

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one.)

of Sherrill

FILED  
STATE RECORDS  
MAY 11 2015

Local Law No. 1 of the year 2015

A local law entitled "A Local Law No. 1 of 2015 - Zoning Regulations"  
(Insert Title)

DEPARTMENT OF STATE

Be it enacted by the City Commission of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Sherrill

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 202,015 of the (County)(City)(Town)(Village) of Sherrill was duly passed by the City Commission on April 27 2015, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

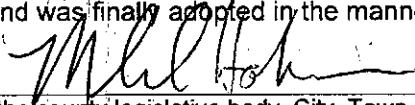
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_ above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 4/30/15

(Seal)

# CITY OF SHERRILL

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Sherrill, N.Y. 13461

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Michael R. Sayles, City Manager  
Michael D. Holmes, Comptroller/City Clerk  
Robert Mumford, Supt. Power & light  
Gary Onyan, Supt. Public Works  
Christopher Dunni, Supt. Waste Water Treatment

COMMISSIONERS  
William Vineall, Mayor  
Jeffery Gilbert, Deputy Mayor  
Michael Hennessy  
Patrick Hubbard  
Jason Merrill



## RESOLUTION ON CITY COMMISSION OF THE CITY OF SHERRILL ADOPTING LOCAL LAW NO. 1 OF 2015

Resolution by City Commission of the City of Sherrill adopting Local Law No. 1 of 2015

Mayor Vineall reported that the city held its public hearing on the proposed local law of the previous meeting of April 13, 2015. The following resolution was offered by Commissioner Gilbert and seconded by Commission Hubbard that:

**WHEREAS**, a local law, being proposed Local Law No. 1 of the Year 2015, was introduced on March 23, 2015, by a member of the City Commission of the City of Sherrill and a copy was placed on the table of the members; and

**WHEREAS**, a resolution was duly adopted by the City Commission of the City of Sherrill calling for a public hearing to be held by the said City Commission on April 13, 2015 at 7 pm at Sherrill City Hall, 377 Sherrill Road, to hear all interested parties on Local Law No. 1 of the Year 2015 entitled "A Local Law No. 1 of the 2015 – Zoning Regulations"; and

**WHEREAS**, that the City Clerk duly published a notice of said public hearing in the official newspaper of the City on March 29, 2015, such date being greater than seven (7) days prior to the hearing date; and

**WHEREAS**, said public hearing was duly held on April 13, 2015 at 7:15 pm at Sherrill City Hall, 377 Sherrill Road, Sherrill, New York and all parties in attendance were permitted an opportunity to speak on behalf or in opposition to said local law, or any part thereof; and

**WHEREAS**, the City Commission, after due deliberation finds it in the best interest of the City to adopt said local law;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Commission hereby adopts Local Law No. 1 of the Year 2015 entitled "A Local Law No. 1 of the 2015 – Zoning Regulations"; and be it further

**RESOLVED**, such local law shall be attached to and made a part of these minutes; and be it further

**RESOLVED**, that the same shall be effective immediately upon filing in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

A roll call was taken on the motion which resulted as follows:

Mayor William Vineall	AYE
Commissioner Jeffrey Gilbert	AYE
Commissioner Michael Hennessy	AYE
Commissioner Patrick Hubbard	AYE
Commissioner Jason Merrill	ABSENT

The resolution was thereupon declared adopted.

### **ZONING REGULATIONS**

A LOCAL LAW REGULATING AND RESTRICTING THE LOCATION, CONSTRUCTION, ALTERATION AND USE OF BUILDINGS AND LAND IN THE CITY OF SHERRILL, NEW YORK, PURSUANT TO THE PROVISIONS OF CHAPTER 21, ARTICLE 2A OF THE CONSOLIDATED LAWS OF THE STATE OF NEW YORK.

THE CITY COMMISSION OF THE CITY OF SHERRILL by virtue of the power and authority vested in it by law does hereby ordain and enact as follows:

#### **ARTICLE 1 - TITLE**

**Section 1** – This local law shall be known and may be cited as “The Zoning Regulations of the City of Sherrill, New York”.

#### **ARTICLE 2 - PURPOSE**

**Section 2** – Purpose and General Rules

1. These Regulations are enacted for the following purposes:
  - a. to lessen congestion in the streets
  - b. to secure safety from fire, flood, panic and other dangers
  - c. to promote health and the general welfare of the public
  - d. to provide adequate light and air and acceptable noise levels

- e. to prevent the overcrowding of land
- f. to avoid undue concentration of population
- g. to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements
- h. to preserve the value of buildings and property and the overall character of the City
- i. to encourage the most appropriate use of land throughout the City

## 2. General Rules Governing All Zoning Districts

- a. Land shall only be used for the purposes permitted in the district in which it is located.
- b. Buildings erected, converted, enlarged, reconstructed, moved or structurally altered; or any part thereof shall be done so according to the regulations of the district in which the building is located.
- c. If a use in any structure is hereafter changed to another use then the new use shall comply with these regulations.

## **ARTICLE 3 - DISTRICTS AND BOUNDARIES**

### **Section 3 – Establishment of Districts**

The City of Sherrill is hereby divided into the following zoning districts:

- R-1 Residence District
- R-2 Residence District
- C-1 Commercial District
- C-2 Commercial District
- M-1 Manufacturing District
- M-P Manufacturing District – planned

### **Section 4 – Zoning Maps**

The locations and boundaries of the zoning districts hereby established are shown on a map entitled "Zoning Districts". The District map and all notations, references and other information shown thereon are hereby declared to be a part of these Regulations. The City Manager shall delineate on the Zoning Map all amendments to the District boundaries, which are authorized by ordinance/local law immediately upon the effective date of such ordinance/local law, indicating the title and date of the ordinance/local law.

**Section 5** – District Boundaries

Where uncertainty exists as to the locations of any boundaries shown on the zoning map, the following rules shall apply:

1. District boundary lines are intended to follow centerlines of streets and alleys, rights-of-way, watercourses, or lot lines, or be parallel or perpendicular thereto, unless such boundary lines are fixed by dimensions as shown on the zoning maps.

2. Where such boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.

3. In subdivided land and where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale appearing thereon.

4. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine and fix the location of said line.

**ARTICLE 4 – USE REGULATIONS**

**Section 6** – R-1 Residence District

In any R-1 Residence District no building shall be erected or extended and no land or building or part thereof shall be used except for any of the following purposes:

1. One-family dwellings
2. Farms and nurseries
3. Formal places of worship or religious education and related living quarters i.e. convent, parish house or rectory
4. Public or private schools or public libraries
5. Public park or playground
6. Golf course
7. Residential daycares per N.Y.S. rules and regulations
8. Accessory structure, provided there shall be no more than two accessory structures, including garages (attached or detached), the square footage of both not to exceed 720 square feet on lots 24,000 square feet or smaller. On lots larger than 24,000 square

feet, the combined square footage of the two accessory structures can be up to 1000 square feet. Any accessory structures bigger than 500 square feet are subject to ten foot setbacks from the property line. Structures less than 500 square feet have a 5 foot setback requirement. Accessory structures may not include any activity commonly conducted as a business.

9. Customary home occupation or profession conducted in a residence by resident occupants that do not impact the surrounding neighborhood in any significant way such as excessive traffic, deliveries, parking overflow or noise. Nor shall any retail finished products be stocked or offered for sale on the premises unless it is an incidental aspect to the home occupation and there shall be no external evidence of such occupation except one (1) sign as permitted in Section 23 of these Regulations.
10. Municipal use
11. The following uses, subject to approval by the Board of Appeals as provided in Section 41 Special Exception:
  - a. Nursing or convalescent home
  - b. Non-profit housing

#### **Section 7 – R-2 Residence District**

In any R-2 Residence District no building shall be erected or extended and no land or building or part thereof shall be used except for any of the following purposes:

1. Any use permitted in the R-1 Residence District
2. Two-family dwellings
3. Three family dwellings created by conversion of structures existing at the time of adoption of these Regulations which do not alter the footprint of the existing structure; and provided further that there shall be one off-street parking space provided in the side or rear yard for each dwelling unit.
4. Charitable or philanthropic institutions
5. Bed & Breakfast
6. The following uses, subject to approval by the Board of Appeals as provided in Section 41 Special Exception:
  - a. Club, lodge, social and recreational building

#### **Section 8 – C-1 Commercial District**

In any C-1 Commercial District no building shall be erect or extended and no land or building or part thereof shall be used except for any of the following purposes:

1. Any use permitted in the R-2 Residence District
2. Business, professional or governmental office
3. Bank or other financial institution
4. Retail store to include liquor stores
5. Restaurant and/or restaurants with drive through service lanes
6. Confectionery, bakery, millinery, dressmaking, tailoring, florist, and similar shops, provided that all goods made or processed on the premises for retail sale.
7. Personal service shops such as barber, shoe repair, beauty parlor, photographer, optician, letter press and offset printing shop
8. Radio, television, computer, technology and household appliances sales and service/repair.
9. Dry cleaning and pressing shops
10. Laundries and/or laundromats
11. Studios – music, dance, theatrical
12. Funeral Homes
13. Public utility or municipal structure
14. Business sign shop
15. Automotive fuel/service station, car wash, convenience store subject to approval by the Board of Appeals, as provided in Section 40.
16. Apartment Houses
17. Convenience Store
18. Hospital
19. Firehouse
20. Planned shopping center

21. The following uses, subject to approval by the Board of Appeals as provided in Section 41 Special Exception:

- a. Motels, hotels and apartment houses.
- b. Public garages.

