boat fuel.

Floor Area of a Building: The sum of the gross horizontal areas of the several floors of a building and its accessory building on the same lot, excluding the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Garage: An accessory building intended or designed to be used for the storage of noncommercial motor vehicles.

Home Occupation: A "home occupation" is an occupation or profession customarily carried on in a dwelling unit by a person or persons residing in that dwelling unit, and which is clearly incidental or secondary to the residential use of the dwelling unit and does not involve the conduct of a retail business, and which conforms to the following additional conditions:

(A) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding **four (4) square foot** in area, non-illuminated, and mounted flat against the wall of the principal building.

(B) No home occupation shall be conducted in any accessory building.

(C) No traffic shall be generated by such home occupation in greater volumes than in a single family residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in required front yard.

(D) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference reasonably offensive to neighbors, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

Home occupation includes day care for **three (3)** or fewer children cared for solely by a person residing in the dwelling unit. **(Ord. No. 06-01; 02-15-06)**

House Trailer: Any portable or mobile vehicle used or designed to be used for living purposes and with its wheels, rollers or skids in place.

Junk Yard: A lot, land or structure, or part thereof, used primarily for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage and salvaging of machinery or vehicles not in running condition, and for the sale of parts thereof.

Lot: A parcel of land occupied or capable of being occupied by **one (1) building**, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this Code.

Lot, Corner: A parcel of land at the junction of and fronting on **two (2)** or more intersecting streets.

Lot, Depth of: A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

Lot, Interior: A lot other than a corner lot.

Lot, Through: A lot which has a pair of opposite lot lines along **two (2)** more or less parallel public streets, and which is not a corner lot. On a through lot both street lines shall be deemed front lot lines. **(Ord. No. 04-03; 03-17-04)**

Lot, Width of: The mean width measured at right angles to its depth.

Lot Line: A property boundary line of any lot held in single or separate ownership; except that where any portion of the lot extends into the abutting street or alley, the lot line shall be deemed to be the street or alley right-of-way line. **(Ord. No. 04-03; 03-17-04)**

Lot Line, Front: That boundary of a lot which is along an existing or dedicated street. The owner of a corner lot may select either street lot line as the front lot line. **(Ord. No. 04-03; 03-17-04)**

Lot Line, Rear: That boundary of a lot which is most distant from and is parallel or approximately parallel to the front lot line. If the rear lot line is less than **ten (10) feet** in length, or if the lot forms a point at the rear, the rear lot line shall be deemed to be a line **ten (10) feet** in length within the lot, parallel to and at the maximum distance from the front lot line. **(Ord. No. 04-03; 03-17-04)**

Lot Line, Side: Any boundary of a lot which is not a front or rear lot line. **(Ord. No. 04-03; 03-17-04)**

Mini warehouse: A building or group of buildings with enclosed, individual and separate or compartmentalized stalls, lockers or other areas that are leased or rented for storage of business or household goods or other personal property. **(Ord. No. 18-08; 03-21-18)**

Mobile Home: Any structure designed for permanent human habitation and so constructed as to permit its transport on the streets and highways on its own wheels or on a trailer to be placed at the site where it is to be occupied as a dwelling unit. "Mobile Home", however, shall not include any structure which meets all of the following criteria:

- (A) The structure is placed on a permanent foundation constructed solely of masonry materials of one type suitable for a conventional single family dwelling;
 - (B) The structure consists of at least **two (2)** separate sections;
 - (C) The structure contains at least **one thousand ten (1,010) square feet** and is at least **twenty-four (24) feet** wide for **sixty percent (60%)** or more of its total length;
 - (D) The wheels, axles and tongue are permanently removed from the structure;
- and
- (E) The structure is served by permanent utilities, including electricity, water and sewage disposal. **(Ord. No. 549; 03-15-89)**

Mobile Home Space: A plot of ground within a mobile home community or park which is designed for and designated as the location for only **one (1) automobile** and **one (1)** mobile home and not used for any other purpose whatsoever other than the customary accessory uses thereof.

Nonconforming Use: A building, structure or use of land existing at the time of enactment of this Code, and which does not conform to the regulations of the district or zone in which it is situated.

Nursing or Convalescent Home: Any dwelling with less than **ten (10) sleeping rooms** where persons are housed or lodged and furnished with meals and nursing care for hire.

Parking Space: An off-street space available for the parking of **one (1) motor vehicle** and having an area of not less than **two hundred (200) square feet**, exclusive of passageways and driveways appurtenant thereto, and giving access thereto, and having direct access to a street or alley.

Recreational Vehicle: "Recreational vehicle" has the same definition as in the Illinois Motor Vehicle Code: Every camping trailer, motor home, mini motor home, travel trailer, truck camper or van camper used primarily for recreational purposes and not used commercially nor owned by a commercial business. **(Ord. No. 08-13; 09-17-08)**

Semitrailer: "Semitrailer" has the same meaning as in the Illinois Vehicle Code and means every vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. **(Ord. No. 08-13; 09-17-08)**

Second Division Vehicle: "Second Division Vehicle" has the same definition as in the Illinois Motor Vehicle Code: Those motor vehicles which are designed for carrying more than **ten (10) persons**, those motor vehicles designed or used for living quarters, those motor vehicles which are designed for pulling or carrying freight, cargo or implements of husbandry, and those motor vehicles designed for carrying **ten (10)** or fewer persons which have been remodeled for use and used as Second Division Vehicles. **(Ord. No. 08-13; 09-17-08)**

Sign: Any structure or part thereof or device attached thereto or painted or represented thereon, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. The word "sign" includes the word "billboard" but does not include the flag, pennant or insignia of any nation, state, city or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event.

Sign, Advertising: A "sign" which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises, and only incidentally on the premises, if at all.

Sign, Business: A "sign" which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall not be deemed a "business sign".

Story: That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

Street: A public way which affords principal means of access to abutting properties.

Street Line: The legal line between street right-of-way and abutting property.

Structures: A combination of material other than a building to form a construction that is safe and stable and includes, among other things, stadiums, platforms, radio towers, sheds, storage bins, fences and display signs.

Truck Tractor: "Truck Tractor" has the same definition as in the Illinois Motor Vehicle Code: Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. A Truck Tractor licensed in Illinois has an Illinois truck tractor license plate. **(Ord. No. 08-13; 09-17-08)**

Use: The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

Warehouse: A commercial facility for storage of goods or other personal property. **(Ord. No. 18-08; 03-21-18)**

Yard: An unoccupied space open to the sky, on the same lot with a building or structure. A yard is measured to the exterior wall of a structure. **(Ord. No. 04-23; 10-27-04)**

Yard, Front: An open, unoccupied space on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot.

Yard, Rear: An open, unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

Yard, Side: An open, unoccupied space on the same lot with the building, situated between the building and side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

40-1-5 DISTRICTS.

(A) The districts into which the Village, together with the area which extends **one and one-half (1 1/2) miles** beyond the corporate limits of said Village, is divided by the Zoning Code, shall be designated as follows:

<u>DISTRICT</u>	<u>DESIGNATION</u>
Agricultural District	A
Residential District	R
Multiple Family Residential District	R-3
Mobile Homes District	M-H
Commercial District	C
Industrial District	I

(Ord. No. 13-12; 06-26-13)

(B) The boundaries of the districts shall be as shown on the Zoning Map which together with all amendments, changes and additions thereto, and all legends, symbols, notations and other matter shown thereon shall be a part of this Code.

40-1-6 BOUNDARIES. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply.

(A) Where district boundaries are indicated as approximately following the center lines of alleys, streets or highways, said alley, street lines, or highway right-of-way lines shall be construed to be such boundaries.

(B) Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

(C) Where district boundaries are so indicated that they are approximately parallel to the center lines or alley lines or street lines of streets, or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at

such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map.

