

**TOWN OF LINDINA ZONING ORDINANCE  
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## TOWN OF LINDINA ZONING ORDINANCE

**1.00 Introduction.** The Town of Lindina does hereby enact an Ordinance to promote and maintain agricultural opportunity and other opportunity which does not diminish the rural character of the land. The Ordinance is intended to promote the health, safety, aesthetics, rural character and general welfare of the citizens of this township through the regulation and restriction of the comprehensive regulation of land use within the Town. This Ordinance regulates the density of population, the location and use of buildings, structures and land for protection of agriculture, natural resources, residences and other purposes in order to prevent the overcrowding of land. This Ordinance provides a method for its administration and enforcement and provides penalties for its violation.

**1.01 Classification of Uses.** This Ordinance divides the Town of Lindina, Juneau County, State of Wisconsin, into Districts of such number, shape and area as are deemed best suited to carry out the purposes outlined here. In each zoning District there are uses which are permitted uses, conditional uses and uses not classified.

**(a) Permitted Uses by Right:** Permitted uses of land or buildings, the permissibility of which is a predetermined right anywhere in the District in which located, subject only to the regulations established governing such use, including securing the Zoning Permit. Permitted accessory uses are incidental, customary to, and commonly associated with the permitted principle use, and therefore permitted on the same basis as the principle use. Accessory uses shall not be permitted prior to principle uses.

**(b) Uses Permitted by Conditional Grant:** Conditional uses, the nature, character or circumstances of which are dependent upon specific contemporary conditions, are such that predetermination of permissibility by right or the detailing in the Ordinance of specific standards are not practical; but which may be denied or permitted in the Districts where listed subject to the issuance of a conditional use permit in accordance with the provisions of Section 6.00.

**(c) Uses Not Classified:** Any uses not specifically listed in this Ordinance but similar in land use intensity and character may be allowed as a conditional use subject to definition and interpretation by the Town Board. However, any uses not specifically listed in this Ordinance and not similar in land use intensity and character to those listed are not allowed.

## **2.00 General Provisions**

**2.01 Compliance.** No structure, land or water shall be hereafter used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a certificate of zoning compliance (Zoning Permit), except as specifically exempted herein, without full compliance with the provisions of this Ordinance.

### **2.02 Pre-existing Non-conforming Premises, Uses and Developments**

**(a)** The existing lawful use of a building or premises at the time of the enactment of this Ordinance or any amendment thereto may be continued although such use does not conform to the provisions of this Ordinance for the District in which it is located, but no building or premises containing a non-conforming use shall be enlarged or extended.

**(b)** If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of a more restricted classification or to another non-conforming use of the same classification, subject to Plan Commission approval by the conditional use process. For the purposes of this Ordinance, the uses permitted in the Agricultural District comprise the most restricted classification, and the uses first permitted in the other Districts comprise progressively less restrictive classifications in the same order in which the Districts appear herein.

**(c)** If the non-conforming use of a building or premises is discontinued for a period of twelve (12) months, any future use of the building or premises shall conform to the regulations for the District in which it is located. A reasonable interim between tenants or occupants shall not be construed to mean discontinuance.

**(d)** When a building containing a non-conforming use is damaged by fire, wind, explosion, act of God or the public enemy, it may, with zoning permit, be timely restored as it was prior to the damage.

**(e)** The total structural repairs or alterations in any non-conforming use shall not during its life exceed 100 percent of the local assessed value of the building at the time of its becoming a non-conforming use unless permanently changed to a conforming use. Normal maintenance of a residence or other building shall not be affected by this provision.

**(f)** Nothing herein contained shall require any change in the plan construction, size or designated use of any building or part thereof for which a zoning permit has been issued before the effective date of this Ordinance and the construction of which shall have been started within six (6) months of the date of such permit.

**2.03 Certificate of Zoning Compliance.** A certificate of zoning compliance (Zoning Permit) from the Town is required before a Building Permit or Sanitary Permit is issued. The property owner is responsible for maintaining compliance with all applicable local, state and federal regulations.

A property owner shall apply for a certificate of zoning compliance from the Zoning Administrator. The certificate shall state whether or not the property and use on or proposed for the property meets current Ordinance standards. The application shall be on the form and provide the information prescribed by the Town.