**Section 9** – C-2 Commercial District

In any C-2 Commercial District no building shall be erected or extended and no land or building or part thereof shall be used except for any of the following purposes:

1. Any use permitted in the C-1 Commercial District
2. Fruit and vegetable market
3. Automobile and farm machinery sales and service and heavy equipment
4. recreation hall
5. Printing and publishing
6. Light manufacturing & assembly plants
7. Development and Research Centers
8. Animal hospital, kennel or pound
9. Garage, public & private storage
10. Automotive Fuel Service Station
11. Laboratories or scientific sample collection centers.
12. Tattoo parlor

**Section 10** – M-1 Manufacturing District

All non-residential buildings, structures and uses herein before allowed in Sections 6, 7, 8 and 9 are hereby allowed in the M-1 Manufacturing District, and

1. Any other trade or industry, subject to initial and continued compliance with performance standards as prescribed in Article 5, the use of which does not by reason of the emission of noise, dust or odors become obnoxious or dangerous to the health and safety of the public.
2. It is the intent to include adult entertainment in the M-1 District to provide for adult entertainment establishments. However, such establishments, by their nature, are known

to produce deleterious effects on adjacent development and the blighting and downgrading of surrounding neighborhoods, especially where such establishments are clustered. Special regulations of such uses are therefore necessary to ensure that these and other adverse secondary effects will not impact residential neighborhoods, public and quasi-public institutions and facilities serving the youth of the community.

Adult entertainment to include but not limited to escort agencies, adult movie, book and/or video store, adult entertainment establishment, adult cabarets, nightclubs or bars which feature live entertainment that consist in any way of topless or bottomless females and/or males, adult novelty store and other businesses related to adult entertainment activities shall be subject to the following:

- a. Merchandise or activities of the establishment shall not be visible from any point outside of the building or structure containing the use; or
- b. The observation of any material depicting, describing or relating to sexual activities from any point outside of the building or structure containing such use is prohibited.
- c. The provisions of Subsections 2.a. and 2.b. above shall apply to any display, decoration, sign, and window or other opening.
- d. No adult use as set out in Sec. 10-2 above shall be allowed within 1,000 feet of another existing adult use.
- e. No adult use as set out in Sec. 10-2 above shall be located within 1,000 feet of any residential zoning district.
- f. No adult use as set out in Sec. 10-2 above shall be located within 1,000 feet of any bar or tavern.
- g. No adult use as set out in Sec. 10-2 above shall be located within 1,000 feet of an existing church or place of worship, child care center or educational institution.
- h. For purposes of Subsections d., e., f., and g., above, measurements shall be made in a straight line, without regard to intervening buildings, structures or objects, from the nearest point on the property line of the proposed adult entertainment use to the nearest point on the property line of the said uses.
- i. No more than one adult entertainment use shall be conducted within any building or structure containing an adult use.
- j. All adult entertainment uses shall be subject to all other articles of the zoning regulations and any other applicable city codes.

### 3. Warehousing and distribution but not including truck terminals

4. Light manufacturing and assembly plants for the following uses:

- a. Manufacturing, compounding, processing and packaging of such products as candy, and food products
- b. Manufacturing, compounding, assembling, recycling or treatment of articles or merchandise from the following previously prepared materials:
  - paper
  - plastics
  - precious or semi-precious metals or stones
  - textiles
  - wood
- c. Manufacture or assembly of electrical or electronic instruments or devices, precision measuring devices, surgical or dental instruments, musical instruments, rubber or metal stamps, toys or novelties.

5. Cellular telephone towers and antennas.

In the M-1 Manufacturing District the use of buildings and land for any of the following purposes is expressly prohibited:

1. Incineration of garbage, offal or refuse
2. Manufacture of fertilizer and bone grinding
3. Slaughter of animals or meatpacking industry
4. Celluloid manufacture, treatment or storage
5. Junk, scrap metal, automobile salvage and similar uses
6. Rubber reclaiming plants, smelters or blast furnaces; tanning, curing or storing of raw hides or skins, coke ovens
7. And in general, any use similar to those enumerated above which would be injurious to the safety or welfare of the neighborhood by reason of smoke, odor, vibration, dirt, dust, glare, noise, or danger of fire or explosion

The above uses may be approved or modified by the Board of Appeals as provided in Section 41, Special Exception.

**Section 11** – M-P Planned Manufacturing District

The regulations for the M-P Planned Manufacturing District are intended to provide a means for the establishment of a community of industries developed according to a comprehensive plan, so

located and designed as to be compatible with surrounding areas and uses and to contribute to the economic growth of the City.

In the planned manufacturing district the following buildings and uses are permitted:

1. Anything permitted in the C-2 district
2. Public utilities station or structure
3. Municipal building or structure
4. Printing or publishing plant
5. Commercial truck sales and/or service

Permitted accessory uses shall include parking, loading and storage areas, and business signs, all of which shall be planned as an integral part of the site and structures, and be located on the same site with the principal use.

Within the Planned Manufacturing District, the following minimum requirements shall apply:

1. Area. Each development within a Planned Manufacturing District shall include a minimum site of 1 acre.
2. Off-street parking shall be provided at a minimum ratio of one space for each two employees on the major shift. Off-street parking and loading shall be in side and rear yard only.
3. Yards:
  - a. Front yard - 50 feet minimum
  - b. Side yard - 50 feet minimum
  - c. Rear yard - 100 feet minimum
4. Building coverage shall not exceed 25 percent of parcel.
5. Building height shall not exceed three stories.

Application for a Planned Manufacturing District development shall be made to the City Commission. The City Commission shall refer the application to the Planning Board for consideration as to area, off-street parking, ingress and egress, yards, building coverage and building height.

The Planning Board shall require the applicant to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development.

The Planning Board may require such changes in said plans, drawings, elevations and specifications as are found to be necessary to meet the requirements of these Regulations. The Commission may make such additional requirements as are reasonably necessary to protect established or permitted uses in the vicinity and to promote and protect the orderly growth and sound development of the City. In reaching its decision on the proposed development and the changes, if any, in the preliminary plans, drawings, elevations and specifications, the Planning Board shall be guided in its considerations by performance standards as to the following:

1. Fire and explosion hazards
2. Radioactive or electrical disturbance
3. Noise
4. Vibration
5. Glare
6. Smoke
7. Odor
8. Other forms of air pollution

The Planning Board shall approve, approve with modifications, or disapprove such application and shall report its decision to the City Commission.

In the event that substantial progress has not been made in the execution of the construction authorized by the City Commission within six (6) months from the date of approval, such approval shall be deemed subject to the same regulations and restrictions as were effective before such approval. The City Commission may extend its approval for additional periods of six (6) months.

## **ARTICLE 5 – INDUSTRIAL PERFORMANCE STANDARDS**

### **Section 12 – General Application**

Uses permitted in any M-1 Manufacturing or M-P Planned Manufacturing District, and uses accessory thereto, are subject to the following performance standards and procedures.

### **Section 13 – Performance Standards Procedures**

1. Any application for a building permit or a business permit for a use which shall be subject to performance standards, shall include a description of the intended use, which shall be in accordance with the performance standards set forth herein.

2. Continued Compliance. Continued compliance with performance standards is required and enforcement of continued compliance with these performance standards shall be enforced by the Codes Enforcement Officer.