(D) Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located midway between the main tracks of said railroad line.

(E) Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between **two (2) districts**, the regulations of the more restrictive district shall govern the entire parcel in question, unless otherwise determined by the Hearing Officer.

(Ord. No. Z-1; 01-03-62)

40-1-7 FENCES.

(A) For purposes of the following regulations, the term *fence* shall include fences of all types, walls, other structures similar to a fence or wall, and plantings and other vegetation.

(B) Fences may be erected and maintained within any required yard, subject to the following regulations; however, no fence may be erected or maintained upon or within any portion of a platted drainage easement. Furthermore, notwithstanding the following provisions, no fence may be erected or maintained which constitutes a nuisance or is otherwise a detriment to the public health, safety or welfare.

(C) **Requirements in Residential Districts.** No fence may be erected within the Village and within a residential district which does not comply with the following specifications:

- (1) Any fence erected in a required front yard shall be at least **fifty percent (50%)** open, and no fence erected in a required front yard may exceed **four (4) feet** in height measured from ground level. A clearance of **three (3) inches** shall be allowed for installation purposes and shall not count in determining the height of a fence. No privacy fence may be erected in the front of a residence on the same zoning lot. For through lots, that yard which is used as a rear yard, and which would normally be considered a rear yard for lots other than through lots, shall be considered a rear yard for purposes of erecting a fence.
- (2) Any fence erected in that portion of a required rear yard where the rear lot line borders a public street shall be at least **fifty percent (50%)** open, and shall not exceed **four (4) feet** in height measured from ground level. A clearance of **three (3) inches** shall be allowed for installation purposes and shall not count in determining the height of a fence.
- (3) No fence may be erected which exceeds **six (6) feet** in height above ground level. A clearance of **three (3) inches** shall be allowed for installation purposes and shall not count in determining the height of a fence.
- (4) No fence may be constructed with barbed wire, metal spikes, or any other sharp pointed materials. All chain link fences shall be installed with the knuckle portion of the fence up and with the barb portion of the fence at or near the ground. No fence may be electrified.

(D) **Requirements in Commercial and Industrial Districts.** No fence may be erected or maintained within the Village and within a commercial or industrial district which does not comply with the following specifications:

- (1) Any fence erected in a required front yard shall be at least **fifty percent (50%)** open.
- (2) Any fence erected in that portion of a required rear yard where the rear lot line borders a public street shall be at least **fifty percent (50%)** open, and shall not exceed **four (4) feet** in height measured from ground level. A clearance of **three (3) inches** shall be allowed for installation purposes and shall not count in determining the height of a fence.
- (3) No fence may exceed a height of **eight (8) feet** above ground level. A clearance of **three (3) inches** shall be allowed for installation purposes and shall not count in determining the height of a fence.
- (4) No fence may be constructed with barbed wire, metal spikes, or any other sharp pointed materials unless the sharp pointed materials are erected at least **six (6) feet** above ground level, but not higher than **eight (8) feet** above ground level. All chain link fences shall be installed with the barbed portion of a fence at or near the ground unless it is installed at least **six (6) feet** above ground level. No fence may be electrified.

(E) **Permits.**

- (1) No fence which exceeds **four (4) feet** in height may be erected within any residential, commercial, or industrial district unless a fence permit is obtained from the office of the Village Clerk at a cost of **Twenty-Five Dollars (\$25.00)**. The individual or agency actually constructing the fence shall be responsible for obtaining the permit. No work shall start until the permit has been obtained. Any individual or agency starting work prior to applying for and receiving said permit shall be subject to a fine of **Five Dollars (\$5.00)** per day for each day the violation exists after the owner is mailed a written notice of violation at the property address or the owner's other current address.
- (2) A fence permit will become null and void after **one (1) year** from the date of issuance if the fence authorized by said permit has not been completed.

(F) **Variances.** Application for and other procedures for a variance of any of the above provisions shall be made in the same manner as provided in **Section 40-8-4** and **40-8-5** for variances of other provisions of the Zoning Code, except that the filing fee for a petition requesting a variance with respect to a fence existing on the effective date of the ordinance establishing this **Section 40-1-7** shall be **Twenty-Five Dollars (\$25.00)**.

(G) **Recreational Purpose Fences.** Fences erected for purposes of providing fencing around sports or recreation facilities or areas as listed below, shall not be subject to the height restrictions specified elsewhere in this Section, provided that such facility or area is not located within **twenty (20) feet** of a zoning lot corner formed by the intersection of any **two (2)** street lines; the fence is at least **seventy-five percent (75%)** open; and a fence permit is obtained. The maximum height of a fence is listed by each sports or recreational facility or area as follows:

<u>Use</u>	<u>Maximum Height in Feet</u>
Tennis court (public or private)	12
Baseball diamond backstop (public or private)	16
Swimming pools (public)	8
Elementary, middle or high schools (public or private)	8

(H) **Swimming Pool Fences.** The provisions of this Section shall not apply to swimming pool fences specifically regulated by other provisions of the Village Code.
(Ord. No. 02-06; 10-16-02)

40-1-8 ESTABLISHMENT OF ZONING HEARING OFFICER. The corporate authorities hereby establish the position of hearing officer and upon appointment of an individual to the position of hearing officer, delegate to the hearing officer the authority to: (i) conduct any public hearing – other than a public hearing provided for in **65 ILCS 5/11-13-12** of the Municipal Code – required to be held under Division 13 of Article II of the Municipal Code in connection with applications for any special use, variation, amendment or other change or modification in any ordinance of the municipality adopted pursuant to Division 13 of Article 11 of the Municipal Code; and (ii) hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to Division 13 of Article 11 of the Municipal Code. The Hearing Officer shall exercise and perform all of the powers and duties of the Board of Appeals in the same manner and to the same effect as provided in this Chapter 40 with respect to the Board of Appeals and Plan Commission.
(Ord. No. 18-19; 07-18-18)

ARTICLE II - RESIDENTIAL DISTRICT REGULATIONS

40-2-1 APPLICATION OF REGULATIONS. The following regulations and the general provisions and exceptions set forth in Article VII of this Code shall apply in the "R" and "R-3" Districts. **(Ord. No. 13-12; 06-26-13)**

40-2-2 PERMITTED USES IN THE "R" DISTRICT. The following uses shall be permitted in the "R" district.

One-family dwelling.

Duplexes.

Nursing or convalescent home.

Churches or similar places of worship, parish house, convent.

Public parks, public playgrounds and recreational areas operated by membership organizations for the benefit of their members and not for gain.

Public schools and institutions of higher education, public libraries, municipal buildings.

Philanthropic or eleemosynary institutions.

Customary home occupations, provided that there shall be no external evidence of such occupations except a small announcement or business sign not over **two (2) square feet** in area.

Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.

(Ord. No. 13-12; 06-26-13)

40-2-3 PERMITTED USES IN THE "R-3" DISTRICT.

All uses permitted in the "R" District.

Multi-family dwellings.

