

2009

CITY OF ONIDA

ZONING ORDINANCES

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Amendments

Section 1.03.01 as effective 4-28-2010, changes reflected in this printing

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TITLE 15

ARTICLE I GENERAL PROVISIONS

CHAPTER 1.01 TITLE AND APPLICATION.

SECTION 1.01.01. TITLE.

This ordinance shall be known and referred to as "The Zoning Ordinance of the City of Onida, South Dakota."

SECTION 1.01.02. JURISDICTION.

The provisions of this ordinance shall apply to all territory within the boundaries of the City of Onida, South Dakota, as established on the Official Zoning Map of the City of Onida.

SECTION 1.01.03. PURPOSE.

To promote the general welfare of the population through sound policies of land development and land management, to preserve natural beauty and ecological balance; to this end this Ordinance will prevent overcrowding of the land with population and structures, and provide for adequate sanitation, transportation, and other community facilities.

This ordinance has been prepared in accordance with the Comprehensive Plan for the City and is designed to coordinate physical development of the community with needs for public services and facilities.

SECTION 1.01.04. INTENT.

The intent is to place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the Comprehensive Land Use Plan.

CHAPTER 1.02 ORDINANCE PROVISIONS.

SECTION 1.02.01. PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants; the most restrictive or that imposing the higher standards shall govern.

SECTION 1.02.02. VIOLATIONS/PENALTIES FOR VIOLATION.

Violations shall be treated in the manner specified below:

- 1) Any person who starts work, for which a permit is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All fees assessed there under shall be rounded to the nearest whole dollar.
- 2) Upon finding such violation, the City of Onida shall notify the owner of the property involved by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by 1st class mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the building permit plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than ten dollars (\$10.00), including the postage costs.
- 3) If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the building permit fee. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (5) below.
- 4) Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Ordinance.
- 5) It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the City Council pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be two hundred dollars (\$200.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense.

6) In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of the City of Onida in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation.

7) Any taxpayer of the City may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

SECTION 1.02.03. SEPARABILITY CLAUSE.

Should any article, chapter, section, or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part other than the part so declared to be unconstitutional or invalid.

SECTION 1.02.04. REPEAL OF CONFLICTING ORDINANCES.

All ordinances or part of ordinances in conflict with this Ordinance or inconsistent with the provisions of this Ordinance, in particular the previous 1978 Zoning Ordinance No. 374 of the City of Onida are repealed entirely.

SECTION 1.02.05. EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

CHAPTER 1.03 OFFICIAL ZONING MAP.

SECTION 1.03.01. OFFICIAL ZONING MAP.

The location, size, shape and boundaries of the zones to which the provision of the text of this ordinance are applicable, shall be indicated on the Official Zoning Map in the City Finance Office and said map, after being adopted by reference as a part of this ordinance, and so certified by the City Finance Officer together with the text, shall be maintained by the City Finance Officer and said map shall be the official zoning map, for the purpose of enforcement of this ordinance.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map shall be located in the City Offices and shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the City of Onida.

SECTION 1.03.02. RULES WHERE MAP DESIGNATION UNCERTAIN.

Where uncertainty exists with respect to the various zoning districts as shown on the Official Zoning Map, the following rules shall apply:

- 1) The district boundaries are either streets or alleys, highways, rights-of-way, railroad rights-of-way, waterways, lot lines, property lines, quarter section lines, half section lines, or full section lines, unless otherwise shown.
- 2) Where the designation on the Official Zoning Map indicates the various districts are approximately bounded by lot lines, the lot lines shall be the boundaries of such districts unless boundaries are otherwise indicated on the map.
- 3) In subdivided property, the zoning district boundary line on the Official Zoning Map may be determined by use of the scale contained on the map.

SECTION 1.03.03. CHANGES AND/OR REPLACEMENT OF OFFICIAL ZONING MAP.

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by ordinance adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Mayor attested by the City Finance Officer, and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of the City of Onida, State of South Dakota." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption or amendment.

SECTION 1.03.04. ANNEXATION.

Any land subsequently annexed to the City shall upon such annexation automatically be placed in the Agricultural Zoning District and remain so zoned until an amendment to this ordinance shall place such annexed land in a different zone or zones. The City Council shall review the zoning classification of any annexed land and give their recommendations as to the proper classification within six months of the effective date of annexation.

Changes to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 1, Section 1.03.03 of these regulations.