3. Determination of Violation. The Codes Enforcement Officer shall investigate any purported violation of performance standards and, if there is reasonable ground for the same, shall notify the City Manager of the occurrence or existence of a probable violation thereof. The City Manager shall investigate the alleged violation. If after a hearing on due notice, the City Commission finds that a violation occurred or exists, such violation shall be remedied as provided in the following paragraph.

4. Remedy of Violation. All violations, as ascertained in accordance with paragraph 3 above shall be remedied within thirty (30) days of the decision of the City Commission or shall be deemed a separate violation for each day following and subject to fines as set forth herein, except that certain uses established before the effective date of these Regulations and nonconforming as to performance standards shall be made to conform therewith within 30 days as determined by the City Commission, unless especially granted by the City Commission.

#### **Section 14** – Regulation of Nuisance Elements

1. Definition of Elements. No land or building in any M-P Planned Manufacturing District which shall be used or occupied for manufacturing purposes shall be operated in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosive or other hazard; noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare; or other substance, condition or element in such amount as to adversely affect the surrounding area or premises (referred to herein as “dangerous or objectionable elements”); provided that any use permitted by these Regulations may be undertaken and maintained in the M-P Planned Manufacturing District if it conforms to the regulations of this subsection limiting dangerous and objectionable elements at the specified point or points of the determination of their existence.

2. The determination of the existence of any dangerous and objectionable elements shall be made at:

- a. The point or points where such elements shall be most apparent for fire or explosion hazards, for radioactivity and electrical disturbances, for smoke and other forms of air pollution.
- b. The property lines of the use creating such elements for noise, for vibration, for glare, and for odors.

#### **Section 15** – Standards to be Enforced

1. Fire and Explosion Hazards. All activities involving, and all storage of, inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire suppression equipment and devices standard in this industry. Burning of waste materials in open fires is prohibited. The relevant provisions of State and local laws and regulations shall also apply.

2. Radioactivity or Electrical Disturbance. No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance. All applicable Federal regulations shall be complied with.

3. Noise. At the points of measurement specified in Section 14, paragraph 2b the maximum sound pressure level radiated in each standard octave band by any use or facility (other than transportation facilities or temporary construction work) shall not exceed the values for octave bands lying within the several frequency limits given in Table 1 after applying the corrections shown in Table 2. The sound pressure level shall be measured with a Sound Level Meter and associated Octave Band Analyzer conforming to standards prescribed by the American Standards Association, Inc., New York, N.Y. (American Standard Sound Level Meters for Measurement of Noise and Other Sounds, 224.3-1944, American Standards Association, Inc., New York, N.Y., and American Standard Specification for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds, 224.10-1953, or latest approved revision thereof, American Standards Association, Inc., New York, N.Y. shall be used.)

**TABLE 1**

<u>Frequency Ranges Containing Standard Octave Bands in Cycles Per Second</u>	<u>Octave Band Sound Pressure Level in Decibels re 0.0002 dyne/cm</u>
20 - 75	65
75 - 150	55
150 - 300	50
300 - 600	45
600 - 1200	40
1200 - 2400	40
Above - 2400	35

If the noise is not smooth and continuous and is not radiated between the hours of 10 p.m. and 7 a.m., one or more of the corrections in Table 2 shall be applied to the octave band levels given in Table 1.

**TABLE 2**

<u>Type of Location of Operation or Character of Noise</u>	<u>Correction in Decibels</u>
1. Daytime operation only	5
2. Noise source operates less than*	
a. 20% of any one-hour period	5
b. 5% of any one-hour period	10
1. Noise of impulsive character (hammering, etc.)	-5

- |  |    |
|--|----|
| 2. Noise of periodic character<br>(hum, screech; etc.)                                   | -5 |
| 3. Property is located in any M-District and<br>is not within 200 feet of any R-District | 10 |

4. Vibration. No vibration shall be permitted which is detectable without instruments at the points of measurement specified in Section 14, paragraph 2b.

\* Apply one of these corrections only.

5. Glare. No direct or sky-reflected glare, whether from flood lights or from high-temperature processes such as combustion or welding or otherwise, so as to be visible at the points of measurement specified in paragraph 2b. This restriction shall not apply to signs otherwise permitted by the provisions of these Regulations.

6. Smoke. No emission shall be permitted from any chimney or otherwise, of visible grey smoke of a shade equal to or darker than No. 2 on the Power's Micro-Ringlemann Chart, published by McGraw-Hill Publishing Company, Inc., and copyright 1954 (being a direct facsimile reduction of a standard Ringlemann Chart as issued by the United States Bureau of Mines), except that visible grey smoke of a shade equal to No. 3 on said chart may be emitted for 4 minutes in any 30 minutes.

7. Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable at the property line of the zone lot from which they are emitted without instruments.

8. Other Forms of Air Pollution. No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted which can cause any damage to health, to animal, vegetation, or other forms of property, or which can cause any excessive soiling.

## ARTICLE 6 -

### LOT AREA AND WIDTH, YARDS, BUILDING COVERAGE AND HEIGHTS

#### Section 16 – Additional Area Regulations

1. Lots of less than required dimensions
  - a. Any lot with an area or a width less than that required in the district in which said lot is located may be used for any purpose permitted in the district, provided that all other regulations prescribed for the district shall be complied with, and further provided that said lot was held under separate ownership at the time of the adoption of these Regulations and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimension requirements.
  - b. In the event that compliance with the yard and coverage requirements of the district would result in a residential structure of less width than 24 feet, the

## ARTICLE 12 – AMENDMENTS

### **Section 43** – Declaration of Policy

For the purpose of establishing and maintaining sound and stable development and to conserve property values generally, these Regulations shall not be amended except to correct a manifest error in these Regulations, or to provide for regulations more appropriate to an area because of changed or changing conditions.

### **Section 44** – Amendments, How Initiated

The City Commission may from time to time on its own motion, may amend, supplement, repeal or change the regulations and district boundaries established by these Regulations.

Whenever the owner or owners of frontage in any district shall present a petition duly signed and acknowledged, to the City Commission, requesting an amendment, supplement, change or repeal of the regulations prescribed for such district or part thereof, it shall be the duty of the City Commission to vote upon said petition within 90 days after the filing of the same by the petitioners with the City Clerk.

The Planning Board and/or the Zoning Board of Appeals may, by resolution, propose an amendment, supplement, change or repeal of the regulations to the City Commission.

### **Section 45** – Referral of Proposed Amendments to the Planning Board

All proposed amendments originating by petition, or by motion of the City Commission, shall be referred to the Planning Board for a report and recommendations thereon. The Planning Board shall submit its report and recommendations within 30 days after receiving such referral. Failure of the Planning Board to report within the required time shall be deemed to be the Planning Board approval of the proposed amendment. The Planning Board may submit a request to the City Commission for a 30 day extension to submit its report and recommendation.

### **Section 46** – Hearing on Proposed Amendment

Before any amendment, supplement, repeal or change in the regulations or district boundaries, there shall be a public notice and hearing thereon by the City Commission, as provided by law. In addition to the public notice of a hearing, notice shall be given in writing to all property owners of record of the land included in such proposed change, and the land immediately adjacent extending 100 feet therefrom, and the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, as said property owners and addresses appear on the latest completed assessment roll of the City.

**Section 47** – Adoption of Amendment

After the public hearing, and referral to and report by the Planning Board, a majority vote of the members of the City Commission shall be required to amend the zoning regulations except as described in Section 47, Protest Petitions.

**Section 48** – Protest Petitions

If a protest against a proposed amendment, supplement, repeal or change is presented to the City Commission, duly signed and acknowledged by the owners of twenty percent or more of the land included in such proposed change, or by the owners of twenty percent or more of the land immediately adjacent extending 100 feet therefrom, or by the owners of twenty percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the three-fourth vote of the City Commission.

**Section 49** – Periodic Review of Zoning Regulations

From time to time, at intervals of not more than five years, the Planning Board shall re-examine the provisions of these Regulations and the location of district boundary lines and shall submit a report to the City Commission recommending such changes or amendments, if any, which may be desirable in the interest of public welfare, convenience and necessity.

**ARTICLE 13 – MISCELLANEOUS**

**Section 50** – Interpretation

In interpreting and applying the provisions of these Regulations, they shall be held to be the minimum requirements for the promotion of public health, safety and general welfare. When these Regulations impose a greater restriction on the use of buildings or land or on the heights of buildings, or requires larger open spaces, or makes any other greater requirement than is imposed or required by any other ordinance, rule or regulation, or by easements, covenants, or agreements, the provisions of these Regulations shall govern.

