

**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.

**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.

**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.

**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.

**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)**

**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.

**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.

**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.

**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:

<b><u>DISTRICT</u></b>	<b><u>DESIGNATION</u></b>
Residential District	R
Mobile Homes District	M-H
Commercial District	C
Industrial District	I

(B) The boundaries of the districts shall be as sown 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 Board of Appeals.

**(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)**

**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 all "R" districts.

**40-2-2**      **PERMITTED USES.** The following uses shall be permitted in all "R" districts.

One-family dwelling

Two-family dwellings that have been converted from a one-family dwelling. A private entrance, separate kitchen, and sanitary facilities must be provided for each dwelling unit.

Duplex (**Ord. No. 97-08; 08-20-97**)

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 agricultural operations, provided however, that no cash grain, storage of manure, or odor or dust producing substance or use shall be permitted within **twenty (20) feet** of any dwelling house.

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.

For the purpose of this Section, an enclosed basement shall not be considered a dwelling and such a structure shall not be permitted in this or any other district.

**40-2-3**      **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 this district.

**40-2-4**      **BUILDING HEIGHT LIMIT.** No building shall be erected to a height in excess of **thirty-five (35) feet**.

**40-2-5**      **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**.

**40-2-6**      **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.

**40-2-7**      **YARD REQUIRED.** Each lot shall have front, side and rear yards not less than the following depths or widths:

(A)      **Front Yard Depth.** **Twenty-five (25) feet** from the front yard line of the nearest structure. 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 front yard 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 improvements located on the nearest adjacent properties, but in no event shall any new improvement be located less than **ten (10) feet** from the front lot line.

(B)      **Side Yard Width.** **Ten (10) feet** from the side yard line to the nearest structure, 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**. Provided further, that on a corner lot, a side yard adjoining a street shall be not less than **twenty-five (25) feet** in width to the nearest structure. 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 side lot 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 improvements located on the nearest adjacent properties, but in no event shall any new improvement be located less than **ten (10) feet** from the side lot line.

(C)      **Rear Yard Depth.** **Ten (10) feet** from the rear yard line to principal use or **three (3) feet** to accessory use or detached garage, if the rear line abuts on an alley. **(Ord. No. 04-03; 03-17-04)**

**40-2-8**      **OFF-STREET PARKING.** For one-family dwellings or two-family dwellings, one off-street parking space shall be provided on the site for each dwelling. For other permitted uses in the "R" District, off-street parking spaces shall be provided as may be prescribed by the Board of Appeals. **(Ord. No. Z-1; 01-03-62)**

**40-2-9      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 - MOBILE HOME PARK REGULATIONS**

**40-3-1**        **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.

Mobile homes.

**40-3-2**        **REQUIREMENTS.**

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

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

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

(D)            Mobile homes shall be so harbored on each space so that there shall be at least a **fifteen (15) foot** clearance between mobile homes; provided, however, that with respect to mobile 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 mobile home shall be located closer than **fifteen (15) feet** from any building within the mobile home park or from any property line bounding the mobile home park.

(E)            All mobile 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 mobile home space, and in addition, parking sites shall be maintained within the park equal to **one-fourth (1/4)** of the total mobile home space.

(G)            All driveways and walkways within the mobile 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 mobile 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 IV - COMMERCIAL DISTRICT REGULATIONS.**

**40-4-1**      **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 Board of Appeals 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 Board of Appeals, 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.

**40-4-2**      **BUILDING HEIGHT LIMIT.** No building shall be erected to a height in excess of **thirty-five (35) feet**.

**40-4-3**      **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**.

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

**40-4-5**      **YARDS REQUIRED.** Each lot shall have a rear yard not less than **twenty (20) feet**.

**40-4-6**      **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**.

**40-4-7**      **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 Board of Appeals. The number of off-street loading spaces shall be determined by the Board of Appeals on the basis of the number of truck movements anticipated.