ARTICLE II DISTRICT REGULATIONS

CHAPTER 2.01 APPLICATION OF DISTRICT REGULATIONS.

SECTION 2.01.01. APPLICABILITY OF REGULATIONS.

The regulations set forth by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

SECTION 2.01.02. COMPLIANCE; GENERALLY.

No building, or any part thereof shall hereafter be used or occupied, and no building or any part thereof shall be erected, constructed, reconstructed, converted, altered, enlarged, extended, raised, moved or used, and no premises shall be used for any purpose other than a purpose permitted in the District in which said building or premise is located, except as hereinafter provided.

SECTION 2.01.03. STRUCTURES & LOTS; CONSTRUCTION OR ALTERATION; LIMITATIONS OF.

No building or other structure shall hereafter be erected or altered:

- 1) To exceed the height or bulk;
- 2) To accommodate or house a greater number of families;
- 3) To occupy a greater percentage of lot area;
- 4) To have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this ordinance.
- 5) No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or are below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

CHAPTER 2.02 NON-CONFORMING USES.

SECTION 2.02.01. INTENT.

Within the districts established by this Ordinance or amendments that may later be adopted there exist;

- Lots
- Structures
- Uses of land and structures
- Characteristics of use

1) Which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

2) Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure, a non-conforming use of land or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance by the addition of other uses, or a nature which would be prohibited generally in the district involved.

3) To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance.

4) And upon which construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

SECTION 2.02.02. REPAIRS AND MAINTENANCE.

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing to an extent not exceeding ten (10) percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

SECTION 2.02.03. USES AND STRUCTURES.

A lawful use or structure existing at the time this ordinance is adopted or amended may continue even though such use does not conform to the district regulations subject to the following provisions:

- 1) If no structural alterations are made, a nonconforming use or structure may be changed to another nonconforming use or structure of the same or more restricted zoning district.
- 2) Whenever, a nonconforming use or structure has been changed to a conforming use, it shall not be changed back to a nonconforming use.
- 3) If any nonconforming building is destroyed or damaged by any casualty, such building may be repaired or replaced and use continued providing said reconstruction shall not add to the non-conformity or add to the cubic contents of said building as the same existed at the time of such casualty; and provided further that such repair or reconstruction of such building shall begin within six months after such casualty and completed within a reasonable time thereafter. However, if the damage caused by such casualty is such as to cause a loss in value exceeding 50 percent of the replacement value immediately prior to such casualty then it cannot be rebuilt for a non-conforming use. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.
- 4) When a nonconforming use or structure is discontinued for a period of 1 year, it shall not be continued unless in conformance with the requirements of this ordinance and SDCL 11-6-39.
- 5) Any nonconforming use may be extended throughout any part of a structure, which was arranged or designed for such use previous to the adoption of this ordinance, but shall not be extended outside each structure.

6) No existing nonconforming use or structure shall be enlarged, moved, or structurally altered except to change to a permitted use. This is not to include normal repairs and maintenance, which do not enlarge, move or structurally alter a nonconforming use.

7) Type I and Type II Manufactured Homes located upon any lot or lots of record at the time of the adoption of this Ordinance may be replaced by Type I and/or Type II Manufactured Homes of like dimensions and said replacement shall not be deemed to have changed the use thereof from a nonconforming to a conforming use. If a replacement Type I and/or Type II Manufactured Home is of larger dimension than the existing Type I and/or Type II Manufactured Home, then application must first be made to the City Council for special permit.

8) "Non-Conforming Land Use" shall be deemed to include non-conforming manufactured home courts existing at the time of the adoption of this Ordinance, and the substitution or replacement of Type I and Type II Manufactured Homes to said manufactured home court shall not be deemed to have changed the use thereof from a non-conforming to a conforming use.

9) Nothing contained in this section shall be so construed as to abridge or curtail the powers of the City Council acting as the City Planning and Zoning Commission as set forth elsewhere in this Ordinance.

SECTION 2.02.04. USES UNDER CONDITIONAL USE PROVISIONS NOT NON-CONFORMING USES.

Any use which is permitted as a conditional use in a district under the terms of this Ordinance (other than a change through City Council action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

SECTION 2.02.05 NON-CONFORMING LOTS OF RECORD.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such a lot fails to meet the requirements of area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations of the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the City Council acting as Board of Adjustment.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and

area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements in this ordinance.

CHAPTER 2.03 DISTRICT REGULATIONS.

SECTION 2.03.01. GENERALLY.