The use of buildings hereinafter erected, moved on, converted, enlarged or structurally altered and the use of any land shall be in compliance with the regulations established herein for the District on which such land or building is located.

**2.04 Permit Fees.** Permit fees shall be established by the Town Board.

**2.05 Yard Requirements.** Front, back and side yards shall be provided in accordance with the regulations indicated and shall be unobstructed from the ground level to the sky.

Front yard (street yard) building set backs shall be as follows:

(a) From Class A highways, one hundred ten (110) feet from the centerline or forty two (42) feet from the right-of-way line, whichever is greater;

(b) From Class B highways, seventy five (75) feet from the centerline or thirty (30) feet from the right-of-way line, whichever is greater;

(c) From Class C highways, sixty three (63) feet from the centerline or thirty (30) feet from the right-of-way line, whichever is greater.

All other building set backs shall be as set forth in the description of the specific District involved.

On corner type lots, every yard abutting the street shall be considered a front yard for purposes of determining set backs.

**2.06 Accessory Buildings.** Accessory buildings which are not part of the principal building shall not occupy more than thirty (30) percent of the area of the required rear yard and shall not be nearer than ten (10) feet to any lot line. The above area restrictions shall not apply to accessory buildings on farms, but such accessory buildings shall not be closer than one hundred (100) feet to any side lot line. Where an accessory building is a part of the principal building or is substantially attached thereto, or is located partly or wholly in front of the rear wall of the principal building, side yard and rear yard requirements for the principal building shall be applied to the accessory buildings.

**2.07 Land Use Policies Master Plan.** The policies of the Town of Lindina Land Use Policies Master Plan shall be considered in all decisions mad by the Plan Commission, Zoning Administrator, Zoning Board of Appeals and the Town Board.

**2.08 Pyramiding Shall Not Be Allowed.** Pyramiding is defined as the act of building a dwelling on a parcel of land larger than that required, then selling the building(s) with acreage less than is required and repeating this process. For the purposes of this Ordinance, it is permissible for a resident to sell their house with acreage below that stated and build a new house. Repeating this more than once shall be deemed pyramiding and shall not be allowed.

**2.09 Miscellaneous.** Every building hereafter erected, moved on, converted enlarged or structurally altered shall be located on a lot or single parcel. Farm buildings shall be exempt from height regulation.

### **3.00 Zoning Districts and Zoning Maps.**

All of the Town of Lindina, outside the limits of incorporated cities, is hereby divided into four (4) use districts, namely:

District 1 – Agricultural District

District 2 – Recreational District

District 3 – Family Residence District

District 4 – Commercial District

#### **3.01 Agricultural District**

This District is intended to protect and preserve areas of the Town of Lindina which are presently rural or agricultural in character or use. For purposes of this Ordinance, we accept as an original parcel, each parcel for which there is a tax parcel number as of January 1, 2000. Any subdivision of lands into less than a quarter quarter section after January 1, 2000 shall not be recognized for purposes of this section. Each quarter quarter section shall be identified by the Government Survey which is the basis for the original description of all lands in Wisconsin. Thus, Lindina is Township 15 North, Range 3 East, consisting of 36 sections, each of which, except Sections 1 through 6, contains 640 acres each, typically described as a fractional part of a section. Thus, for example, the 40 acres in the Southwest corner of a section would be called the Southwest Quarter of the Southwest Quarter of that Section. The northern tier of quarter quarter sections in Sections 1 through 6 may contain slightly more than 40 acres, but will, for purposes of this Ordinance, be treated as any other quarter quarter section of the Government Survey. In the Agricultural District, no building or premises shall be used and no building, structure or development shall be hereafter constructed, moved or significantly altered, unless otherwise provided in this Ordinance, except for one or more of the following uses:

##### **(1) Permitted Uses.**

(a) General farming, including dairying, livestock and poultry raising, nurseries, greenhouses, forestry, orchards, and other similar enterprises or uses. Fur farms and farms operated for the disposal or reduction of garbage, sewage, rubbish or offal are prohibited. No greenhouse or building for the housing of livestock or poultry shall be located within one hundred (100) feet of any boundary or a residential lot other than that of the owner or lessee, of such greenhouse or building containing such livestock or poultry.