**Section 51** – Severability

If any article, section, paragraph, subdivision, clause or provision of these rules, regulations, restrictions, prohibitions, or districts shall, by court of competent jurisdiction, be adjudged invalid, such adjudication shall apply only to such article, section, paragraph, district, subdivision, clause or provision so adjudicated.

**Section 52** – Effective Date

These Regulations shall be in effect upon its adoption and ten days after publication and posting, as provided by law.

## ARTICLE 14 – DEFINITIONS

**Section 53** – For the purposes of these Regulations certain words and terms used herein are defined as follows:

Words used in the present tense include the future tense; words in the singular number include the plural, and the plural the singular. The word “lot” includes the words “plot” and “parcel”. The word “building” includes the word “structure”. The word “used” shall be deemed also to include “designed, intended or arranged to be used”. The word “shall” is mandatory and not discretionary

**ACCESSORY STRUCTURE:** A structure detached from a principal building, fifteen feet or less in height, located on the same lot and customarily incidental and subordinate to the principal building or use.

**ADDITION:** An expansion of the exterior perimeter of a building.

**ADULT:** Any person aged 18 years or older.

**ADULT BOOK and/or VIDEO STORE:** An establishment which offers for sale or rental books, magazines, photographs, films, videos, or other visual representations, and other materials oriented toward representation of sexual activity of any kind. This term does not include occasional sales of books, magazines, videos and other materials that may meet this definition or a store that does not have as its primary purpose the sale of these items but which may offer items meeting this description as a small fraction of the items it sells or rents.

**ADULT ENTERTAINMENT ESTABLISHMENT:** Any premise which provides adult sexually-oriented entertainment whether live or by motion pictures, videos, photographic reproductions or other means.

**ADULT NOVELTY STORY:** A commercial establishment offering for sale visual materials, printed matter, instruments, devices, and other paraphernalia designed and intended for use in connection with sexual activities.

**ALLEY:** A public way not a street, in the rear of or along the side of a lot which fronts on a public street.

**APARTMENT:** A room or suite of two (2) or more rooms designed or used solely as a residence in a building not used as a hotel, rooming or boarding house or for other transient occupancy.

**APARTMENT HOUSE:** A building divided into five (5) or more apartments designed or used solely for residential purposes.

**AREA VARIANCE:** Authorization for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable requirements of this code.

**ATTACHED:** consists of roof, walls, foundation or slab.

**BASEMENT:** A story partly below grade and having at least half of its clear floor-to-ceiling height above the average grade of the adjoining ground.

**BED AND BREAKFAST:** A house or portion thereof where transient lodging rooms and breakfast are provided, the premises being owner-occupied.

**BUILDING:** A structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattels. When a building is divided into separate parts extending from the ground up, each part so divided is deemed a separate building.

**BUILDING, AREA:** The total ground area of each building and all accessory buildings, exclusive of uncovered porches, steps, and terraces.

**BUILDING COVERAGE:** That percentage of the lot area covered by the building area.

**BUILDING, HEIGHT OF:** The vertical distance measured from the established grade at the curb, or if no grade has been officially established at the curb, measured from the average level of the finished ground surface across the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs; and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**CAR WASH:** An area of land and/or building with machine- or hand-operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles.

**CELLAR:** An area wholly or partly below grade and having less than half of its clear floor-to-ceiling height above the average grade of the adjoining ground.

**CONVENIENCE STORE:** Any retail establishment offering for sale of prepackaged food products, household items, newspapers and magazines, and sandwich and other freshly prepared foods, for off-site consumption. Convenience stores may include the sale of gasoline, in which case they shall conform to the requirements of Automotive Fuel Service Stations.

**CONVERSION:** Modifications wholly within an existing structure. Work including ordinary repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed provided that the cubic content of the building as it existed at the time of adoption of these regulations shall not be increased. See Structural Alteration.

**DEVELOPMENT AND RESEARCH CENTER:** Centers created for a use engaged in medical or scientific research, testing or experimentation, not the manufacture or sale of products except as incidental to the primary use.

**DWELLING UNIT:** A building, or portion thereof, with provision for living, sanitary and sleeping facilities for one family.

**DWELLING, ONE-FAMILY:** A detached building containing one dwelling unit only.

**DWELLING, TWO-FAMILY:** A detached building containing two dwelling units only.

**DWELLING, MULTI-FAMILY:** A building, or portion thereof, containing three or four dwelling units.

**ESCORT AGENCY:** A company that provides social escorts for paying clients.

**FAMILY:** One or more persons occupying a dwelling unit and living as a single housekeeping unit.

**FARM:** A parcel or tract of land having an area of at least five (5) acres which is used for the production or raising agricultural or dairy products.

**GARAGE, PRIVATE:** A roofed or enclosed space designed or used primarily for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein.

**GARAGE, PUBLIC:** A commercial and/or business building or part thereof used for the storage, renting selling, servicing, and repair of motor vehicles, operated for gain.

**GARAGE, STORAGE:** A commercial and/or business building or part thereof, used only for the storage of vehicles and at which automobile fuels and oils are not sold and motor-driven vehicles are not equipped, serviced, repaired, rented or sold.

**AUTOMOTIVE FUEL SERVICE STATION:** Any area of land, including structures thereon, that is used or designed for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for servicing motor vehicles, but not including the painting or body repair thereof by any means.

**HOME OCCUPATION:** A "home occupation" is a business, profession, occupation or trade conducted for gain or support entirely within a residential building or a structure accessory thereto, which is incidental and secondary to the use of such building for dwelling purposes and which does not change the essential residential character of such building. Common examples of home occupations include but are not limited to offices for accountants and lawyers, shop for beauticians and barbers and studios of an artist or photographer.

**HOSPITAL:** A building or structure for the diagnosis and medical or surgical care of human sickness or injuries. The term shall be deemed to include sanitarium and medical clinic/urgent care.

**HOTEL or MOTEL:** A building for renting sleeping rooms which may include dining rooms, kitchens, and other facilities for use by temporary guests, excluding bed and breakfast establishments.

**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 the parts thereof.

**LIGHT MANUFACTURING & ASSEMBLY PLANTS:** Establishments engaged in the transformation of materials into new products in a process general considered to be free of potentially dangerous, offensive or hazardous methods and materials.

**LOT:** A parcel of land occupied or capable of being occupied by one building and accessory buildings or uses, or by a group of buildings united by a common use or interest;

**LOT, AREA:** The total horizontal area included within lot lines, except that no part of the area within a public right-of-way may be included in the computation of lot area.

**LOT, CORNER:** A lot abutting upon two or more streets at their intersection, and having an interior angle at the corner of intersection of less than one hundred and thirty five (135) degrees. If the angle of intersection is more than one hundred thirty-five degrees, the lot is an "interior lot."

**LOT, COVERAGE:** The cumulative square footage of all structures on a lot.

**LOT, INTERIOR:** A lot bounded by a street on one side only at an angle greater than one hundred thirty five degrees.

**LOT LINE:** The established division line between different parcels of property.

**LOT, THROUGH:** An interior lot bounded by a street on front and back.

**LOT DEPTH:** The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

**MUNICIPAL USE:** Any use directly related to governing the City and/or the internal affairs of the City in a building owned by the City.

**NON-CONFORMING USE:** A building, structure or lot occupied by a use at the time of enactment of these Regulations or any amendment which fails by reason for such adoption, revision, or amendment to conform with the present regulations of the district in which it is located.

**NURSERY:** A facility for the growing, display or sale of plant, stock, seeds or other horticultural items.

**NURSING OR CONVALESCENT HOME:** Any building used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnish

**PARKING SPACE:** An off-street space available for the parking of one motor vehicle and having an area of not less than one hundred seventy (170) square feet, exclusive of passage-ways and driveways thereto, and having direct access to a street or alley. Parking spaces for disabled people shall be at least eight (8) feet wide and shall have an adjacent aisle at least eight (8) feet wide.

**ROOMING HOUSE:** A multiple dwelling in which one or more rooms are rented for lodging.

**SETBACK:** The minimum horizontal distance between the street, rear or side lines of the lot and the front, rear or side lines on the building. When two (2) or more lots under single ownership are used, the exterior property lines so grouped shall be used in determining offsets.

**SIGN:** Any device affixed to or painted or represented directly or indirectly upon a building, structure or land and which directs attention to an object, product, place, activity, person, institution, organization or business.

**SIGN, ADVERTISING:** An "advertising sign" is a sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere than upon the premises where such sign is located, or to which it is affixed.