(Ord. No. 13-12; 06-26-13)

40-2-4 REGULATIONS FOR SIGNS. Except for bulletin boards used in conjunction with churches and institutions, and business signs for the sale or lease of property, all advertising signs shall be excluded from the "R" and "R-3" Districts. **(Ord. No. 13-12; 06-26-13)**

40-2-5 BUILDING HEIGHT LIMIT. No building shall be erected to a height in excess of **thirty-five (35) feet** in the "R" and "R-3" Districts. **(Ord. No. 13-12; 06-26-13)**

40-2-6 REQUIRED LOT AREA. Lot area shall be not less than **seven thousand five hundred (7,500) square feet** and lot width not less than **seventy-five (75) feet** in the "R" and "R-3" Districts. **(Ord. No. 13-12; 06-26-13)**

40-2-7 **PERCENTAGE OF LOT COVERAGE.** All buildings, including accessory buildings, shall not cover more than **thirty-five percent (35%)** of the area of the lot, presently or hereafter platted, in the "R" District. This limitation does not apply in the "R-3" District. **(Ord. No. 13-12; 06-26-13)**

40-2-8 **YARD REQUIRED.** Each lot in the "R" and "R-3" Districts shall have front, side and rear yards not less than the following depths or widths:

(A) **Front Yard Depth.** **Twenty-five (25) feet** to residence and garage or accessory building. Provided, however, that in presently platted additions or subdivisions, residence improvements erected on lots therein after the effective date of this Code, shall comply with the existing setback line. If the existing improvements have not resulted in a uniform setback line, then any new improvements shall set back at least as far as the existing improvement which is closest to the front of such lot.

(B) **Each Side Yard Width.** **Ten (10) feet** provided, however, that lots presently platted of a width of less than **fifty (50) feet** shall have side yards of at least **three (3) feet.**

(C) **Rear Yard Depth.** **Twenty-five (25) feet** to principal use or **three (3) feet** to accessory use or detached garage. **(Ord. No. 16-09; 08-17-16)**
(Ord. No. 13-12; 06-26-13)

40-2-9 **OFF-STREET PARKING.** A minimum of **one (1)** off-street parking space shall be provided for each dwelling unit on each lot in the "R" and "R-3" Districts.

(A) In residential zones, no semitrailer, whether attached to a Truck Tractor or unattached, may be parked on a zoning lot except when actively engaged in loading or unloading household goods or the unloading of materials to be used for the construction of improvements on the lot. No semitrailer may be used for storage.

(B) No Second Division Vehicle other than a B-Truck, a Truck Tractor licensed to the owner or lessee of the lot and not attached to a semitrailer, or a Recreational Vehicle, may be parked on a lot in the "R" district.

(C) Except where the primary use of the zoning lot is agricultural, no Second Division Vehicle other than a B-Truck, a Truck Tractor licensed to the owner or lessee of the lot and not attached to a semitrailer, or Recreational Vehicle may be parked anywhere on any lot in the "R" district other than on a paved off-street parking place.

(D) No person parking a vehicle in the "R" district may run its motor or the motor of any auxiliary power supply or refrigeration unit for more than **fifteen (15) continuous minutes** within a **six (6) hour** period.

(Ord. No. 08-13; 09-17-08) (Ord. No. 13-12; 06-26-13)

40-2-10 **SEA-LAND CONTAINERS.**

(A) **Definition.** A sea-land container is a unit, usually constructed of steel, which is customarily used for storing construction tools and supplies at a construction site. Such units are also known as cargo boxes and are also used for transporting cargo on water (by loading such units on board ships) and on land (by loading such units on railroad cars). Such units are also usually designed to be capable of stacking one on top of another. Such units are usually designed with one or more access doors and are usually accessible through the top.

Standard sizes of such units are **eight (8) feet** high and **eight (8) feet** wide, with lengths varying from **ten (10) feet** up to **forty (40) feet**.

(B) **Permit Required.** No person or entity shall place or maintain a sea-land container on any real estate in the Village without first having obtained a permit therefore. Such permit shall be applied for in the same manner and subject to the same requirements and procedures as a building permit. The application for such permit shall state the purpose for which the container shall be utilized and the amount of time such container shall remain in place. The fee for such permit shall be **Seventy-Five Dollars (\$75.00)**, and shall be valid for a period of **twelve (12) months**, after which time a renewal permit shall be required; the fee for each renewal permit shall be **Thirty-Seven Dollars Fifty Cents (\$37.50)**.

(C) **Restrictions.**

- (1) No sea-land container shall be placed or maintained on real estate zoned for residential use.
- (2) A sea-land container shall be considered a "structure", subject to all of the restrictions, requirements and other provisions of the Building Code of the Village as in effect and amended from time to time.
- (3) The restrictions set forth in paragraphs (1) and (2) above shall not apply to:
 - (a) Sea-land containers offered for sale or rent from real estate which is zoned for commercial or industrial use; or
 - (b) Sea-land containers which are utilized in connection with construction or other work for which a current permit, if required, has been issued by the Village.
- (4) No sea-land container shall be used or adapted for use as a residence, office or other use involving human occupancy.
- (5) The placement of any and all sea-land containers for any purpose shall be subject to the setback requirements applicable to buildings under the applicable provisions of the Village Code.
- (6) All sea-land containers shall be kept securely locked except when being accessed or attended to in connection with a lawful use thereof.
- (7) Sea-land containers may not be stacked.

(Ord. No. 03-05; 04-16-03)

ARTICLE III – AGRICULTURAL ZONE

40-3-1 PERMITTED USES.

Agriculture.

Animal agriculture.

Single-family dwellings, when occupied by farm owners, operators, tenants or farm workers.

40-3-2 REQUIRED LOT AREA AND LOT WIDTH. Each lot shall have a lot area of not less than **two and one-half (2.5) acres** and shall not be less than **eighty (80) feet** in width.

Lots used for Animal Agriculture shall have a lot area of not less than **twenty (20) acres** and shall be not less than **four hundred (400) feet** in width.

Areas depicted on the Village Zoning Map as having agricultural zoning as of the effective date of this Chapter but not meeting the **two and one-half (2.5) acre** requirement set forth in this Section may continue to be used for Agriculture and Single-Family Dwellings.

40-3-3 HEIGHT REGULATION. No residential dwelling in the A Zone shall exceed **thirty-five (35) feet** in height. No agricultural building in the A Zone shall exceed in height, its distance from the lot line.

40-3-4 REQUIRED YARDS. Where a lot in the A Zone adjoins a lot in the "R" or "R-3" Zone, it shall have a **ten (10) foot** side yard, **twenty-five (25) foot** rear yard, and **twenty-five (25) foot** front yard setback requirement.

40-3-5 SEPARATION DISTANCES. A dwelling in the A Zone shall be at least **thirty (30) feet** from any structure used for sheltering livestock or poultry or for storage of agricultural implements.

A lot in the A Zone used for Animal Agriculture shall be at least **one thousand three hundred twenty (1,320) feet** from any lot zoned "R" or "R-3", measured at the closest points of both lots.

40-3-6 OFF-STREET PARKING. There shall be sufficient off-street parking provided in the "A" District that no person living on the zoning lot or visiting the zoning lot shall park on or in an adjoining street. Commercial operations selling produce, wine or other agricultural products produced on the zoning lot shall have sufficient paved or gravel parking areas for the customers and shall prevent the customers from parking other than on the paved or gravel parking areas.

(Ord. No. 13-12; 06-26-13)

ARTICLE IV - MANUFACTURED HOME PARK REGULATIONS

40-4-1 **PERMITTED USES.** The following uses shall be permitted in all "M-H" Districts.

 All uses permitted in any residential district subject to all the provisions specified for such "R" District.

 Manufactured homes.

40-4-2 **REQUIREMENTS.**

(A) The manufactured home park shall be located on a well-drained site properly graded to insure rapid drainage and freedom from stagnant pools of water.

(B) Manufactured home spaces shall be provided having a minimum of **two thousand (2,000) square feet** for each manufactured home space.

(C) Each manufactured home space shall be provided with storage locker space off the manufactured home space of at least **fifty (50) cubic feet.**

(D) Manufactured homes shall be so harbored on each space so that there shall be at least a **fifteen (15) foot** clearance between manufactured homes; provided, however, that with respect to manufactured homes parked end to end, the end to end clearance may be less than **fifteen (15) feet** but not less than **ten (10) feet.** No manufactured home shall be located closer than **fifteen (15) feet** from any building within the manufactured home park or from any property line bounding the manufactured home park.