(b) One (1) single-family detached dwelling unit per original parcel. In the case of large parcels, one single-family detached dwelling unit per government survey quarter quarter section. If an original parcel or, if applicable, a quarter quarter section already has one dwelling unit, no further dwelling units are allowed. Each such parcel qualifying for a dwelling unit must meet the following conditions:

- (i) Each dwelling unit must be located on a parcel of a minimum size of two (2) acres designated by a certified survey map or comparable recorded form.
- (ii) Each dwelling unit must have access to a public road with a minimum open private drive width of twelve (12) feet.
- (iii) To the extent not inconsistent with the above, each dwelling unit must comply with the provisions of section 3.03(3) hereafter.

**(2) Conditional Uses.**

(a) Not to exceed one (1) house trailer or mobile home on any operating farm that has a substantially full compliment of farm buildings, including an existing residence on said quarter quarter section on the condition that an occupant is principally employed in the farming operation; provided that no such house trailer or mobile home shall be located closer to the home than the farm residence. When the house trailer or mobile home is no longer occupied by one actively engaged in the farming operation, the house trailer or mobile home is to be removed within six (6) months.

(b) Telephone, radio, television and power distribution towers, poles and lines, including transformers, substations, equipment housings, underground lines designed to transmit gas, oil or the like and related facilities only if they do not come at the expense of agriculture, neighborhood stability and rural aesthetics. Any such tower or structure in excess of thirty five (35) feet in height will be carefully planned and regulated to encourage consolidation of such towers in order not only to reduce potential proliferation of towers, but also to secure a net reduction in the total number of towers and keep them out of the view of objecting neighbors, if possible.

- (c) Aircraft landing field, basins and hangars.
- (d) Fur farms, pea viners and charcoal kilns.
- (e) Kennels.
- (f) Veterinarian facility, animal hospital.

(g) Farm building construction operation, farm supply stores, feed mill intended to serve the farming community.

(h) Creamery, cheese factory, animal sales barn, farm implement sales and service, welding service.

(i) Licensed bed and breakfasts which meet the minimum standards of the applicable Wisconsin Administrative Codes.

(j) Home based businesses as described in Section 3.03.

(k) Professional offices as described in Section 3.03.

(l) Large Volume Animal Feeding Operations. "Large volume animal feeding operation" means a feedlot or facility, other than a pasture and where two thousand (2000) or more animals or five thousand (5000) or more poultry will be fed, confined, maintained or stabled animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

Prior to the Plan Commission considering a large volume animal feeding operation, all necessary Federal and/or State permits must have been tentatively approved and detailed evidence established of the description and effectiveness of the barriers to be employed to avoid offensive sight, sound or smell to neighbors or the public.

### **3.02 Recreational District**

This District is being maintained as distinct from the surrounding Agricultural District as an historical carryover. The purpose of this District is to provide for areas within the Town of Lindina where open space and recreational needs, both public and private, of the citizens of the Town of Lindina, as well as the general public, can be met without undue disturbance of natural resources and adjacent uses.

In the Recreational District, no building or premises shall be used and no building, structure or development shall hereafter be constructed, moved or significantly altered, unless otherwise provided for in this Ordinance, except for one or more of the following uses:

#### **(1) Permitted Use:**

(a) Single-family dwellings, provided that the minimum lot size shall be twelve (12) acres each. The height, floor space and yard set back requirements are the same as stated in Section 3.03 Family Residence District.

(b) Churches, public and parochial schools.

(c) Public parks and playgrounds, under the provisions established for public parks and playgrounds.

#### **(2) Conditional Uses.**

(a) Campground and resort cottages for transient occupancy. Such areas shall meet the following requirements:

(i) The operator shall obtain an annual permit which shall expire on the first day of April, each year, and which shall be issued by the Town Zoning Administrator, the approval of the Board of Appeals and the payment of the annual permit fee in an amount to be set by the Town Board.

(ii) A condition for the granting of a permit for the establishment of any such camping area, or for the renewal of the annual permit therefore, is that the camping area shall at least equal the minimum requirements of the Wisconsin Division of Health, Administrative Codes which govern the development of campgrounds.

(iii) The application for the annual permit which shall be in writing on forms provided by the Town Zoning Administrator

and shall have attached thereto a plan for the camping area, or in the case of an application for renewal, a plan showing any revision or extension of plans previously filed.