**SIGN, BUSINESS:** A "business sign" is a sign which directs attention to a business or profession conducted or to a commodity, service, or entertainment sold or offered upon the premises where such sign is located, or to which it is affixed.

**SIGN, FLASHING:** A "flashing sign" is any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use. For the purpose of these Regulations any revolving, illuminated sign shall be considered a "flashing sign".

**SPECIAL USE:** a certain use of land or buildings that may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken to assure compatibility with surrounding uses. Special uses are restricted and approved by the Board of Zoning Appeals.

**SPECIAL USE PERMIT:** the documentary evidence of authority granted by the Zoning Board of Appeals when a certain use of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken and conditions imposed to assure the compatibility with surrounding uses.

**STABLE, PRIVATE:** An accessory building in which one or more horses or ponies are kept for private use and not for hire, remuneration or sale.

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

**STORY, HALF:** That part of a building between a pitched roof and the uppermost full story, said part having a ceiling height of 7 feet or more for an area not exceeding one-half the floor area of said full story, and in which space not more than two-thirds of the floor area is finished off as rooms.

**STREET:** A public or private thoroughfare which affords the principal means of access to abutting property.

**STRUCTURE:** Includes anything constructed or erected, the use of which demands a temporary or permanent location on the ground, or attached to something having a temporary or permanent location on the ground.

**STRUCTURAL ALTERATION:** As applied to a building or structure, any change or rearrangement in the structural parts or in the exit facilities or any enlargement, either by extending a side or by increasing in height; or the moving from one location or position to another. See Conversion.

**THROUGH LOTS:** Lots other than corner lots with frontage on more than one street.

**TOURIST HOME:** A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

**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.

**USE, PERMITTED:** A specific principal use of a building, structure, lot or land, or part thereof which the code provides for a particular district.

**USE VARIANCE:** Permission for the use of land or buildings for a use which is not otherwise permitted by the zoning regulations.

**VARIANCE:** A modification of the regulation of this code, granted on grounds as set forth in applicable regulations of this code.

**YARD:** An open space on the same lot with a building.

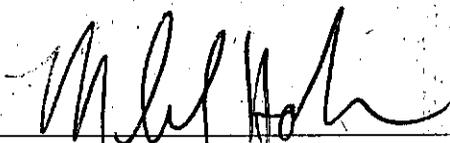
**YARD, FRONT:** An open, unoccupied space on the same lot with the building, between the front line of the building and the street or highway line, and extending the full width of the lot.

**YARD, REAR:** An open, unoccupied space, except for accessory buildings, on the same lot with the building between the rear line of the building and the rear lot line 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 the side lot line, and extending from the front yard to the rear yard.

I certify that this is a true and exact copy of the minutes on April 27, 2015 on record in the City Clerk's office.

4/30/15  
Date

  
Michael D. Holmes, City Clerk

Board of Appeals shall determine and fix yard and coverage requirements for said lot to permit its reasonable utilization for a permitted use.

- c. A single story garage attached to a dwelling may be constructed not nearer than five feet to the property side line, provided that the lot is 70 feet or less in width, and further provided that said lot was held under separate ownership at the time of adoption of these Regulations and the owner thereof owns no adjoining land that could be combined with said lot to meet the dimension required.

2. Reduction of Lot Area. The minimum yards and open spaces, including lot area per family, required by these Regulations for any building existing at the time of adoption of these Regulations, or for any building thereafter erected or structurally altered shall not be encroached upon or considered as yard or open space requirements for any other building, nor shall any lot be reduced below the district requirements of these Regulations..

3. Corner Lot. On a corner lot in any district where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on such streets. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his application for a zoning permit. Nothing in this regulation shall be so interpreted as to reduce the building width of a corner lot facing an intersecting street, and of record at the time of the passage of these Regulations to less than twenty-four (24) feet.

4. Visibility at Street Corners. On a corner lot in any district where a front yard is required, no fence, wall, hedge, or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines.

5. Front Yard Exceptions. The front yard of all buildings and structures hereafter constructed within a Residence District shall be not less than the average front yard of all buildings in the block for a distance of 300 feet on each side of such building. An adjacent vacant lot shall be considered as having the minimum front yard required in the district for the purpose of computing such average front yard.

#### 6. Transition Yard Requirements

- a. Where two districts abut on the same street between two intersecting streets, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the district boundary line in the less restricted district a front yard equal in depth to one-half the required depth for the front yard in the more restricted district.
- b. Where the side or rear yard of a lot abuts a side or rear yard of a lot in a more restricted district, there shall be provided along such abutting line or lines a side or rear yard equal in depth to that required in the more restricted district.

7. Projecting Architectural Features, Terraces, Porches, Fire Escapes

- a. The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves and architectural features, provided, however, that such features shall not project more than 2 feet into any required yard.
- b. A paved terrace shall not be considered as part of a building in the determination of yard sizes or lot coverage, provided that such terrace is unroofed and without walls, parapets, or other form of enclosure exceeding 6 feet in height.
- c. In determining the percentage of building coverage or the size of yards for the purpose of these Regulations, enclosed porches, or porches open at the side but roofed, shall be considered a part of the building.
- d. An open fire escape may extend into any required yard not more than 6 feet, provided that such fire escape shall not be closer than 4 feet at any point to any lot line.
- e. Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard a distance not to exceed 6 feet.

8. Walls, Fences and Hedges. The yard requirements of these Regulations shall not prohibit any necessary retaining wall nor any fence, wall or hedge, provided that in any residence district, no fence or wall shall exceed 4 feet in height in any front yard or 6 feet in height in any side or rear yard, and provided further that such fence or wall shall be no closer to any front lot line than 2 feet, and shall comply with visibility at street corners as provided in Section 17 of this Article.

9. Minimum Lot Sizes.

- a. Residential lots not served by public sewer shall not be less than one hundred (100) feet wide at the building setback line, nor less than twenty thousand (20,000) square feet in total area, except where percolation tests, in the opinion of the City Engineer (or the City Manager, if there be no City Engineer), require that there be additional area.
- b. In hillside locations, a slope policy is hereby implemented to require minimum lot sizes, determined by average lot slope, as follows:

Degrees	Lot Area (in square feet)		Average Lot Width (in feet)	
	With Sewers	Without Sewers	With Sewers	Without Sewers
0-10	10,000	20,000	100	100

10-20	15,000	20,000	100	120
Over 20	1 acre	1 acre	150	200

**Section 17** – Additional Height Requirements

1. Chimneys, Spires, etc. The height limitations of these Regulations shall not apply to belfries, church spires, cupolas, penthouses and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks and necessary mechanical appurtenances usually carried above the roof level; nor to flag poles, monuments, transmission towers and cables, radio and satellite antennae or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose for which they are intended. No advertising device of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations.

2. Through Lots. On through lots 120 feet or less in depth, the height of a building may be measured from the grade of either street. On through lots more than 120 feet deep, the height regulations and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than 120 feet from that street.

**Section 18** – Residential Floor Area Requirements

Minimum residential ground floor areas, measured from the exterior faces of exterior walls, exclusive of garages and open porches, are as follows:

<u>Dwelling</u>	<u>District</u>	<u>No. of Stories</u>	<u>Minimum Ground Floor Area Per</u>
Residential	R-1	Less than 2 stories	1,000
		Two or more stories	800
Residential	R-2	Less than 2 stories	800
		Two or more stories	700
Commercial	C-1 & C-2	Less than 2 stories	600
		Two or more stories	600

**Section 19** – Accessory Structures: Number, Height and Location

1. Number. There shall be not more than two accessory structures, including garages (attached or detached) on each zone lot intended or used for residential purposes except that dwelling groups and large-scale developments shall not be subject to the provisions of this Section.

2. Structure Size Maximum height of accessory structure shall be one story, or 15 feet.

3. Location. Accessory structures in R-Districts which are not attached to a principal building may be erected within the rear yard in accordance with the following requirements:
- a. 5 feet from side and rear line except when abutting an alley, then 10 feet.
  - b. Corner lot -- same as for principle building in regards to street side setbacks.
  - c. Not closer to a principal building than 10 feet.

The following is subject to approval by the Board of Appeals as provided in Section 41 Special Exception.

4. Accessory Structures in Commercial and Manufacturing Districts. Non-dwelling accessory structures shall comply with front and side yard requirements for the principal building to which they are accessory and shall be not closer to any rear property line than 10 feet.

### **Section 20** – Dwelling Units in Commercial or Manufacturing Districts

In any Commercial or Manufacturing District the requirements for lot area, lot width, side yards, and rear yards as specified for dwellings in the R-2 District shall apply to any commercial or manufacturing building in which one or more dwelling units are also located.