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

**ARTICLE V - INDUSTRIAL DISTRICT REGULATIONS**

**40-5-1 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 Board of Appeals 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 Board of Appeals 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 40-10-1** of the Village Code and pursuant to permits granted in accordance with **Section 40-10-4** and **40-10-5** of the Village Code. **(Ord. No. 02-05; 08-21-02)**

**40-5-2 BUILDING HEIGHT LIMIT. Three (3) stories or forty-five (45) feet.**

**40-5-3 STRUCTURE HEIGHT LIMIT. Height limitations subject to review by the Board of Appeals.**

**40-5-4 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.**

**40-5-5 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**.

**40-5-6**     **OFF-STREET PARKING SPACES.**   **One (1)** off-street parking space shall be provided for each **two (2) employees** on the maximum work shift.

**40-5-7**     **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 Board of Appeals. The number of off-street loading spaces that may be required by the Board of Appeals 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 VI - NON-CONFORMING USES**

**40-6-1**      **GENERAL RULE.** Except as otherwise provided in **Section 40-10-7** 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**)

**40-6-2**      **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.

**40-6-3**      **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 Board of Appeals unless said building is changed to a conforming use.

**40-6-4**      **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.

**40-6-5**      **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.

**40-6-6**      **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 Board of Appeals shall be repaired or rebuilt except in conformity with the regulations of this Code.

**40-6-7**      **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.

**40-6-8**      **CHANGES.** Once changed to a conforming use no building or land shall be permitted to revert to a non-conforming use.

**40-6-9**      **DISPLACEMENT.** No non-conforming use shall be extended to displace a conforming use.

**40-6-10**     **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.

**40-6-11**     **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 VII - ADMINISTRATION AND ENFORCEMENT**

**40-7-1 ENFORCEMENT.** This Code shall be enforced by the Building Inspector. No building permit or certificate of occupancy shall be granted by him for any purpose except in compliance with the provisions of this Code.

**40-7-2 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)**

**40-7-3 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)**

**40-7-4 CERTIFICATE OF OCCUPANCY.**

(A) No land shall be occupied or used and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Building Inspector, stating that the building or proposed use thereof complies with the provisions of this Code. **(Ord. No. 2001-05; 08-15-01)**

(B) No non-conforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the Building Inspector thereof.

(C) All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within **ten (10) days** after the erection or alteration shall have been approved as complying with the provisions of this Code.

(D) The Building Inspector shall maintain a record of all certificates, and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.

(E) No permit for excavation for, or the erection or alteration of or repairs to, any building shall be issued until an application has been made for a certificate of occupancy.

**40-7-5**      **VIOLATIONS AND PENALTIES.**    A violation of this Code is a misdemeanor punishable by a fine not exceeding **Five Hundred Dollars (\$500.00)** except that each day's violation may be considered a separate offense.

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

**ARTICLE VIII - BOARD OF APPEALS**

**40-8-1**        **COMPOSITION.** A Board of Appeals is hereby created which shall consist of **seven (7) members** appointed by the Village Board to serve for a term of **five (5) years. One (1) member** of the Board shall be designated by the Village Board as Chairman and shall hold office as Chairman until his successor is appointed. The Board may select or appoint such other officers as it deems necessary. The Chairman shall have the power to administer oaths and compel attendance of witnesses.

**40-8-2**        **MEETINGS.** The Board shall meet at the call of the Chairman and at such other times as it may determine. The Board shall keep minutes of its proceedings including findings of fact, all its determinations and decisions, the reasons therefor, and the vote of each member upon every question, which minutes shall immediately be filed in the office of the Village Clerk and shall be a public record.

**40-8-3**        **APPEALS.** An appeal may be taken to the Board of Appeals by any person, group or organizations, public or private, effected by a decision by the Building Inspector. Such appeal shall be taken within such time as prescribed by the Board by general rule, by filing with the Building Inspector and with the Board a notice of appeal specifying the grounds thereof.

**40-8-4**        **DUTIES.** The Board of Appeals shall have all the power and duties prescribed by law and by this Code, which are more particularly specified as follows:

(A)            **Interpretation.** Upon appeal from a decision by the Building Inspector or other administrative official, to decide any question involving the interpretation of any provision of this Code, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

(B)            **Variances.** To recommend to the Village Board the variances of the strict application of any of the requirements of this Code in the case of exceptionally irregular, narrow or shallow lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance in the strict application of any provision of this Code shall be recommended by the Board of Appeals to the Village Board unless it finds:

- (1) That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that such circumstances or conditions are such that the

strict application of the provisions of this Code would deprive the applicant of the reasonable use of such land or building.