### **3.03 Family Residence District**

In the Family Residence District, no building or premises shall be used and no building, structure or development shall hereafter be constructed, moved or significantly altered unless otherwise provided in this Ordinance, except for one or more of the following specified uses:

#### **(1) Permitted Uses.**

- (a) Single family dwellings.
- (b) Churches, public and parochial schools.
- (c) Municipal buildings, except sewage disposal plants, garbage incinerators and buildings for the repair or storage of road building machinery.
- (d) Public parks and playgrounds, including swimming pools, golf courses, tennis courts, picnic grounds and bathing beaches.
- (e) Accessory buildings, including private garages and buildings clearly incidental to residential use of the property; provided, however, that no accessory building may be used as a separate dwelling unit.
- (f) Gardening and farming, including nurseries for the propagation of plants only, except farms operating for the disposal of sewage, rubbish or offal, fur farms, stock farms and poultry farms.

#### **(2) Conditional Uses.**

- (a) Home-based businesses, when such business is incidental to the residential use of the premises and does not involve and external alteration that would effect a substantial change in the residential character of the building; provided further, that no article is sold or offered for sale that is not produced by such home-based business, that no stock in trade is kept or sold and that no person other than a member of the resident family is employed on the premises.
- (b) Professional offices, when such office is conducted solely by a member or members of the resident family entirely within the residence and incidental to the residential use of the premises; provided further, that there shall be no external alterations that would effect a substantial change in the residential character of the building, that no more than fifty (50) percent of only one floor of the dwelling shall be devoted to such offices and that no more than two persons not members of the resident family may be employed in non-professional capacities in any such office.

(c) Telephone exchanges, provided there are no service garage or storage yard, telegraph and telephone and power distribution poles and lines and necessary appurtenant equipment housings. These regulations, however, shall not include microwave radio relay structures unless the location thereof shall first have been approved by the Plan Commission.

**(3) Height, Area for Lot, Floor, Side Yard and Other Requirements.**

(a) Height: Except as otherwise provided in this Ordinance, no building shall exceed a height of thirty five (35) feet.

(b) Lot Area: Buildings used in whole or in part for family dwelling purposes which are hereafter erected shall be located on a lot having an area of not less than two (2) acres, and no such lot shall be less than two hundred (200) feet in width; provided that minimum lot area requirement shall not apply to lots of less than two (2) acres which have been sold and the conveyance thereof recorded in the Office of the Register of Deeds prior to the adoption of the Ordinance.

(c) Floor Area: Buildings used in whole or in part for residential purposes which are hereafter erected, moved or structurally altered shall have an above-grade floor area of eleven hundred (1100) square feet or more.

(d) Side Yards: There shall be a side yard on each side of a building. For single family dwellings, the aggregate width of the side yards shall be not less than twenty five (25) feet and no single yard shall be less than ten (10) feet wide. There shall be a rear yard of not less than thirty (30) feet.

### **3.04 Commercial District.**

In the Commercial District, no building or premises shall be used and no building, structure or development shall hereafter be constructed, moved or significantly altered unless otherwise provided in this Ordinance, except for one or more of the following specified uses:

**(1) Permitted Uses.**

There are no permitted uses in a Commercial District.

**(2) Conditional Uses.**

The following uses when the location thereof shall be consistent with the general purpose and intent of this Ordinance and shall show the desirability or undesirability of specific proposed locations for a specific proposed use from the standpoint of the public interest, because of such factors as (without limitation because of enumeration) dust, noise, glare, odor, vibration, and increased traffic on the public streets:

(a) Single family dwellings.

(b) Retail businesses, such as art shop, antique shop, bakery employing not over five (5) persons on the premises, bank, savings and loan or other financial institution, barber shop, beauty parlor, book and stationery store, newsstand, bowling alley, bus depot, business and professional office, clothing store, department store, drug store, florist shop, greenhouse, retail food products, fruit and vegetable store, grocery store, meat and fish market, supermarket, furniture store, appliance store, office equipment store, upholstery shop, hardware store, household appliance store, plumbing shop, heating or electrical supply shop, sporting goods store, music, radio and television store, record shop, paint store, interior decorator, photographer, printing and duplicating shop, restaurant, café, sign painting shop, theater (except drive-in theater), lumber yard.

(c) Funeral home.

(d) Hotel, motel.

(e) Laundry, cleaning and dyeing establishment.

(f) Clubs, lodges, churches, schools.

(g) Storage in connection with any of the above uses when clearly incidental to the conduct of a retail business on the premises.