In lieu of the above requirement for such buildings, there may be provided on the lot at ground level free, accessible and usable open space of at least 400 square feet for each dwelling. Said open space shall not be used for storage, automobile parking, accessory buildings or other uses, but shall be available and usable for outdoor recreational use and for household activities which are normally carried on outdoors.

## **ARTICLE 7 – SUPPLEMENTARY REGULATIONS**

### **Section 21** – Lots in Two Districts

Where a district boundary line divides a lot held in one ownership at the time of adoption of said district line, the regulations for the less restricted portion of such lot shall extend not more than 50 feet into a more restricted portion provided the lot has frontage on a street in the less restricted district.

### **Section 22** – Commercial Excavation

Except when incidental to the construction of a building on the same lot, the excavation and removal of sand, gravel, top soil, clay or other natural mineral deposit, or the quarrying of any kind of rock formation is subject to the approval of the Board of Appeals. Before issuing a permit for such use the Board of Appeals shall find that such excavation or quarrying will not endanger the stability of adjacent land nor constitute a detriment to public welfare; convenience or safety by reason of excessive dust, noise, traffic congestion, or other condition. The Board of Appeals may specify any reasonable requirements to safeguard the public health, safety and welfare in granting such permit, and

- a. The final slope of material in any excavation or pit shall not exceed the normal limiting angle of repose of such material.
- b. The Board of Appeals shall specify the minimum distance between the nearest street and property line and the nearest excavation which will be permitted consistent with the public welfare.
- c. The area involved in the commercial excavation shall be restored to a safe, sanitary property drained area and shall be made to conform with the adjacent area.

The Zoning Board of Appeals shall, on its own initiative or upon the petition of any resident within 500 feet from the commercial excavation in question, after a public hearing, have the power and authority to revoke a permit previously granted if its continued use shall be found to endanger the stability of adjacent land or constitute a detriment to public welfare, convenience or safety. The Board of Zoning Appeals may decline to issue a permit for commercial excavation in any residential district if it deems such proposed excavation would be contrary to the public interests.

### **Section 23 – Signs**

1. Purpose and intent of sign regulation. It is the purpose and intent of this section to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor signs of all types; to protect property values; to create a more attractive and economic business climate; to enhance and to protect the physical appearance of the community; to reduce sign and advertising distraction and obstructions that may contribute to traffic accidents; to reduce hazards that may be caused by signs occupying, overhanging or projecting into the public right of way; to provide more open space and to curb the deterioration of the community development.

2. No sign shall be erected or maintained in the City of Sherrill except in compliance with the provisions of this section.

3. Residential districts. No sign shall be erected or maintained in any residential district of the City of Sherrill except in compliance with the provisions of this paragraph.

- a. Identification Sign. One (1) identification sign may be erected and maintained on a residential parcel identifying the name and/or street address of the occupant thereof. Such sign shall not exceed two (2) square feet in area, shall not have a dimension in excess of 6:1 ratio length to width, and no part thereof shall be erected or maintained more than ten (10) feet above ground level. Such sign may be illuminated. Such sign shall not be located nearer than three (3) feet to the city's sidewalk or, if there be none, then not nearer than ten (10) feet to the paved portion of the road.
- b. "For Sale" or "For Rent" Sign. One (1) sign announcing the parcel on which it is located to be for sale or for lease may be erected or maintained. Such sign shall not exceed four (4) square feet in area,

shall not have a single dimension in excess of 4:1 ratio, and no part thereof shall be erected or maintained more than five (5) feet above ground level. Such sign shall not be illuminated. Such sign shall not be located nearer than three (3) feet to the city's sidewalk or, if there be none, then not nearer than ten (10) feet to the paved portion of the road. Signs in compliance with above do not require prior Zoning Enforcement approval or a permit.

c. Business Sign. Such sign requires Code Enforcement Officer approval. One (1) business sign per parcel may be erected or maintained, and no part thereof shall be erected or maintained more than six (6) feet above ground level. Such sign shall not be located nearer than three (3) feet to the city's sidewalk or, if there be none, then not nearer than ten (10) feet to the paved portion of the road.

- (1) Home Occupations. A home occupation business sign shall be non-illuminated. If located in an R-1 residential district, such sign shall not exceed three (3) square feet in area; if located in an R-2 residential district, such sign shall not exceed four (4) square feet in area and shall not have a single dimension in excess of a 6:1 ratio.
- (2) Churches. A church sign or bulletin board, identifying the church and its denomination, its pastor, times and days of services, and/or upcoming events, may be erected and maintained on the parcel occupied by the church. Such sign may be illuminated. Such sign shall not exceed thirty-two (32) square feet in area and shall not have a single dimension in excess of eight (8) feet.
- (3) Other Signs. Any other sign, other than for a home occupation or a church, may not be illuminated, shall not exceed six (6) square feet in area, shall not have a single dimension in excess of six (6) feet, and shall not be erected or maintained more than six (6) feet above ground level.

d. Advertising Sign. No advertising sign shall be erected or maintained in a residential district.

e. Event Sign. An "event sign" is a sign announcing a single. One (1) such sign may be erected or maintained on the parcel. The sign shall not be illuminated, shall not exceed nine (9) square feet in area, shall not have a single dimension in excess of nine (9) feet, and shall not be located nearer than three (3) feet to the city's sidewalk, or if there be none, then not nearer than ten (10) feet to the paved portion of the road. No event sign shall be displayed more than fourteen (14) days prior to the event announced thereon, and no event sign shall be displayed more than five (5) days after the completion of the event announced thereon.

f. Flashing and Neon signs. No flashing sign or neon sign shall be erected or maintained in a residential district.

g. Corner Lots. The owner or occupant of any parcel of land located at the intersection of two public streets shall be authorized to erect one (1) additional sign on said parcel, which sign shall otherwise comply with all other provisions of this paragraph.

4. Non-Residential Districts. In any district other than a residential district, the following provisions shall apply.

a). Prior Approval. No business or advertising sign shall hereafter be erected until the same has been reviewed, approved and awarded a permit by the Code Enforcement Officer. Any person proposing to erect any sign shall submit a scale drawing and/or plan of the proposed sign showing its wording, size and dimensions, materials, proposed location and, if proposed to be affixed to a building more than six (6) feet above ground level, a list of materials and other means by which the same is proposed to be secured to the building, and if the Code Enforcement Officer requires it, a certification to the City of Sherrill from a licensed engineer that the proposed sign and its proposed installation do not constitute a danger to the public health or safety. Upon submission of all materials herein required to the Code Enforcement Officer. The failure of the Code Enforcement Officer to act within thirty (30) days shall be deemed to constitute his approval of the proposed sign.

b). Business Signs. Not more than two (2) business signs may be erected or maintained by a business, area not to exceed one (1) sq. ft. per linear foot of business building frontage in total. If multiple businesses occupy the business building, they must comply with the aforementioned restrictions in total. Such signs may be illuminated. No portion of any such sign shall be erected or maintained above the roof line of the main structure. Traffic control signs shall be approved as part of proposal, but will not count as part of sq. ft.

c). Advertising Sign. One (1) advertising sign may be erected or maintained on a parcel. Such sign shall not exceed thirty-two (32) square feet in area, shall not have a single dimension in excess of eight (8) feet, and no portion thereof shall be above the roof line of the main structure. Such sign shall be located as if it were a business sign.

d). Flashing Signs. No flashing sign shall be erected or maintained in a non-residential district.

e). "For Sale" or "For Rent" Sign. Not more than one (1) temporary sign announcing the parcel on which the sign is located to be for sale or for rent may be erected or maintained. Said signs shall not be illuminated and shall not exceed thirty-two (32) square feet. No portion of any such sign shall be erected or maintained above the roof line of the main structure. No such sign

shall be located nearer than three (3) feet to the City sidewalk or if there be none, then no nearer than ten (10) feet to the paved portion of the road. Signs in compliance with above do not require prior Zoning Enforcement approval or a permit.

5. Signs not permitted in any district. No signs of any kind shall be attached or affixed to any telephone or utility pole, or on any city owned property without the express consent of the City Manager.

6. Temporary signs. Temporary signs shall be allowed in all districts in addition to any other signs permitted by these Regulations, subject to the following additional restrictions and specifications. All temporary signs must be approved by the Code Enforcement Officer.

A "temporary sign" is a sign which is freestanding or otherwise not permanently attached to a building or to a post or other structure permanently erected on the premises and is not otherwise described and permitted in these Regulations.