The district regulations included in this Chapter may be qualified or supplemented by additional regulations appearing elsewhere in this ordinance.

Any use or uses not expressly permitted in a particular district shall be prohibited, unless such uses are existing at the effective date of these regulations and qualify as nonconforming uses.

Deviation from zoning district lot, yard and related requirements, and deviation from city-wide zoning regulations, shall be prohibited, unless a Variance is granted as provided for in Chapter 3.03, Section 3.03.02 of these regulations.

The City Council may establish additional requirements and standards for uses and structures permitted by Conditional Use Permit as conditions to said Conditional Use Permit.

SECTION 2.03.02. ZONING DISTRICTS.

The following zone and use districts are hereby established for the purposes of administration and enforcement of this ordinance.

Agricultural District

Commercial District

Industrial District

Residential District A

Residential District B

Residential District C

Multiple-Family Residential District

CHAPTER 2.04

AGRICULTURAL DISTRICT.

(INSIDE CITY LIMITS ONLY)

SECTION 2.04.01. PURPOSE.

The Agriculture District is designed to provide an environment where farming related agriculture can operate compatibly with a greater density of population than normally found in farming areas.

SECTION 2.04.02. PERMITTED USES.

The following uses and structures shall be permitted in the Agricultural District.

- 1) Any form of farming related agriculture activity, and related farm buildings, but excluding livestock and ranching activities with the exception of the fairgrounds facilities where livestock is permitted for recreational use. Feedlots are excluded and not allowed in the Agricultural District.
 - 2) Public parks and recreation areas.
 - 3) Facilities necessary for the provision of transportation, communication, water sewerage, electrical energy, and natural gas pipelines and their appurtenances, are permitted, subject to approval by the Building Inspector.
-

SECTION 2.04.03. PERMITTED ACCESSORY USES.

The following uses and structures shall be permitted in the Agricultural District.

- 1) Facilities common to farm activities.
 - 2) Living quarters for persons regularly employed on premises, but not including labor camps or dwellings for transient labor.
 - 3) Private garages.
 - 4) Roadside stands for sales of agricultural products grown or produced on the premises.
-

SECTION 2.04.04. CONDITIONAL USES.

The following uses may be permitted, as a conditional use in the Agricultural District by the City Council acting as the Board of Adjustment subject to such requirements as the City deems necessary to protect adjacent property, prevent objectionable or offensive conditions and promote the health, safety, and general welfare. The City Council may grant the following uses provided the written consent of more than fifty percent (50%) of the number of owners of property within two hundred fifty (250) feet of any property line of the premises is obtained.

- 1) Airports.
- 2) Commercial or private recreation areas not normally accommodated in commercial areas such as golf courses, campgrounds, drive in theatres, riding stables, race tracks, swimming pools, private clubs, etc.
- 3) All residential, commercial, or industrial structures not in place before the ordinance was enacted.
- 4) Public buildings or facilities erected or established and operated by any governmental agency.
- 5) Radio and cell transmission towers and/or lines.
- 6) Utility substations.
- 7) Nurseries and greenhouses.
- 8) Home occupations.
- 9) Veterinary Offices and animal hospitals.

SECTION 2.04.05. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use shall be prohibited in the Agricultural District.

SECTION 2.04.06. AREA REGULATIONS.

The following regulations shall apply to the uses indicated. They shall be supplemental to and in addition to other provisions applying to the property:

1) Minimum Lot Requirements – The minimum lot area for permitted uses shall be (1) acre or 43,560 feet. The minimum lot width for permitted uses shall be one hundred fifty (150) feet. Uses permitted by conditional use shall have a minimum lot area width as determined by the City Council acting as the Board of Adjustment.

2) Minimum Yard Requirements – Permitted uses shall have a minimum front yard of seventy-five (75) feet, minimum side yards of (30) feet, and a minimum rear yard of (50) feet. Uses

permitted by conditional use shall have minimum yard requirements as determined by the City Council acting as the Board of Adjustment.

3) Height Regulations: Single Family Dwellings – Two and one – half stories, excluding basement, or (35) feet. Other Allowable Uses – Seventy-five feet (75) for towers or steeples and not more than forty-five (45) feet for the principal building.

CHAPTER 2.05 COMMERCIAL DISTRICT.

SECTION 2.05.01. PURPOSE.

The purpose of the Commercial District is to provide commercial areas oriented to the pedestrian shopper or highway commercial development.

SECTION 2.05.02. PERMITTED USES.