- (h) Animal hospital, pet shop, veterinary.
- (i) Dance hall, skating rink.
- (j) Feed and seed store.
- (k) Go-kart and other similar race tracks.
- (l) Multi-family residential dwellings, apartments.

**(3) Height, Areas for Lot, Floor, Yard and Other Requirements.**

Height: Except as otherwise provided in this Ordinance, no building shall exceed a height of forty five (45) feet.

Lot area: Buildings used in whole or in part for residential purposes shall comply with the lot area regulations of Section 3.03, otherwise there shall be a two (2) acre lot area minimum for this District or whatever greater lot area is necessary for a proper sewerage disposal system, except that the lot width shall not be reduced below two hundred (200) feet.

Floor area: Buildings used in whole or in part for dwelling purposes, as opposed to accommodations for transients, shall have a minimum floor area as required by Section 3.03.

Side yards: There shall be a side yard of not less than ten (10) feet wide.

Rear yard: There shall be a rear yard of not less than thirty (30) feet in depth.

#### **4.00 Administration.**

##### **4.01 Zoning Administrator.**

There is hereby created the Office of Town Zoning Administrator. The Zoning Administrator shall be appointed by the Town Board and shall hold office until replaced by said Town Board. The duties of the Zoning Administrator shall be to administer, supervise and enforce the provisions of this Ordinance, and compensation for the discharge of these duties shall be determined by the Town Board.

##### **4.02 Permit Procedure.**

No buildings shall hereafter be erected, moved or structurally altered until a certificate of zoning compliance (Land Use Permit/Zoning Permit) therefore shall have been applied for and issued by the Town Zoning Administrator. A fee shall be charged for each zoning permit and for each alteration or subsequent permit. Upon issuance, said permit shall be prominently displayed on the premises before construction is commenced. No permit will be required for repairs and maintenance that do not extend, enhance structurally alter or upgrade the premises.

All applications for a certificate of zoning compliance shall be accompanied by a local sketch in duplicate, drawn to scale, showing the location, actual shape and dimensions of the lot to be improved, the exact size and location on the lot of all structures, land features, proposed or existing buildings and accessory buildings, the lines within which each building shall be erected, altered or moved, the existing or intended use of each building or a part of a building, the number of families the building is intended to accommodate, a narrative description of the proposed action, the estimated cost of the improvement, and such other information with regard to the project and neighboring lots or buildings as may be necessary to determine and provide for the enforcement of this Ordinance.

The Zoning Administrator shall issue or refuse to issue a certificate of zoning compliance within ten (10) days after receipt of a fully completed application therefor. Refusal to issue a permit shall be given in writing, with the reasons for such refusal.

##### **4.03 Enforcement.**

**(1) Financial Surety.** Financial surety, such as a performance bond or a letter of credit to be obtained for the benefit of the Town and filed with the Town may be required so as to ensure compliance with the terms of this Ordinance or permit. Consideration should be given to any increased costs incurred by the Town in the event of non-compliance or that may be incurred for the purpose of

rehabilitation. Failure to obtain or maintain said surety shall invalidate any permit.

**(2) Violations.** It shall be unlawful for any building or structure to be erected, constructed, placed, moved or structurally altered, or for any use of the land, premises, building or structure to be established or changed in violation of the provisions of this Ordinance.

It shall be unlawful to fail to comply with any standard of this Ordinance or with any condition or qualification placed upon the issuance of a permit or approval or variance granted in due course under this Ordinance.

**(3) Liability.** Owners of lands, occupiers of land or premises, and their agents or occupiers including, contractors, surveyors, plumbers, installers, soil technicians, lending institutions, are all responsible for compliance with the provisions of this Ordinance which bear upon their area of competency and responsibility.

Any such party who violates or aids or abets in the violation shall be liable to prosecution or remedial action.

**(4) Prosecutions, Injunctions and Penalties.** The Town Zoning Administrator shall promptly report all violations to the Town Board who shall bring action to enjoin the violation and to cause its removal.

In addition to the forfeitures and penalties set forth below, the Town may seek enforcement of this Ordinance by seeking injunction, restraining order and a reversal, reversion or restoration of the violation.