(E) All manufactured home spaces shall abut upon a driveway of not less than **twenty (20) feet** in width, which shall have unobstructed access to a public street or highway, and the sole vehicular access shall not be by an alley, and all dead-end driveways shall include adequate vehicular turning space or cul-de-sac.

(F) **One (1)** off-driveway parking site shall be maintained on each manufactured home space, and in addition, parking sites shall be maintained within the park equal to **one-fourth (1/4)** of the total manufactured home space.

(G) All driveways and walkways within the manufactured home park shall be hard surfaces and lighted at night with electric lamps of not less than **fifty (50) watts** each, spaced at intervals of not more than **one hundred (100) feet.**

(H) An electrical outlet supply of at least **one hundred ten (110) volts** shall be provided for each manufactured home space, with a minimum **thirty (30) ampere** individual service outlet.

(I) Outdoor laundry space of adequate area and suitable location shall be provided.

(Ord. No. Z-1; 01-03-62)

ARTICLE V - COMMERCIAL DISTRICT REGULATIONS.

40-5-1 **PERMITTED USES.** The following uses shall be permitted in all "C" Districts.

All uses permitted in any residential district subject to all the provisions specified for such residential district and including apartment, hotel or motel.

Stores and shops for the conducting of any retail business.

Personal service shops (barber shops, beauty parlors, etc.).

Banks, theaters, offices, restaurants and similar community services.

Garages and filling stations upon approval of the Zoning Hearing Officer and subject to such conditions and safeguards as deemed appropriate by such Board and upon the securing of a permit therefor. Garages and filling stations are subject to the following provisions.

- (1) No repair work is performed out-of-doors.
- (2) Pumps, lubricating or other devices are located at least **ten (10) feet** from any street line or highway right-of-way.
- (3) All fuel, oil or similar substances stored above ground shall be at least **twenty-five (25) feet** distant from any street or lot line.
- (4) All automobile parts, dismantled vehicles and similar articles are stored within a building.

Undertaking establishments.

Accessory buildings and accessory uses.

Other uses which, in the opinion of the Zoning Hearing Officer, are of the same general character as those listed as permitted uses and which will not be detrimental to the district in which they are located.

40-5-2 **BUILDING HEIGHT LIMIT.** No building shall be erected to a height in excess of **thirty-five (35) feet**.

40-5-3 **REQUIRED LOT AREA.** Lot area shall not be less than **two thousand four hundred (2,400) square feet** and lot width not less than **twenty (20) feet**.

40-5-4 **PERCENTAGE OF LOT COVERAGE.** All buildings including accessory buildings shall not cover more than **seventy-five percent (75%)** of the area of the lot.

40-5-5 **YARDS REQUIRED.** Each lot shall have a rear yard not less than **twenty (20) feet**.

40-5-6 **OFF-STREET PARKING SPACES.** Off-street parking spaces shall be owned or provided under common ownership by the owner of the lot within **three hundred (300) feet** of the site of each of the permitted uses in accordance with the following schedule:

(A) For stores, service establishments, shops and studios, **one (1) square foot** of parking area per square foot of gross floor area in the structure(s), provided that no store, service establishment, shop or studio shall provide less than **three hundred (300) square feet** of off-street parking area.

(B) For offices and office buildings, **one (1) parking space** for each individual office, either separate or part of a suite of offices, plus **one (1) additional space** for every **three (3) employees**.

40-5-7 OFF-STREET LOADING SPACES.

(A) **One (1)** off-street loading space shall be provided on the site of a store or warehouse having a gross floor area exceeding **two thousand (2,000) square feet**, and **one (1)** additional off-street loading space shall be provided for each additional **two thousand (2,000) square feet** or major fraction thereof of gross floor area.

(B) Off-street loading spaces shall be provided on the site of any of the permitted uses when found to require the receipt or distribution by vehicle of materials or merchandise and when found to be necessary for the public safety, convenience or welfare by the Zoning Hearing Officer. The number of off-street loading spaces shall be determined by the Zoning Hearing Officer on the basis of the number of truck movements anticipated.

(Ord. No. Z-1; 01-03-62)

ARTICLE VI - INDUSTRIAL DISTRICT REGULATIONS

40-6-1 USES PERMITTED.

(A) Any use not in violation with the enacted laws of the State of Illinois or of the Village of New Berlin may be permitted; provided, however, that no building or premise shall be used for any industrial purpose unless approved by the Village Board after a review and report by the Zoning Hearing Officer and subject to such requirements as it may deem necessary to protect adjacent property and prevent objectionable or offense conditions.

(B) In recommending approval or disapproval of specific industries, the Zoning Hearing Officer shall take into consideration the degree or amount of smoke, dust, gas, noise, vibration and other operational characteristics of the industry, its location and distance from residential areas and its effects on surrounding property, and the Board may impose such reasonable conditions and requirements as to landscaping, paving and other features of the development as are deemed necessary for the protection of affected property.

(C) Adult uses, as defined in **Section 40-7-1** of the Village Code and pursuant to permits granted in accordance with **Section 40-7-4** and **40-7-5** of the Village Code. **(Ord. No. 02-05; 08-21-02)**

(D) Warehouses and mini warehouses. **(Ord. No. 18-08; 03-21-18)**

40-6-2 BUILDING HEIGHT LIMIT. Three (3) stories or forty-five (45) feet.

40-6-3 STRUCTURE HEIGHT LIMIT. Height limitations subject to review by the Zoning Hearing Officer.

40-6-4 REQUIRED LOT AREA. Lot area shall be not less than **seven thousand five hundred (7,500) square feet** and lot width not less than **seventy-five (75) feet**.

40-6-5 YARDS REQUIRED.

(A) Each lot shall have a front yard of not less than **twenty-five (25) feet** in depth.

(B) There shall be a side yard along the side of every lot in an "I" District of not less than **ten (10) feet**; provided, however, any lot bordering a residence district on a side yard shall have a side yard of a width not less than the minimum width required in said adjacent residence district.

(C) There shall be a rear yard on every lot of an "I" District of not less than **ten (10) feet**.

40-6-6 OFF-STREET PARKING SPACES. **One (1)** off-street parking space shall be provided for each **two (2) employees** on the maximum work shift.

40-6-7 **OFF-STREET LOADING SPACE.** Off-street loading space shall be provided on the site of any of the permitted uses found to require the receipt or distribution by vehicle of materials or merchandise and found to be necessary for the public safety, convenience or welfare by the Zoning Hearing Officer. The number of off-street loading spaces that may be required by the Zoning Hearing Officer shall be determined on the basis of the number of truck movements anticipated, but not more than **four (4) additional spaces** may be required.

(Ord. No. Z-1; 01-03-62)

ARTICLE VII – SUPPLEMENTARY REGULATIONS

DIVISION I - ADULT USES

40-7-1 DEFINITIONS.

Adult Bookstore: An establishment having as a substantial or significant portion of its sales or stock in trade, books, magazines, films for sale or for viewing on premises by use of motion picture devices or by coin operated means, and periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas"; or an establishment with a segment or section devoted to the sale or display of such materials; or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin operated booths, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

Adult Club: A public or private establishment, a primary purpose of which is to provide members or guests with a venue to perform any one or more "specified sexual activities" with other members or guests.

Adult Entertainment Cabaret: A public or private establishment which:

- (A) features topless dancers, strippers, "go-go" dancers, male or female impersonators, lingerie or bathing suit fashion shows;
- (B) not infrequently features entertainers who display "specified anatomical areas"; or
- (C) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or features entertainers who engage in, or are engaged in explicit simulation of, "specified sexual activities".