The following uses and structures shall be permitted in the Commercial District:

- 1) Retail and wholesale sales.
- 2) Finance, insurance, and real estate services.
- 3) Business services excluding any warehousing and storage services.
- 4) Churches, welfare, and charitable services; business associations, professional membership organizations, labor unions, and similar labor organizations, and civic, social and fraternal associations.
- 5) Eating establishments.
- 6) Utility substations necessary to the functioning of the utility, but not including maintenance facilities and other general system facilities, when located according to the yard space rules set forth in this section for dwellings and having a landscaped or masonry barrier on all sides.
- 7) Professional, offices, governmental and education services.
- 8) Hotels, motels, and bed and breakfasts.
- 9) Recreational services such as but not limited to theaters, bars, and pool halls.
- 10) Licensed Day Care centers.
- 11) Residential uses on 2nd floor or higher of any building.

SECTION 2.05.03. CONDITIONAL USES.

The following uses may be permitted as a conditional use in the Commercial District by the City Council acting as the Board of Adjustment subject to such requirements, as the Board of Adjustment deems necessary to protect and promote the health, safety, and general welfare.

- 1) The City Council may allow residential and mixed business and residential structures to conform with the space limits of the multiple-family district or any other district requiring more lot area per dwelling unit, upon finding that the proposed density to residential use will be in harmony with nearby residential zoning, and when said mixed occupancy building is specifically designed and constructed for such mixed occupancy, but shall not include the construction of a business building in the yard of a residence or within an existing residence.
- 2) Mortuaries.
- 3) Contract construction services.
- 4) Truck or bus terminal.
- 5) Wholesale merchandising or storage warehouse.
- 6) Car washes provided that their operative machinery is within an enclosed structure and adequate drainage is provided.

SECTION 2.05.04. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use permit shall be prohibited in the Commercial District.

SECTION 2.05.05. AREA REGULATIONS.

- 1) Minimum Lot Requirements: Permitted uses shall have a minimum lot area of three thousand five hundred (3,500) square feet and a minimum lot width of twenty-five (25) feet.
- 2) Minimum Yard Requirements: No yards shall be required in the Commercial District.
- 3) Maximum Lot Coverage: The maximum lot coverage for all permitted uses shall not exceed ninety (90) percent.
- 4) Multiple family dwellings shall comply with all regulation of the Multiple Family District.
- 5) Automobile repair shops and filling stations shall be subject to the following provisions.
 - a) No repair work is performed out-of-doors.
 - b) Pumps, lubrication or other devices shall be at least twenty (20) feet from any street line.
 - c) All gasoline, liquefied petroleum gas, fuel, oil, or similar substances that are for resale shall be stored underground.

- d) All automobile parts, dismantled vehicles, and similar articles shall be stored within a building.
- e) All on site advertising signs which are not attached to or made part of a commercial structure shall be located on the zoning lot in such a manner that no portion of the sign shall ever hang over the street right of way or adjoining property.

CHAPTER 2.06 INDUSTRIAL DISTRICT.

SECTION 2.06.01. PURPOSE.

This district provides for a wide range of commercial and industrial uses, all of which shall be able to meet comparatively rigid specifications as to nuisance free performance. This District specifically excludes any new or additional residence on the theory that the mixture of residential use and public services and facilities for residences with those of industry is contrary to the purposes of these regulations irrespective of whether the industry is encroaching on a living area or a living area is encroaching on an industrial area.

SECTION 2.06.02. PERMITTED USES.

The following uses and structures shall be permitted in the Industrial District:

- 1) Horticulture and the raising of field crops.
- 2) On-site signs.
- 3) Utility substations.
- 4) Motor freight terminals, garaging, and equipment maintenance.
- 5) Contract construction services.
- 6) Storage plants, lumber yards, distributing stations, and warehouses.
- 7) Motor freight terminals, garaging and equipment maintenance.
- 8) Light assembly work, machine shops doing assembling or shaping and light cutting and sampling.
- 9) Woodworking shops or plants.
- 10) Any industrial use, other than those permitted by conditional use, which can meet the performance standards listed in section 2.06.06.
- 11) Grain elevators and Grain Storage Facilities.

SECTION 2.06.03. CONDITIONAL USES.