**(5) Penalties.** Any person, firm or corporation who violates, disobeys, neglects, omits or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance may also be required, upon conviction, to forfeit not less than \$100 nor more than \$2000 for each offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs of the prosecution, shall be imprisoned in the County Jail of Juneau County until such forfeiture and costs are paid, but not to exceed thirty (30) days for each violation. Each day that a violation continues to exist shall constitute a separate offense.

**(6) Execution Against Defendant's Property.** Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of the Court for a violation of any Ordinance of the Town, the Court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for said forfeiture and costs.

**(7) Liens.** In addition to all other remedies, the judgment establishing a violation of this Ordinance and ordering a forfeiture or penalty shall constitute a lien on the property and running with the property wherein the violation occurred and shall be removed only upon payment of said penalty or forfeiture. Notice of the lien shall be given to the defendant and the defendant shall be given twenty (20) days to appeal to the Court. Upon satisfaction or partial satisfaction of such judgment, notice of such shall be filed with the Register of Deeds.

**5.00 Plan Commission.**

**5.01 Appointment and Rules.**

A Plan Commission shall:

- (1) Develop, adopt and review the Land Use Policy Master Plan and elements thereof.
- (2) Make reports and recommendations relative to the planning and development of the Town.
- (3) Hear and rule on applications for conditional use permits.

## **6.00 Conditional Uses.**

### **6.01 Purpose.**

This Ordinance identifies certain uses of property within each District the approval or denial of which shall be decided as a matter of discretionary judgment, upon conversation of the specific proposal, site neighboring properties, area conditions and the provisions of the Land Use Policy Plan. Approval shall be accompanied by conditions established by the Plan Commission. Conditional uses are not “as of right” uses. It is within the power of the Plan Commission to determine that there are no conditions which would allow a use to coexist with its neighbors.

### **6.02 Procedures.**

(1) Applications for conditional use approval shall be made on application forms developed and approved by the Plan Commission.

(2) An application fee, established by the Town Board, shall be paid at the time an application is filed and is not refundable.

(3) Applicant must pay all expenses incurred by the Town in this process.

(4) When the Town Clerk or Zoning Administrator, as designated by the Town, has received the completed application and fee and a staff review, if necessary, has been completed, the Commission shall set a date for public hearing. Class Two (2) Notice shall be given. Notice of hearing shall also be mailed to all owners of record within one thousand (1000) feet of the property.

(5) The Plan Commission may approve, disapprove or approve with modifications, a conditional use application provided that such is in accordance with the purpose and intent of the Ordinance and is found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or community. The adopted motion to approve conditional uses shall include all conditions. These conditions may address site plan, time table, operation, and surety requirements.

(6) A decision granting or denying a conditional use may be appealed to the Town Board. Such application must be signed by the applicant, persons with protest rights under S.62.23(7) Wis. Stats. were the matter one of rezoning, or by any Town Board member. Such appeal must be filed within ten (10) days of Commission action. The matter shall be placed on the agenda of the Town Board. The Town Board may affirm, reverse or modify.

## **7.00 Zoning Board of Appeals.**

### **7.01 Appointments, Terms.**

The Zoning Board of Appeals shall be appointed and shall be governed as to terms, vacancies, removal and as to rules and procedures by S.62.23(3)(e), Wis. Stat. and by this Ordinance.

### **7.02 Functions.**

The Zoning Board of Appeals shall hear and decide:

- (1) Applications for appeal of administrative interpretations.
- (2) Applications for variances.

### **7.03 Procedure.**

The Zoning Board of Appeals shall conduct a public hearing on all administrative appeals, variances and other decision matters before it and cause a Class Two (2) Notice under the statutes to be published and shall give due notice of the hearing to all parties in interest. The Chair may administer oaths to parties testifying. All testimony before the Board and all documentary evidence or material shall be received at hearings. All parties in interest shall be afforded reasonable opportunity to comment. The concurring vote of four (4) members of the Board shall be necessary to approve an appeal, variance or other decision before the Board. The vote of each member decided by the Board shall be recorded in the Minutes.

### **7.04 Procedure for Administrative Appeals.**

Decisions by the Zoning Administrator that consist of interpretations of the Ordinance may be appealed to the Zoning Board of Appeals as administrative appeals. Decisions by the Zoning Administrator to issue an enforcement demand where the Administrator has determined a violation has occurred may be appealed hereunder.