Adult Entertainment Facility: As defined in **65 ILCS 5/11-5-1.5,**

- (A) a striptease club or pornographic movie theater whose business is the commercial sale, dissemination or distribution of sexually explicit material, shows or other exhibitions or
- (B) an adult bookstore or adult video store whose primary business is the commercial sale, dissemination or distribution of sexually explicit material, shows or other exhibitions.

Adult Motion Picture Theater: A building or area used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult Novelty Store: An establishment having a substantial or significant portion of its sales or stock in trade consisting of toys, devices, clothing "novelties", lotion and other items distinguished or characterized by their emphasis on or use for "specialized sexual activities" or "specified anatomical areas" or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

Adult Use: Adult bookstores, adult motion picture theaters, adult entertainment cabarets, adult entertainment facilities, adult novelty stores, adult clubs, and other similar uses of property within the Village.

Specified Sexual Activities:

- (A) human genitals in the state of sexual stimulation or arousal;
- (B) acts of human masturbation, sexual intercourse or sodomy; and
- (C) fondling or other erotic touching of human genitals, pubic region, buttock or female breasts; or
- (D) excretory functions as part of or in connection with any of the foregoing activities.

Specified Anatomical Areas:

- (A) less than completely and opaquely covered:
 - (1) human genitals;
 - (2) pubic region;
 - (3) buttock;
 - (4) female breasts below a point immediately above the top of the areola; and
- (B) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

40-7-2 **LIQUOR SALE AND CONSUMPTION PROHIBITED.** No liquor license shall be issued and no liquor shall be sold or consumed on the premises of any adult use.

40-7-3 **LOCATION.** Adult uses are permitted only in areas zoned I (Industrial) under and pursuant to the provisions of **Article VI** of **Chapter 40** of the Village Code, provided:

- (A) No adult use shall be located within **one thousand (1,000) feet** of any property which is zoned residential or used for residences, churches, schools, parks or another adult use;
- (B) No adult entertainment facility shall be located within **one thousand (1,000) feet** of the property boundaries of any school, day care center, cemetery, public park, forest preserve, public housing or place of religious worship, all as provided in **65 ILCS 5/11-5-1.5**; and
- (C) No adult use shall be located in a building in which there is an establishment selling alcoholic liquors.

40-7-4 **PERMIT REQUIRED.**

(A) No adult use shall be constructed, occupied or conducted without a permit issued pursuant to this Section and **Section 40-7-5**. A permit shall be valid for **twelve (12) months** after the date of its approval by the Village Board; the applicant must apply for a renewal permit for each period of **twelve (12) months** thereafter. Applications for renewal permits must be submitted not less than **sixty (60) days** before the expiration of the existing permit. Permits for constructing, occupying or conducting an adult use shall be issued only after the following review process. The applicant shall apply to the Building Inspector for the permit; the original application shall be accompanied by a non-refundable **Five Hundred Dollars (\$500.00)**

application fee, and each application for a renewal permit shall be accompanied by a non-refundable **One Hundred Dollar (\$100.00)** application fee. The application shall be on a form specified by the Building Inspector, and shall include, in addition to any additional information submitted by the applicant, the following information:

- (1) The name, address, and phone number of all owners of record of the property on which the adult use is proposed to be constructed or operated;
- (2) The name, address, and phone number of all persons who will be operating the adult use; and if such person is a corporation or limited liability company, the name, address and phone numbers of all officers and directors and managers of the corporation or limited liability company, and the name, address and phone number of all management personnel.
- (3) The common address and legal description of the property;
- (4) A site plan and floor plan drawn to scale, identification of construction materials, and plans for lighting, parking and circulation, ingress and egress, landscaping and screening, and signage;
- (5) A statement as to the nature of the adult use proposed.

The Building Inspector shall forward the application to the Zoning Hearing Officer for review. Within **sixty (60) days** of filing, the Zoning Hearing Officer shall conduct a review of the application for conformance with the Zoning, Subdivision, and Adult Use Chapters of the Village Code. The Zoning Hearing Officer shall render a recommendation to the Village Board as to whether the proposed adult use conforms with all Village ordinances, and may recommend conditions on the development and operation of the adult use related to site plan, floor plan, construction materials, lighting, parking and circulation, ingress and egress, landscaping and screening, and signage in order to assure that the design and operation of the adult use is in conformance with all Village ordinances and is compatible with surrounding uses.

(B) **Criminal Background Restrictions.** No permit shall be issued to a person who has been convicted of a felony or misdemeanor involving drugs, prostitution, pandering, obscenity, sexual abuse or other crime or offense of a sexual nature, nor shall a permit be issued to a corporation or other entity, any manager or owner of **five percent (5%)** or more of which has been so convicted. Upon application for an adult use license, the Chief of Police shall conduct such background checks as are required to demonstrate compliance with the above restrictions and shall report his findings to the Village Board.

40-7-5 ACTION BY CORPORATE AUTHORITIES. Within **thirty (30) days** of receipt of the recommendation of the Zoning Hearing Officer and the report of the Chief of Police as to the criminal background investigation required under **Section 40-7-4(B)**, the Village Board shall, by ordinance or resolution, grant or deny the original or renewal permit. The Village Board's action shall specify the location, by legal description and common address, of the adult use, and shall specify the nature of the adult use permitted. The Village Board may place conditions on the adult use. The Village Board's determination is a final agency action subject to administrative review.

40-7-6 **EXTERIOR DISPLAY.** No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

40-7-7 **EXISTING ADULT USES.** Any adult use which existed lawfully, but which became nonconforming upon the adoption of this Article, may be continued as hereinafter provided:

(A) Upon written notice from the Village to the owners or interests therein that any building, structure, lot or regulated use is nonconforming under the provisions of the Zoning Code as amended, the owners or interests therein shall, within **two (2) months** from the date of such notice, apply to the Village Clerk for a Certificate of Nonconformance.

(B) Failure to apply for a Certificate of Nonconformance within **two (2) months** of the notice provided in paragraph (A) above will require the amortization of the nonconformance within **six (6) months** of the notice provided for in paragraph (A).

(C) Nonconformances that have applied for a Certificate of Nonconformance from the Village Clerk shall be discontinued within **one (1) year** of the notice provided in paragraph (A) above.

40-7-8 **OFFENSES.**

(A) No person, firm or corporation shall own, manage, or operate an adult use within the corporate limits of the Village without a permit from the Village obtained in accordance with this Article.

(B) No person, firm or corporation shall provide false information on an application for an adult use permit.

(C) No person, firm or corporation shall own, manage or operate an adult use within the corporate limits of the Village except in conformance with this Article.

40-7-9 **PENALTIES.** Persons found guilty of violating this Article shall, upon conviction thereof, be subject to a fine of not less than **Two Hundred Fifty Dollars (\$250.00)** or more than **Seven Hundred Fifty Dollars (\$750.00)**. Each day a violation occurs shall be deemed a separate offense. Where a corporation or limited liability company owns or operates an adult use, all officers, directors, managers and employees who knowingly participated in management decisions shall be liable to the same extent as the corporation.

40-7-10 **ENLARGEMENT OR CHANGE IN NATURE OF USE.** An adult use permit is specific to a location and to a use. No adult use may be enlarged, nor the nature of the adult use changed, without the owner and manager thereof securing a new permit.

(Ord. No. 02-05; 08-21-02)

ARTICLE VIII – NON-CONFORMING USES

40-8-1 GENERAL RULE. Except as otherwise provided in **Section 40-7-7** with respect to adult uses, the lawful use of any building or land existing at the time of enactment of this Code may be continued although such use does not conform with the provisions of this Code. **(Ord. No. 02-05; 08-21-02)**

40-8-2 UNSAFE STRUCTURES. Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition but may not be altered.