The following uses may be permitted as a conditional use in the Industrial District by the City Council acting as the Board of Adjustment, subject to such requirements as the City deems necessary to protect and promote the health, safety and general welfare:

- 1) Junk or salvage yards, provided that the area is screened from public view.
- 2) Slaughterhouse.
- 3) Explosive manufacture or storage.
- 4) Fertilizer manufacture.
- 5) Incineration or reduction of garbage, dead animals, fat, or refuse.
- 6) Livestock sales or auction barns and yards.
- 7) Grain storage facilities.

SECTION 2.06.04. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use permit shall be prohibited in the Industrial District.

SECTION 2.06.05. AREA REGULATIONS.

1) Minimum Lot Requirements: The minimum lot area for permitted uses shall be twenty thousand (20,000) square feet. The minimum lot width for permitted uses shall be one hundred (100) feet. The minimum lot area and width for uses permitted by conditional use shall be as determined by the City Council acting as the Board of Adjustment.

2) Minimum Yard Requirements: Permitted uses shall have a minimum front yard of twenty-five (25) feet, minimum side yards of ten (10) feet, and a minimum rear yard of twenty (20) feet. The minimum yard requirement shall be forty (40) feet when the permitted or conditional use is adjacent to residentially zoned property. The minimum yard requirements for uses permitted by conditional use shall be as determined by the City Council acting as the Board of Adjustment.

a) All outdoor storage within 500 feet of a residential District must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stock pile which fence shall be maintained in safe and good repair.

b) Storage yards for junk shall be set back a minimum of one hundred (100) feet from any adjoining street line and thirty-five (35) feet from any other property line, and shall be screened by a solid wall at least two (2) feet above the highest stock pile and maintained in a state of good repair. Further provided, that no storage yard for junk shall be allowed on any lot in an Industrial zone that is within five hundred (500) feet of a residential zone.

3) Maximum Lot Coverage: The maximum lot coverage for all buildings and structures shall not exceed seventy-five percent (75%) of the total lot area. The maximum lot coverage for uses permitted by conditional use shall be as determined by the City Council acting as the Board of Adjustment.

4) Maximum Height: The maximum height of all buildings and structures shall not exceed forty-five (45) feet.

SECTION 2.06.06. PERFORMANCE STANDARDS.

1) Noise.

All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

2) Air Pollution.

State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.

3) Odor.

The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.

4) Glare, Heat or Radiation.

Every use shall be so operated that there is no emission or heat, glare, or radiation visible or discernable beyond the property line.

5) Vibration.

Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.

6) Sewage and Liquid Wastes.

No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radio-active nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.

7) Fire Hazard.

All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National City of Fire Underwriters and any additional regulations that may from time to time be adopted by the City Council.

8) Physical Appearance.

All operations shall be carried on within an enclosed building except that new or operable equipment and waste materials stored in enclosed containers, not readily visible from the street, may be displayed or stored in the open.

CHAPTER 2.07 RESIDENTIAL DISTRICT A.

SECTION 2.07.01. PURPOSE.

This district is designed to provide for single family dwelling areas on lots of a larger size.

SECTION 2.07.02. PERMITTED USES.

The following uses and structures shall be permitted in the Residential District A:

- 1) Site-built single-family dwellings.
- 2) Modular homes.
- 3) Public park and recreation areas.
- 4) Real estate signs, advertising the real estate for sale on which located. Signs are not to be larger than three feet by four feet and not to remain longer than two (2) weeks following the closing of sale or such longer period as the City Council acting as the Board of Adjustment may permit.
- 5) Churches and parish houses.
- 6) Public and private schools.
- 7) Off-street parking shall be provided for all uses established in the residential districts.
- 8) Only one building for living purposes shall be permitted on one zoning lot, except as otherwise provided herein.
- 9) Crop and tree farming but not including the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
- 10) Country Clubs.

SECTION 2.07.03. PERMITTED ACCESSORY USES.

The following accessory uses are permitted in all residential districts subject to further restrictions or liberalizations which are imposed by a specific district.

- 1) Private garages and private parking areas.
- 2) Private swimming pools exclusively for the use of residents of the premises and their non-paying guests and subject to any other regulations or ordinances of the City.

SECTION 2.07.04. CONDITIONAL USES.

The following uses may be permitted as a conditional use in the Residential District A by the City Council Acting at the Board of Adjustment, subject to such requirements as Board deems necessary to protect adjacent property, prevent objectionable or offensive conditions and promote the health, safety and general welfare. The Board of Adjustment may grant the following uses provided the written consent of more than fifty percent (50%) of the number of owners of property within two hundred fifty (250) feet of any property line of the premises is obtained.