An appeal may be initiated by any person aggrieved by a decision or interpretation of the Administrator. An appeal shall be commenced within thirty (30) days after the decision or interpretation is made. An appeal may be made by filing with the Town Clerk, or Clerk's designee, a Notice of Appeal identifying the decision to be appealed, the grounds for the requested relief and payment of the applicable fees. The Board may reverse, affirm, wholly or partly, or modify the decision in question. Decisions by the Board on administrative appeal shall be based upon the terms of the Ordinance and, as to those matters not directly addressed by the terms of the Ordinance, by evidence as to the legislative intent.

## **7.05 Variances.**

**(1) Application.** An application for a variance may be filed by any party having a property interest along with payment of the applicable fee to the Town Clerk or designee.

**(2) Review and Decision.** Following a public hearing and any other investigation authorized by the Board, it shall decide the matter based upon the following standards:

(a) No variance may be granted that would have the effect of allowing a use of land or property that would violate state law or administrative rules.

(b) To grant a variance, the Board must find that the variance will not be contrary to the public interest where, owing to special and peculiar conditions, applicable only to the specific property in question, a literal enforcement will result in exceptional practical difficulty or unusual and unnecessary hardship, so that the spirit of this Ordinance shall be observed, public health, safety and welfare secured and substantial justice done.

(c) When considering a dimensional standard variance that will not involve a significant change in the character of the District, the hardship/difficulty test is whether compliance with the strict letter of the regulations on lot area, set back, frontage, height, lot area coverage or occupancy or density would unreasonably prevent the owner from using the property for the allowed purpose or would render conformity unnecessarily burdensome. When considering a dimensional variance that would, if approved, cause significant change in the character of the District, the hardship/difficulty test is tougher. It is, in absence of approval, no feasible use can be made of the property.

**(3) Use Variances.** Variances allowing a use not specified for that District by this Ordinance are not permitted.

## **8.00 Interpretation.**

### **8.01 Validity.**

Should any section, clause or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

### **8.02 Conflicting Provisions Repealed.**

All ordinances or part of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

### **8.03 Effective Date.**

This Ordinance shall be in force from and after its passage, approval, publication and recording according to law.

### **8.04 Definitions.**

For the purposes of this Ordinance, the following definitions shall be used:

**ACCESSORY USE OR STRUCTURE:** A use or detached structure subordinate to the principal use of a structure, located on the same lot or parcel, serving a purpose customarily incidental to the principal use of the principal structure. No accessory structure or part thereof shall be used for an eating, sleeping or living quarters.

**AGRICULTURE:** Beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint, and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least thirty five (35) acres of which is enrolled in the conservation reserve program under 16 USC 383 to 3836; participating in the milk production termination program under 7 USC 1446(d); and vegetable raising.

**BUILDING:** Any structure which has a supported roof intended for shelter or enclosure.

**BUILDING, HEIGHT:** The vertical distance, measured from the mean elevation of the finished grade along the front of the building to the highest point on the roof or flat roofs; to the mean height level between the eaves and the ridge for gable and hip roofs; to the deck line for mansard roofs.

BUILDING, PRINCIPAL: The building on the lot intended for primary use as permitted by the regulations of the zone in which it is located.

BUILDING, SETBACK LINE: A line measured across the width of the lot at that point where the main structure, including any overhang, is in accordance with setback provisions.

CONDITIONAL USES: Certain land uses which are specifically mentioned in this ordinance which may have impacts dependent upon specific circumstances. Conditional uses as specified in this Ordinance require issuance of Conditional Use Permits approved by the Plan Commission.

CORNER LOT: A lot abutting two (2) or more streets at their intersection.

DWELLING: A detached building designed or used exclusively as a long-term residence or sleeping place, but does not include transient occupancy such as hotels, motels, boarding houses or bed and breakfast establishments. See also RESIDENCES.

DWELLING, SINGLE FAMILY: A residential building containing one dwelling unit.

DWELLING UNIT: A building or portion thereof with rooms arranged, designed, used or intended to be used for one family. For enforcement purposes, guest houses with kitchen and bathroom facilities are considered dwelling units. Each sleeping room shall be defined as a separate dwelling unit.

FAMILY: One (1) or more persons related by blood, marriage or adoption, or a group of not more than five persons not so related, maintaining a common household in a dwelling unit.

FRONTAGE: That side of a lot abutting on a street or waterway and ordinarily regarded as the front of the lot.