40-8-3 ALTERATIONS. A non-conforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost **fifty percent (50%)** at any **one (1) time** of the fair cash market value of the building as determined by the Zoning Hearing Officer unless said building is changed to a conforming use.

40-8-4 EXTENSION. A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building which existed prior to the enactment of this Code shall not be deemed the extension of such non-conforming use.

40-8-5 CONSTRUCTION APPROVED PRIOR TO CODE. Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within **three (3) months** of the date of such permit, and the ground story framework of which, including the second tier of beams, shall have been completed within **six (6) months** of the date of the permit, and which entire building shall be completed according to such plans as filed within **one (1) year** from date of this Code.

40-8-6 RESTORATION. No building damaged by fire or other cause to the extent of more than **fifty percent (50%)** of its fair cash market value as determined by the Zoning Hearing Officer shall be repaired or rebuilt except in conformity with the regulations of this Code.

40-8-7 DISCONTINUANCE OF NON-CONFORMING USE. Whenever a non-conforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this Code.

40-8-8 CHANGES. Once changed to a conforming use no building or land shall be permitted to revert to a non-conforming use.

40-8-9 DISPLACEMENT. No non-conforming use shall be extended to displace a conforming use.

40-8-10 **CESSATION.** Notwithstanding any other provisions of this Code, any dump, automobile wrecking yard or other junk yard in existence in any Residential District at the date of enactment of this Code shall at the expiration of **three (3) years** from such date become a prohibited and unlawful use and shall be discontinued.

40-8-11 **DISTRICT CHANGES.** Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any non-conforming uses existing therein.

(Ord. No. Z-1; 01-03-62)

ARTICLE IX – ENFORCEMENT PROCEDURES AND FEES

40-9-1 ENFORCEMENT. This Code shall be enforced by the Building Inspector. No building permit or certificate of occupancy shall be granted for any purpose except in compliance with the provisions of this Code.

40-9-2 BUILDING PERMITS. Application for and issuance of all building permits required by the Village Code shall be made and administered in accordance with written procedures adopted by the Village Board and in effect from time to time and kept on file by the Village Clerk. The written procedures attached to this Code as Exhibit "A" are hereby adopted by the Village Board as part of this Code. **(Ord. No. 2001-05; 08-15-01)**

40-9-3 BUILDING PERMIT FEES. The Village Clerk or other official designated by the Village Board is hereby authorized and directed to collect a Building Permit fee from the owner and/or contractor for any work for which a permit is required on the basis of the fee schedule as adopted by the Village Board and in effect from time to time, the current schedule to be kept on file by the Village Clerk. The building permit fee schedule attached to this Code as Exhibit "A" is hereby adopted by the Village Board as part of this Code. **(Ord. No. 2001-05; 08-15-01)**

40-9-4 CERTIFICATE OF OCCUPANCY.

(A) **Two (2)** types of certificates of occupancy are hereby established:

- (1) A Zoning Certificate of Occupancy, pursuant to which the Building Inspector certifies that the use or proposed use of land or a structure is in accordance with the regulations which pertain to the zoning district in which the land is located;
- (2) A Zoning and Building Certificate of Occupancy, pursuant to which, in addition to the certification in subsection (1), the Building Inspector certifies that a structure is in accordance with the Village's Building Code and other applicable codes.

(B) Any landowner may apply for a Zoning Certificate of Occupancy. The application shall be on a form specified by the Building Inspector and shall be accompanied by:

- (1) a **Twenty-Five Dollar (\$25.00) fee** payable to the Village;
- (2) a sworn statement of the landowner stating the use or proposed use of the land; and
- (3) a drawing to scale of the land and all structures and uses thereon, including data relating to setbacks from the property lines.

(C) Any landowner may apply for a Zoning and Building Certificate of Occupancy. The application shall be on a form specified by the Building Inspector and shall be accompanied by:

- (1) a **Fifty Dollar (\$50.00) fee** payable to the Village;
- (2) a sworn statement of the landowner stating the use or proposed use of the land;
- (3) a drawing to scale of the land and all structures and uses thereon, including data relating to setbacks from the property lines; and

- (4) (a) in the case of a one or two-family dwelling, a certificate from a person licensed pursuant to the Home Inspector License Act, **225 ILCS 441/1-1 et seq.**, that such person has determined after inspection that all structures thereon are built in accordance with the Village's Building Code and all applicable fire, plumbing and electrical codes; or
- (b) in the case of a multi-family or commercial building, a certificate from a licensed architect that the architect has determined after a review of the plans and an inspection that all structures thereon are designed and built in accordance with the Village's Building Code and all applicable fire, plumbing and electrical codes.

The Building Inspector may rely on the certifications of the licensed home inspector or architect without further investigation.

(D) The Building Inspector shall examine the application, and if the application meets the requirements of this Section and the use or proposed use of land or a structure is in accordance with the regulations which pertain to the zoning district in which the land is located, shall issue the certificate to the applicant within **three (3) working days** of receipt of the application.

(E) Denials of an application for a certificate of occupancy may be appealed to the Zoning Hearing Officer.

(F) No certificate of occupancy is required as a legal prerequisite for any person to own or occupy land or operate any use thereon.

(Ord. No. 08-10; 07-16-08)

40-9-5 **VIOLATIONS AND PENALTIES.** A violation of this Code is a misdemeanor punishable by a fine not exceeding **Seven Hundred Fifty Dollars (\$750.00)** except that each day's violation may be considered a separate offense.

(Ord. No. Z-1; 01-03-62)

(See Section 1-1-20 also)

ARTICLE X – ADMINISTRATIVE PROTOCOLS

DIVISION I – HEARING OFFICER’S POSITION

40-10-1 **HEARING OFFICER.** The position of Hearing Officer is hereby established in accordance with Illinois law. **(See 65 ILCS 5/11-13-3)**

40-10-2 **MEMBERSHIP, APPOINTMENT, COMPENSATION.** The Hearing Officer shall be appointed by the Mayor with the advice and consent of the Village Board pursuant to an employment agreement.

40-10-3 **TERM OF OFFICE – VACANCIES.** The Hearing Officer shall hold office from the date of his appointment and until his successor has been selected and under contract. With the advice and consent of the Village Board, the Mayor may remove the Hearing Officer for cause after due notice. Vacancies in the Hearing Officer position shall be filled in the same manner as provided for his appointment.

40-10-4 **MEETING.** All meetings of the Hearing Officer shall be held at such times as he may determine. All meetings shall be open to the public. The Hearing Officer may adopt rules of meeting procedures consistent with this Code and the applicable Illinois Compiled Statutes. The Hearing Officer may administer oaths and compel the attendance of witnesses.

40-10-5 **RECORDS.** The secretary for the Hearing Officer shall keep minutes of the proceedings and examinations. These minutes shall indicate any official action taken. A copy of every rule, variance, order or recommendation of the Hearing Officer shall be filed immediately with the Village Clerk and shall be a public record.

40-10-6 **DECISIONS.** The approval of the Hearing Officer shall be necessary to recommend a variance, a conditional use permit or an amendment to the Village Board. The recommendation of the Hearing Officer shall be by written letter and shall contain its findings of fact. A copy shall be sent to the Village Board.

40-10-7 **PERIOD OF VALIDITY.** No decision by the Village Board granting a variance or conditional use permit shall be valid for a period longer than **twelve (12) months** from the date of such decision unless (1) an application for a zoning certificate is obtained within such period and construction, moving, remodeling, or reconstruction is started, or (2) an occupancy certificate is obtained and a use is commenced. However, the Village Board may grant additional extensions of time not exceeding **one hundred eighty (180) days**, each upon written application made within the initial **twelve (12) month** period without further notice or hearing, but said right to so extend said time shall not include the right to grant additional relief by expanding the scope of the variation.