Temporary signs shall require a permit; such permit shall expire Five (5) days after the event advertised has concluded or in any case shall expire 90 days after issuance thereof. Permits for such signs shall not be reissued within a given calendar year and in no event shall such permit authorize more than one sign.

In the event such temporary sign has not been removed upon expiration of the permit, the Code Enforcement Officer shall cause that sign to be removed, the cost of which is to be charged to the applicant by deducting the same from the deposit.

Dimensions. No such temporary sign shall be larger than thirty-two (32) square feet and shall not exceed twenty (20) feet above ground level in any business or industrial district or four (4) square feet in area and shall not exceed four (4) feet above ground level when placed in any residential district.

Placement. A temporary sign shall not be attached to fences, trees or utility poles and shall not be placed in a position that obstructs or impairs vision of traffic or creates a hazard or nuisance.

7. Permits. A fee of \$10.00 shall be paid by the applicant upon the issuance of a permit for a temporary sign; and in addition thereto, the Code Enforcement Officer shall require a deposit of \$100.00, and it shall be refundable upon timely removal as hereinafter provided. For all other permanent signs requiring a permit the fee shall be \$25.00 and there shall be no deposit required.

8. Signs not affected. Nothing herein contained shall be deemed to prohibit the display of any sign endorsing any candidate for political office or indicating support of or opposition to any political proposition during the sixty (60) days immediately preceding the date on which such election is to be taken or vote is to be held and seven (7) days immediately thereafter. No such sign shall contain obscene or vulgar language so as to

disturb the peace and character of the neighborhood. Nothing herein contained shall be deemed to prohibit the display of any holiday decoration, including flashing lights.

9. Enforcement. Any sign previously given City Commission approval shall be deemed in conformance with this section of the Zoning Regulations..

Any nonconforming sign existing on or after the effective date of this law shall be removed by the owner of the premises upon which such sign is located after written notice is provided thereof. The Code Enforcement Officer upon determining that any such sign exists, shall notify the owner or beneficial user of such sign in writing, to remove the said sign within seven (7) days from the date of such notice. Upon failure to comply with such notice within the prescribed time, the Code Enforcement Officer shall remove or cause removal of such sign, and shall assess all cost and expense incurred in the said removal against the property on which such sign is located.

The penalties and procedures prescribed in Article 10 of these Regulations shall apply to this law in addition to any other civil and criminal remedies available.

#### **Section 24** – Prohibited Uses

In all districts the following buildings and uses are prohibited:

1. Any use, similar to those enumerated below, which would be injurious to the safety or welfare of the neighborhood by reason of smoke, odor, vibration, dirt, glare, noise or danger of fire and explosion.
  - a. Manufacture or bulk storage of acetylene gas, ammonia, asphalt, , fertilizer, fireworks, explosives, or pressure tanks must conform to Underwriters specifications.
  - b. Bulk storage of acetylene, ammonia, asphalt, fireworks, fertilizer, or explosives; gasoline, naphtha, or petroleum refining and pressure tanks, except as specifically approved by the City Manager as meeting Underwriters specifications.
  - c. Poultry and swine farms.
2. No garage, accessory building, storage units or trailer shall be occupied or used for residence or dwelling purposes.

### **ARTICLE 8 – OFF-STREET PARKING AND LOADING**

#### **Section 25** – Off-Street Parking

1. Off-street parking space shall be required as specified in Schedule A and as follows:
  - a. C-2 District: for new buildings constructed and existing buildings substantially altered after the effective date of these Regulations..
  - b. All other Districts: for new uses established, new buildings constructed, and existing buildings substantially altered, after the effective date of these Regulations..
2. For any building having more than one use, parking space shall be required as provided for each use.
3. For uses not specified below, the Board of Appeals shall, on appeal, and after consideration of a recommendation by the Planning Board, establish parking requirements in specific cases consistent with those specified in Schedule A.
4. Required parking spaces for residential uses shall be located in the side or rear yard on the same lot or tract as the principal use. This provision shall not apply to multi-story non-profit housing for the elderly. Parking spaces required for other uses may be located within 200 feet of the principal use, subject to the approval of the Board of Appeals.
5. One off-street parking space shall consist of at least 170 square feet. In addition, space necessary for aisles, maneuvering and a street or alley over an approved curb cut.
6. Floor areas for the purpose of computing parking requirements shall be the sum of the horizontal area within exterior walls of the several floors of a building, excluding basement and cellar areas used primarily for storage or service.

#### Schedule A – Off-Street Parking

<u>Use</u>	<u>Spaces Required</u>
1. Dwellings and Apartment Houses	1 space for each dwelling unit
2. motel, hotel	1 space for each guest
3. Administrative, professional, Philanthropic governmental or utility office area	1 space for each 200 sq. ft. of floor
4. Funeral home	10 spaces, plus space for all employee and resident personnel cars
5. Church or temple	1 space for each 10 seating spaces in main assembly room
6. School	2 spaces for each classroom

7.	Theatre or other place of assembly	1 space for each 5 seating spaces
8.	Nursing or convalescent home	1 space for each 4 beds
9.	Retail store or bank	1 space for each 250 sq. ft. of floor area in excess of 1,000 sq. ft.
10.	Clubs and restaurants serving food or beverages for consumption on the premises	1 space for each 50 sq. ft. of floor area devoted to patron use
11.	Bowling alley	5 spaces for each alley
12.	Wholesale, storage, freight terminal or utility use	1 space for each 1,000 sq. ft. of gross floor area
13.	Industrial or manufacturing uses	1 space for each 2 employees on the maximum working shift
14.	Home occupation	1 space in addition to any required for the dwelling
15.	Non-profit housing for elderly	1 space for each two dwelling units

**Section 26 – Off-Street Loading**

1. At least one off-street loading facility shall be provided for each commercial or manufacturing establishment hereafter erected or altered to have a gross floor area in excess of 5,000 square feet for commercial uses and 10,000 square feet for industrial uses, computed as described in Section 25-6. Space for off-street loading shall be in addition to space for off-street parking.

2. Each facility shall be subject to the following minimum requirements:

- a. Each berth shall be not less than 12 feet wide, 33 feet long, and 14 feet in height when covered.
- b. Space for such berth may occupy any part of any required side or rear yard, except no such berth shall be located closer than 50 feet to any lot in any R-District unless wholly within a completely enclosed building or unless screened from such R-District lot by a wall or uniformly painted solid fence not less than 6 feet in height.

**ARTICLE 8-A**  
**REGULATION OF SATELLITE RECEIVING ANTENNAS – DISH-TYPE, WIND**  
**TURBINES, AND SOLAR PANELS**

Section 27

**Satellite Receiving Antennas.**

- a. For all zoned districts, there shall not be more than two satellite antenna/digital television/internet dishes per residential dwelling and the two units shall not exceed a maximum of five feet total combined diameter and shall be set back at least five feet from all property lines. If said satellite antenna/digital television/internet dish is located in the front yard of a residential dwelling, it is required to be attached to the said dwelling versus free standing.

**Small Wind Energy Conversion Systems.**

- a. No wind energy conversion systems including but not limited to windmills and wind turbines shall be installed without application for a special exception permit which shall take into account amongst other things, the fabric of the proposed neighborhood, the effects on the environment, noise and visual appearance.

**Solar Panels.**

- a. No solar panels shall be constructed within the City of Sherrill without application for a special use permit.

**ARTICLE 9 – NON-CONFORMING USES**

**Section 28** – Continuation

Any non-conforming use, building or structure which existed lawfully at the time of enactment of these Regulations may be continued, subject to the regulations which follow in this Article.

**Section 29** – Identification

The Codes Enforcement Officer shall be responsible for identifying all non-conforming uses and keeping an inventory of same.

**Section 30** – Non-Conforming Use of Land

The non-conforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of the adoption of these Regulations.

A non-conforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such non-conforming use at the time of adoption of these Regulations.

A non-conforming use of land shall not be changed to another non-conforming use.

1. If a non-conforming use of land is discontinued for a period of twelve consecutive months, it shall not be renewed, and any subsequent use of the land shall conform to the regulations of the district in which the land is located.

**Section 31** – Non-Conforming Use of Buildings

1. Additions. A non-conforming building which is substantially designed or intended for a use not permitted in the district in which it is located, shall not be added to or enlarged in any manner. However, such building and the use thereof may be made to conform to all the regulations of the district in which it is located.

2. Alterations and Repairs. No structural alterations shall be made to any non-conforming building unless such alterations are required by law. However, any maintenance and repairs as are required to keep a non-conforming building or structure in sound condition shall be permitted.