GARAGE: A structure which is accessory to a residential building and which is used for the parking and storage of vehicles owned and operated by residents thereof, and which is not a separate commercial enterprise.

KENNEL: Any establishment where or whereon three (3) or more dogs are kept for the purpose of breeding, sale or sporting purposes.

LAND USE: A broad term used to classify land according to present use and according to the suitability for future uses: that is, for housing, open spaces and parks, commercial, industrial, etc.

LIVING UNIT: See Dwelling Unit.

LOT: A parcel, piece or portion of land, defined by metes and bounds, certified survey, recorded land subdivision plat or other means and separate from other lots, parcels or similar units by such description, and where applicable having its principal frontage upon a street, road or waterway.

LOT AREA: The area of contiguous land bounded by lot lines, exclusive of land provided for public thoroughfares.

MOBILE HOME: A structure, transportable in one or more sections, which is at least eight (8) feet in width and thirty two (32) feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities.

NONCONFORMING DWELLING: Any dwelling, lawfully occupied at the time of the effective date of this ordinance or amendments, which does not conform to the size or lot dimension requirements in this Ordinance.

NONCONFORMING LOT: Any lot created and recorded prior to the effective date of this Ordinance or amendment which does not conform to the size or lot dimension requirements in this Ordinance.

NONCONFORMING BUSINESS OR INDUSTRY: Any business lawfully conducted on a premise at the time of the effective date of this Ordinance or amendment, which does not conform to the regulations of this Ordinance.

NONCONFORMING USES AND STRUCTURES: The lawful use of a building, structure or property which existed at the time this Ordinance (or an applicable amendment to the Ordinance) took effect and which is not in conformity with the provisions of this Ordinance.

PARCEL: A lot or group of lots under a single ownership or control.

PARCEL, ORIGINAL: A parcel as it existed as of January 1, 2000.

PRIVATE DRIVE: A private roadway providing access for vehicles to a parking space, garage, dwelling or other structure.

PROFESSIONAL OFFICE: The office of a doctor, salesman, insurance agent, travel agent, practitioner, dentist, minister, architect, landscape architect, planner, professional engineer, lawyer, author, musician, real estate broker, or other recognized professional.

RESIDENCE: A dwelling unit occupied for housekeeping purposes on a non-transient basis.

**RIGHTS-OF-WAY:** A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, telephone line, drainage facilities, oil or gas pipeline, water main, sanitary or storm sewer drain. The usage of the term “right-of-way” for zoning purposes shall mean every right-of-way hereafter established and shown on a plat and a certified survey map which is separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. For zoning purposes, in situations where a lot abuts a private road rather than a public road, the street right-of-way shall be interpreted to be the lot line which abuts the private road.

**SETBACK LINES:** Lines established adjacent to highways, shorelines and side lot lines for the purpose of defining limits within which no building or structure or any part thereof shall be erected or permanently maintained. For purposes of enforcement, all measurements are to be taken horizontally.

**STRUCTURAL ALTERATION:** Any change in the supporting members of a building such as bearings, wall columns, beam or girders, or any substantial changes in the roof and exterior wall.

**STRUCTURE:** Anything erected, the use of which requires a permanent location on the ground. Stairways to the water, signs, billboards or other advertising medium, detached or projecting, shall be construed as a structure.

**STRUCTURE, PRINCIPAL:** The main structure on a parcel of which the primary use of the parcel is contained.

**UNNECESSARY HARDSHIP:** That circumstance where special conditions which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this Ordinance.

**VARIANCE:** An authorization granted by the Zoning Board of Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional; standards of this Ordinance.

**YARD:** An open space on a lot which is unoccupied or unobstructed from its lowest level to the sky. For the purpose of the Ordinance, a “yard” extends along a lot line and at right angles to such lot line only to a depth or width specified in the yard regulations for the zoning district in which such zoning lot is located.

**YARD, FRONT:** A yard extending along the full length of the front lot line between the side lot lines.

YARD, REAR: A yard extending along the full length of the rear lot line between the side lot lines.

YARD, SIDE: A yard extending along a side lot line from the front yard to the rear yard.

YARD, STREET: A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two (2) such yards.

Introduced and adopted this 8<sup>th</sup> day of June, 2000.

*Ken Engevold*

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Town Chairperson

ATTEST

*Helen Petrowitz*

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Town Clerk