40-10-8 **FINALITY OF DECISIONS OF THE VILLAGE BOARD.** All decisions of the Village Board, shall in all instances be the final administrative determination and shall be subject to review by a court in the manner provided by applicable **Illinois Compiled Statutes**. No applicant shall apply for the same or identical request for a period of **one (1) year** unless the facts and/or request have substantially changed.

[ED. NOTE: The Village Board will need to pass an ordinance each time it takes action on a conditional use permit, variance or amendment.]

40-10-9 **OFFICE OF THE SECRETARY FOR THE HEARING OFFICER.** The Secretary for the Hearing Officer may be appointed by the Village Board to serve a until a successor is appointed. The Secretary shall record the minutes of the Hearing Officer's proceedings and actions. The Secretary shall perform such other duties as may be assigned from time to time by the Hearing Officer.

40-10-10 - 40-10-11 **RESERVED.**

DIVISION II - APPEALS

40-10-12 **NATURE OF AN APPEAL.** Any person aggrieved by any decision or order of the Zoning Administrator in any matter related to the interpretation or enforcement of any provision of this Code may appeal to the Hearing Officer on a prescribed form. Every such appeal shall be made and treated in accordance with Illinois law and the provisions of this Division. **(See 65 ILCS 5/11-13-12)**

40-10-13 **FILING, RECORD TRANSMITTAL.** Every appeal shall be made within **forty-five (45) days** of the matter complained of by filing with the Administrator and the Hearing Officer a written notice specifying the grounds for appeal. Every appeal shall also be filed with the **Soil and Water Conservation District** pursuant to State law. Not more than **five (5) working days** after the notice of appeal has been filed, the Administrator shall transmit to the Hearing Officer all records pertinent to the case. **(See 65 ILCS 5/11-13-12 and 5/11-13-14) (See 70 ILCS 405/22.02A)**

40-10-14 **STAY OF FURTHER PROCEEDINGS.** An appeal stays all further action on the matter being appealed unless the Administrator certifies to the Hearing Officer after the notice of appeal has been filed with him, that for reasons stated in the certificate, a stay would cause imminent peril to life or property. In such case, further action shall not be stayed unless the Hearing Officer or the Circuit Court grants a restraining order for due cause and so notifies the Administrator. **(See 65 ILCS 5/11-13-12)**

40-10-15 **PUBLIC HEARING, NOTICE.** The Hearing Officer shall hold a public hearing on every appeal within a reasonable time after the filing of the appeal notice. At the hearing, any interested party may appear and testify, either in person or by duly authorized agent or attorney. Notice indicating the time, date, and place of the hearing, and briefly describing the issue to be decided shall be given not more than **thirty (30) days** nor less than **fifteen (15) days** before the hearing:

(A) By publication in a newspaper of general circulation within this Municipality; and

(B) By certified mail to the applicant; and,

(C) By first-class mail to all owners of property contiguous to any property affected by the appeal.

(See 65 ILCS 5/11-13-12)

40-10-16 **DECISION BY HEARING OFFICER.** The Hearing Officer shall render a decision on the appeal within **thirty (30) days** after the hearing therein. The Hearing Officer may reverse or affirm, wholly or partly, or may modify or amend the decision or order appealed from the extent and in the manner that they deem appropriate. In so doing, the Hearing Officer has all the power of the Administrator. **(See 65 ILCS 5/11-13-3 and 5/11-13-12)**

ED. NOTE: The Hearing Officer is delegated the task of hearing appeals from the decisions of the Zoning Administrator or other official charged with enforcement of an ordinance passed pursuant to the Zoning Enabling Act. This may, for example, entail determining whether there has been a discontinuance of a nonconforming use. It is important for the applicant to note the appeal process because of the requirement of exhaustion of administrative remedies before suit is filed as well as the more obvious reason of using a less expensive administrative process for correcting a mistake or error which may have been made by the zoning administrator. (See 65 ILCS 5/11-13-3)

40-10-17 RESERVED.

DIVISION III - VARIANCES

40-10-18 AREA-BULK VARIANCES.

(A) A variance is a relaxation of the requirements of this Code that are applicable to a particular lot or structure.

(B) A so-called "use variance" (which would allow a use that is neither permitted nor special in the district in question) is not a variance, it is an amendment, and should be granted only as provided for in **Section 40-10-30**.

40-10-19 APPLICATION. Every application for a variance shall be filed with the Administrator on a prescribed form. Every variance application shall also be filed with the **Soil and Water Conservation District** as per State law. The Administrator shall promptly transmit said application, together with any device he might wish to offer, to the Hearing Officer. The application shall contain sufficient information to allow the Hearing Officer to make an informed decision and shall include, at a minimum, the following: **(NOTE: Filing fee required.) [See 70 ILCS 405/22.02(A)]**

- (A) Name and address of the applicant;
- (B) Location of the structure/use for which the variance is sought;
- (C) Brief description of adjacent lots, structures, and/or uses;
- (D) Brief description of the problems/circumstances engendering the variance request;
- (E) Brief, but specific, explanation of the desired variance;
- (F) Specific section(s) of this Code containing the regulations which, if strictly applied, would cause a serious problem; and
- (G) Any other pertinent information that the Administrator may require.

40-10-20 PUBLIC HEARING, NOTICE. The Hearing Officer shall hold a public hearing on each variance request within **sixty (60) days** after the variance application is submitted to them. At the hearing any interested party may appear and testify either in person or by duly authorized agent or attorney. Notice indicating the time, date, and place of the hearing, and the nature of the proposed variance shall be given not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing;

- (A) By certified mail to the applicant and
- (B) By publication in a newspaper of general circulation within the Municipality and,
- (C) By first-class mail to all owners of property contiguous to the property affected by the proposed variance. **(See 65 ILCS 5/11-13-7)**

40-10-21 STANDARDS FOR VARIANCES. The Hearing Officer shall not recommend any variance unless they find that the proposed variance is consistent with the general purposes of this Code, and that the strict application of the district requirements would result in great practical difficulties of hardship to the applicant. More specifically the Hearing Officer shall not decide upon a variance unless they determine, based upon the evidence presented to them, that:

- (A) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; and
- (B) The plight of the owner is due to peculiar circumstances; and
- (C) The variance, if granted, will not alter the essential character of the locality. **(See 65 ILCS 5/11-13-4 and 5/11-13-5)**

[NOTE: A variation shall be permitted only if in the judgment of the Board of Appeals sustains each of the three conditions above.]

40-10-22 RECOMMENDATION OF HEARING OFFICER. The Hearing Officer shall be required to submit an advisory report on all applications within **thirty (30) days** after the final hearing thereon. A copy of the Hearing Officer's report shall be transmitted to the applicant or appellant and to the Zoning Administrator. The Hearing Officer shall specify the terms of relief recommended (if any) in one statement and the findings of fact in another statement. The findings of fact shall clearly indicate the Hearing Officer's reasons for recommending or denying any requested variance. **(See 65 ILCS 5/11-13-5 and 5/11-13-11)**

40-10-23 ACTION BY VILLAGE BOARD. The Village Board shall act on every proposed variance at their next regularly scheduled meeting following submission of the advisory report of the Hearing Officer. Without further public hearing, the Village Board may approve or disapprove any proposed variance by simple majority vote of all the members then holding office. Such decision shall be binding upon the Zoning Administrator and observed by him. The Administrator shall be required to incorporate the terms and conditions of the same in the Zoning Certificate to the applicant or appellant whenever a Certificate is authorized by the Hearing Officer. **[NOTE: The Village Board takes action through the adoption of an ordinance.]**

DIVISION IV – CONDITIONAL (SPECIAL) USES

40-10-24 **CONDITIONAL USE PERMITS.** This Code divides the Village into various districts and permits in each district as a matter of right only those uses which are clearly compatible with one another. Certain other uses, because of their special operational or physical characteristics, may or may not have a detrimental impact on nearby permitted uses, depending upon their precise location, manner of operation and other factors. Such "conditional uses" require careful case-by-case review and may be allowed only after review and approval by the Hearing Officer.