3. Changes. A non-conforming use of a building may not be changed except to a conforming use. When so changed, the non-conforming use may not be resumed thereafter.

4. Discontinuance. A non-conforming use of a building or structure which is discontinued for a period of twelve consecutive months shall not be reestablished, and any subsequent use shall conform to the use regulations of the district in which the premises are located. A use shall be deemed to have been discontinued under any of the following conditions:

- a. Vacancy of a non-conforming use building for a period of twelve consecutive months.
- b. Manifestation of a clear intent on the part of the owner to abandon the non-conforming use.

5. Extension. A non-conforming use may be extended throughout any part of a building designed for such use if at the time of adoption of these Regulations a major portion of the building was used for such non-conforming use.

6. Removal. If any building in which any non-conforming use is conducted is hereafter removed, the subsequent use of the land on which such building was located and the subsequent use of any building erected thereon shall conform with the current regulations of the district.

7. Validity of Permit. Any building for which a permit has been lawfully granted, and on which the construction has been started and diligently prosecuted before the effective date of these Regulations may be completed.

## ARTICLE 10 – ADMINISTRATION

### **Section 32** – Enforcement Officer

The provisions of these Regulations shall be administered and enforced by a person designated by the City Commission as the “Codes Enforcement Officer” and/or by the City Manager, who shall have the power to make inspections of buildings or premises necessary to carry out his duties in the enforcement of these Regulations. No building permit or certificate of occupancy required hereunder shall be issued by the Codes Enforcement Officer and/or the City Manager except in compliance with the provisions of these Regulations, or as directed by the Board of Appeals under the provisions of Article 11.

### **Section 33** – Building Permit

(1) No building shall be erected, moved, structurally altered, added to or enlarged, and no excavation for any building shall be begun unless and until a building permit for such work has been issued by the Code Enforcement Officer and/or the City Manager.

(2) An application for a building permit shall be submitted on a form to be provided by the Code Enforcement Officer and/or the City Manager. Each application shall set forth such information as the Code Enforcement Officer and/or the City Manager may require including, without limitation, the purpose(s) for which the building is intended to be used and shall be accompanied by the following:

- a. a survey map or plot plan showing the dimensions of the lot and building, and the dimensions of required and proposed yards;
- b. if the application involves a residential building of 1,000 or more square feet (exclusive of garages, open porches, cellars or uninhabitable basements or attics) or commercial or industrial buildings or any addition thereto, two complete sets of specifications and detailed construction plans, including a certification that the plans meet the requirements of the New York State Building and Energy Code, bearing the signature or authorized facsimile signature of an architect or engineer licensed by the State of New York;
- c. if the application involves a residential building of less than 1,000 square feet (exclusive of garages, open porches, cellars or uninhabitable basements or attics), a sketch made to scale showing dimension of the building, rooms (each room being identified as to its intended use), windows, doors, lumber sizes, spans and insulation; and
- d. such additional information as the Code Enforcement Officer and/or the City Manager may reasonably require to determine if the proposed building, its use and the use of the land are in conformity with the provisions of these Regulations and any and all other applicable law, ordinance, rules and regulations

(3) The specification and detailed constructions plans required under subparagraph "b" of paragraph (2) hereof shall include a site plan and description of the nature of the work to be performed, the materials and equipment to be used and installed, and the details of the structural, mechanical, electrical and plumbing installation and a section through for fireplace footer to top of chimney and stairs.

(4) Within ten (10) business days following his receipt of all information required hereunder in proper form and any follow-up information, if applicable, the Code Enforcement Officer and/or the City Manager shall approve or disapprove the application.

#### **Section 34** – Certificate of Occupancy

A certificate of occupancy is required for any of the following:

1. Occupancy and use of a building hereafter erected, altered, moved or extended
2. Change in the use of an existing building
3. Occupancy and use of vacant land, except for any use consisting primarily of tilling the soil or similar agricultural use
4. Change in the use of land, except for any use consisting primarily of tilling the soil or similar agricultural use
5. A property where power or utilities have been discontinued for more than five consecutive days. Said Certificate of Occupancy shall only be re-issued if City is made whole for any and all owed utilities and costs.

A certificate of occupancy may be obtained, on application, from the Codes Enforcement Officer and/or City Manager. Such certificate shall be issued only if the proposed use of the building or land conforms to the provisions of these Regulations.. An inspection will be made of each building or lot for which a Certificate of Occupancy has been applied before issuing such certificate. Such inspection shall be made within five (5) business days from the date of application. Failure to make such inspection and determination within the specified period of time shall be deemed to be disapproval of the application for Certificate of Occupancy.

#### **Section 35** – Business Licenses

1. Any business that generates revenue within the City of Sherrill limits shall obtain a business license prior to opening or conducting business within the City.
2. To obtain a business license one must complete the Business License Registration Form, and submit said form, along with the appropriate payment, to the City Clerk at 377 Sherrill Road, Sherrill NY.
3. Each business is required to renew and update their license annually.

4. Upon receipt of a business license, each business owner shall post such business license at the place of business in the public view.
5. For residential home businesses, no fee is required.

**Section 36** – Violation and Penalty

- a) Any person, firm or corporation that violates or aids or assists in the violation of these Regulations or any part thereof shall be guilty of an offense.
- b) Each day that such violation continues shall be deemed to be a separate offense.
- c) Any person, firm or corporation convicted of an offense as provided in subsection (a) hereof shall be punished by a fine not to exceed One Hundred Dollars (\$100.00) per day, by a term of imprisonment not to exceed ten (10) days, or by both such fine and imprisonment.

**ARTICLE 11 – BOARD OF APPEALS**

**Section 37** – Appointment

The Mayor shall appoint members of the Board of Zoning Appeals for a term of three years, five people on the Board of Zoning Appeals, to serve in staggered terms.

**Section 38** – Organization

The Board of Appeals shall choose its own chairman and an acting chairman to serve in his absence. The Board shall adopt rules of procedure governing the organization of the Board and the conduct of its meetings.

**Section 39** – Meetings

1. Meetings of the Board shall be held as provided in rules of procedure adopted by the Board. The Board shall keep minutes of its proceedings, showing the vote of each member on each question and shall keep records of its hearings and other official actions. If any member is absent or fails to vote, the minutes shall indicate such fact. The concurring vote of four members of the Board shall be necessary to reverse any order or decision of the Codes Enforcement Officer and/or the City Manager, or to decide in favor of any applicant on any matter over which the Board has jurisdiction.

2. All hearings of the Board shall be open to the public and the minutes of Board meetings and hearings shall be a public record. Every rule or regulation, amendment or repeal thereof, order, requirement, decision or determination of the Board shall be filed immediately with the Codes Enforcement Officer and/or City Manager and shall be a public record.

**Section 40** – Appeals to the Board

1. An appeal from a determination of the Codes Enforcement Officer and/or City Manager may be taken by any aggrieved person, or by an officer, department or board of the City of Sherrill. Such appeal shall be taken within 30 days of the date of the decision, by filing with the Codes Enforcement Officer and/or City Manager a notice of appeal specifying the grounds thereof.

2. All appeals shall be made in writing on forms provided by the Board. The Codes Enforcement Officer and/or the City Manager shall then transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

3. The Board shall give due notice to the parties at interest, and shall give its decision within 30 days from the date of the hearing.

#### **Section 41** – Jurisdiction

The Board of Appeals shall have the following powers and duties prescribed by statute and by these Regulations:

1. Interpretation: On appeal from a determination of the Codes Enforcement Officer and/or the City Manager to hear and decide on questions where it is alleged there is an error in any order, requirement, decision or interpretation of any provision of these Regulations.

2. Variance: On appeal from a determination of the Codes Enforcement Officer and/or City Manager, to grant a use variance pursuant to the following criteria:

As used in this section: (a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. (b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein. (b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where

the property is located: (i) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) the alleged hardship has not been self-created. (c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein. (b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (i) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (iii) whether the requested area variance is substantial; (iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (v) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. (c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

#### **Section 42** – Decisions of the Board

All decisions of the Board shall be in writing, and a copy of each decision shall be sent to the applicant and to the Codes Enforcement Officer and the City Manager. The Board shall also retain in its files a copy of each decision, which files shall be available for inspection by the public. Each decision shall set forth fully the reasons for the decision of the Board and the findings of fact on which the decision was based. Such findings and reasons shall include references to the standards of appropriate subsections of Section 41, where the appeal is for a variance or a special exception.