- (2) That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as recommended by the Board is the minimum variance that will accomplish this purpose.
- (3) That the granting of the variance will be in harmony with the general purpose and intent of this Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare or in conflict with the General Plan. In recommending any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

(C) **Amendments to Zoning Regulations and Districts.** All proposed or requested amendments to this Code shall be filed with the Village Clerk and then referred by the Village Board to the Zoning Board of Appeals for public hearing. **(Ord. No. 11-8-66)**

(D) To conduct hearings on Adult Use construction and occupancy permits in accordance with **Article X** of the Zoning Code. **(Ord. No. 02-05; 08-21-02)**

**40-8-5      PROCEDURES.**

(A) The Board of Appeals shall act in strict accordance with the procedure specified by law and by this Code. All appeals, made to the Board, shall be in writing. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, the details of the variance sought to be granted, or a copy of the proposed amendment to the Code, as the case may be.

(B) The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the appeal within a reasonable time. Hearings and all proceedings of the Board shall be in conformity with **Chapter 65, Sec. 5/11-13-1 of the Illinois Compiled Statutes.** All hearings shall be open to the public and any party at interest may appear in person or by agent or attorney. A written record shall be made and kept of all proceedings of the Board. All final administrative decisions of the Board of Appeals shall be subject to judicial review.

(C) Every decision of the Board of Appeals as to the interpretation of any provision of this Code, including determinations of location of district boundaries, shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. As to applications for variations or for amendments to this Code, the findings and recommendations of the Board of Appeals shall likewise be by

resolution. Each such resolution shall be filed in the office of the Village Clerk by case number under one or the other of the following headings: Interpretations; Variances; Amendments; together with all documents pertaining thereto.

(D) Each appeal or application filed hereunder, pertaining to interpretation of this Code, shall be accompanied by the payment of a filing fee of **Twenty Dollars (\$20.00)**. Each appeal or application filed hereunder, pertaining to variations or amendments to this Code, except those initiated by the Village Board, shall be accompanied by the payment of a filing fee of **One Hundred Dollars (\$100.00)**. Such fees shall be used to defray the cost of publication notices, reporting services, printing and general administration of this Code.

**(Ord. No. 11-6-66)**

**ARTICLE IX - AMENDMENTS**

**40-9-1 AMENDMENTS.** The regulations imposed and the districts created may be amended or varied from time to time by ordinance after the ordinance establishing them has gone into effect, but no such amendments shall be made without a hearing before the Board of Appeals. Notice shall be given of the time and place of the hearing, not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing, by publishing a notice thereof at least once in one or more newspapers within a general circulation within the municipality. In case of a written protest against any proposed variation, signed and acknowledged by the owners of **twenty percent (20%)** of the frontage immediately adjoining or across an alley therefrom or by the owner of **twenty percent (20%)** of the frontage directly opposite the frontage proposed to be altered, is filed with the Clerk of the municipality, the amendments or variations shall not be passed except by a favorable vote of **two-thirds (2/3)** of all of the Village Board.

**(Ord. No. 11-8-66)**

**ARTICLE X – ADULT USES**

**40-10-1 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.

**40-10-2     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.

**40-10-3     LOCATION.** Adult uses are permitted only in areas zoned I (Industrial) under and pursuant to the provisions of **Article V** 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.

**40-10-4 PERMIT REQUIRED.**

(A) No adult use shall be constructed, occupied or conducted without a permit issued pursuant to this Section and **Section 40-10-5**. 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 Board of Appeals for review. Within **sixty (60) days** of filing, the Board of Appeals shall conduct a review of the application for conformance with the Zoning, Subdivision, and Adult Use Chapters of the Village Code. The Board of Appeals 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.

**40-10-5 ACTION BY CORPORATE AUTHORITIES.** Within **thirty (30) days** of receipt of the recommendation of the Zoning Board of Appeals and the report of the Chief of Police as to the criminal background investigation required under **Section 40-10-4(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.

**40-10-6 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.

**40-10-7 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.

**40-10-8 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.

**40-10-9 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.

**40-10-10 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)**