40-10-25 **APPLICATION.** Every applicant for a conditional use permit shall submit to the Zoning Administrator in narrative and/or graphic form, the items of information enumerated below. The Administrator shall promptly transmit the completed application, together with any comments or recommendation he might have, to the Hearing Officer for further consideration. **(NOTE: Filing fee required)**

ITEMS OF INFORMATION:

- (A) Name and address of the applicant;
- (B) Name and address of the owner or operator of the proposed structure or use, if different from (A);
- (C) Nature of the proposed use, including type of activity, manner of operation, number of occupants or employees, and similar matters;
- (D) Location of the proposed use or structure, and its relationship to existing uses of structures on adjacent lots;
- (E) Area and dimensions of the site for the proposed structure or use;
- (F) Existing topography of the site and proposed finished grade;
- (G) Existing and proposed screening, landscaping, and erosion control features on the site, including the parking area;
- (H) Height and setbacks of the proposed structure;
- (I) Number and size of the proposed dwelling units, if any;
- (J) Number and location of proposed parking/loading spaces and access ways;
- (K) Identification and location of all existing or proposed utilities, whether public or private; and/or
- (L) Any other pertinent information that the Administrator may require;
- (M) Location of any signs.

40-10-26 **PUBLIC HEARING, NOTICE.** The Hearing Officer shall hold a public hearing on every conditional use permit application within **sixty (60) days** after the application is submitted to them. At the hearing, any interested party may appear and testify, either in person or by duly authorized agent or attorney. Notice indicating the time, date, and place of the hearing, and the nature of the proposed conditional use shall be given not more than **thirty (30) days** nor less than **fifteen (15) days** before the hearing:

- (A) By certified mail to the applicant; and,
- (B) By publication in a newspaper of general circulation within this Municipality.
- (C) By first-class mail to all owners of property contiguous to the property affected by the proposed conditional use request. **(See 65 ILCS 5/11-13-7)**

40-10-27 ADVISORY REPORT, FACTORS CONSIDERED. Within **thirty (30) days** after the public hearing, the Hearing Officer shall prepare an advisory report. In deciding the recommendation the Hearing Officer shall consider the following factors:

- (A) Whether the proposed design, location, and manner of operation of the proposed conditional use will adequately protect the public health, safety, and welfare, and the physical environment;
- (B) Whether the proposed conditional use is consistent with this Municipality's comprehensive plan, if any;
- (C) The effect the proposed conditional use would have on the value of neighboring property and on this Municipality's overall tax base;
- (D) The effect the proposed conditional use would have on the public utilities and on the traffic circulation on nearby streets; and
- (E) Whether there are any facilities near the proposed conditional use (such as schools or hospitals) that require special protection.

40-10-28 ACTION BY VILLAGE BOARD. The Village Board shall act on every request for a conditional use permit at their next regularly scheduled meeting following submission of the advisory report by the Hearing Officer. Without further public hearing, the Village Board may approve or disapprove the conditional use permit by an ordinance passed by simple majority vote of all members then holding office. In a separate statement accompanying any such ordinance, the Village Board shall state their findings of fact, and indicate their reasons for a conditional use permit. **(See 65 ILCS 5/11-13-1)**

40-10-29 TEMPORARY USE PERMITS: PROCEDURE FOR. As set forth in this Code, requests for temporary use permits shall be treated in the same manner as requests for conditional use permits. The Hearing Officer shall issue no temporary use permit for a period longer than **one (1) year** but may renew any such permit as they see fit.

DIVISION V - AMENDMENTS

40-10-30 AMENDMENTS. The Village Board may amend this Code in accordance with State law and the provisions of this Section. Proposed alterations of district boundaries or proposed changes in the status of uses (permitted, conditional, prohibited) shall be deemed proposed amendments. Amendments may be proposed by the Village Board, the Hearing Officer, the Zoning Administrator or any party in interest. **(See 65 ILCS 5/11-13-14)**

40-10-31 FILING. Every proposal to amend this Code shall be filed with the Zoning Administrator on a prescribed form. Every amendment proposal shall also be filed with the **Soil and Water Conservation District** pursuant to State law. The Administrator shall promptly transmit the proposal, together with any comments or recommendations he might wish to make to the Hearing Officer for a public hearing. **(NOTE: Filing fee required.)**

40-10-32 PROCEDURES FOR INITIAL ZONING PURSUANT TO ANNEXATION AGREEMENT. Whenever a proposed annexation agreement containing provisions for zoning is filed with the Village, the proposed agreement shall serve as the petition for amendment; hearing shall be conducted in accordance with this Division. In the event a proposed annexation agreement requests variations of the provisions of this Code, the Hearing Officer shall consider the variations requested along with the other zoning issues. The notices required by **Section 40-10-32** shall include a notice of the requested variation.

40-10-33 PUBLIC HEARING - NOTICE. The Hearing Officer shall hold a public hearing on every amendment proposal within **sixty (60) days** after said proposal has been submitted to him. At the hearing, any interested party may appear and testify, either in person or by duly authorized agent or attorney. Notice indicating the time, date, and place of the hearing and the nature of the proposed amendment shall be given not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing:

- (A) By certified mail to the applicant; and,
- (B) By publication in a newspaper of general circulation within the Municipality.
- (C) By first-class mail to all owners of property contiguous to the property affected by the proposed amendment. **(See 65 ILCS 5/11-13-14)**

40-10-34 ADVISORY REPORT - FINDINGS OF FACT. Within **thirty (30) days** after the public hearing, the Hearing Officer shall submit his advisory report to the Village Board. The report shall state the recommendations of the Hearing Officer regarding adoption of the proposed amendment and his reasons therefor. If the effect of the proposed amendment would be to alter district boundaries or to change the status of any use, the Hearing Officer shall include in his advisory report findings of fact concerning each of the following matters:

- (A) Existing use and zoning of the property in question;
- (B) Existing uses and zoning of other lots in the vicinity of the property in question;

- (C) Suitability of the property in question for uses already permitted under existing regulations;
- (D) Suitability of the property in question for the proposed use;
- (E) The trend of development in the vicinity of the property in question, including changes (if any) which may have occurred since that property was initially zoned or last rezoned.

40-10-35 ACTION BY VILLAGE BOARD. The Village Board shall act on every proposed amendment at their next regularly scheduled meeting following submission of the advisory report of the Hearing Officer. Without further public hearing, the Village Board may approve or disapprove any proposed amendment or may refer it back to the Hearing Officer for further consideration by simple majority vote of all the members then holding office.

40-10-36 WHEN TWO-THIRDS MAJORITY VOTE IS REQUIRED. The favorable vote of at least **two-thirds (2/3)** of the members of the Village Board is required to pass an amendment to this Code in each of the following instances:

- (A) When passage would be contrary to the recommendation of the Hearing Officer.
- (B) When the amendment is opposed, in writing, by the owners of **twenty percent (20%)** of the frontage proposed to be altered, or by the owners of **twenty percent (20%)** of the frontage immediately adjoining or across an alley therefrom, or by the owners of **twenty percent (20%)** of the frontage directly opposite the frontage proposed to be altered.

40-10-37 NOTICE TO APPLICANT OF WRITTEN PROTEST. In cases of written opposition to an amendment of this Code as prescribed in **Section 40-10-35**, a copy of the written protest shall be served by the protester or protesters on the applicant for the proposed amendment and a copy upon the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment.

(See 65 ILCS 5/11-13-14)