- 1) Bed and breakfast establishments.
- 2) Two-family dwellings.
- 3) Home occupations.
- 4) Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non-illuminated, and mounted flat against the wall of the principal building.
- 5) Public buildings or facilities established and operated by any governmental agency.
- 6) Hospitals', nursing homes, and homes for the aged. Any building approved for such use shall be set back not less than fifty (50) feet from the street on which it fronts and shall have side and rear setbacks of not less than thirty (30) feet and shall meet other requirements of this Ordinance.
- 7) Licensed commercial day care facilities.
- 8) Utility substations.
- 9) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy.
- 10) Accessory storage buildings used solely by the owners of the property.

SECTION 2.07.05. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use shall be prohibited in the Residential District A.

SECTION 2.07.06. AREA REGULATIONS.

1) Minimum Lot Requirements: The minimum lot area for residences shall be eight thousand five hundred (8,500) square feet.

2) Maximum Lot Coverage: The maximum lot coverage for all buildings and structures shall not exceed fifty percent (50%) of the total lot area.

3) Minimum Yard Requirements: Residential dwellings each shall have minimum front yard depth of twenty-five (25) feet, rear yard depth of twenty-five (25) feet, and side yard depth of six (6) feet.

4) Height Regulations: Single Family Dwellings shall have a maximum height of 2 and one-half stories, or thirty-five (35) feet. Other Conditionally Approved Dwellings shall have a maximum height of seventy-five (75) feet for towers or steeples and not more than forty-five (45) feet for the principal building.

5) Accessory buildings or structures restrictions:

a) No such accessory structure shall be greater than fifteen (15) feet in height nor be closer than twenty (20) feet from any street line.

b) An accessory structure may be constructed within (2) feet of an inside lot line or alley line when the entire structure is not less than sixty (60) feet from the front line and not less than six (6) feet from the principal building. The accessory building may be constructed less than sixty (60) feet from the front line if it is entirely to the rear of an principal building on the neighboring lot.

c) All structures are to have a permanent foundation under them.

6) On a corner lot in Residence Districts, no fence, building or other structure shall be erected to a height of more than 4 feet above the elevation of established grade, at the intersection of the streets on that part of any yard which is bounded by the street lines of the intersecting streets, either at the intersection of said street lines or within 10 feet thereof; and no planting of foliage which, in the judgment of the enforcing officers, will materially obstruct the view of the drivers of vehicles approaching the street intersection shall be placed or maintained within such area.

7) A building which is to be used as a private garage and is not attached to another building may be erected to within one foot of an interior lot line, provided a signed statement is obtained from the adjacent property owner granting permission for the erection of said building.

CHAPTER 2.08 RESIDENTIAL

DISTRICT B.

SECTION 2.08.01. PURPOSE.

This district is designed to provide for single family dwelling areas on lots of moderate size.

SECTION 2.08.02. PERMITTED USES.

The following uses and structures shall be permitted in Residential District B:

- 1) Site-built single-family dwellings.
- 2) Modular homes.
- 3) Public park and recreation areas.
- 4) Real estate signs, advertising the real estate for sale on which located. Signs are not to be larger than three feet by four feet and not to remain longer than two (2) weeks following the closing of sale or such longer period as the City Council Acting as the Board of Adjustment may permit.
- 5) Churches and parish houses.
- 6) Public and private schools.
- 7) Off-street parking shall be provided for all uses established in the residential districts.
- 8) Only one building for living purposes shall be permitted on one zoning lot, except as otherwise provided herein.
- 9) Country Clubs.

SECTION 2.08.03. PERMITTED ACCESSORY USES.

The following accessory uses are permitted in all residential districts subject to further restrictions or liberalizations which are imposed by a specific district.

- 1) Private garages and private parking areas.
- 2) Private swimming pools exclusively for the use of residents of the premises and their non-paying guests and subject to any other regulations or ordinances of the City.

SECTION 2.08.04. CONDITIONAL USES.

The following uses may be permitted as a conditional use in Residential District B by the City Council Acting as the Board of Adjustment, subject to such requirements as Board deems necessary to protect adjacent property, prevent objectionable or offensive conditions and promote the health, safety and general welfare. The Board of Adjustment may grant the following uses provided the written consent of more than fifty percent (50%) of the number of owners of property within two hundred fifty (250) feet of any property line of the premises is obtained.

- 1) Bed and breakfast establishments.
 - 2) Two-family dwellings.
 - 3) Home occupations.
 - 4) Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non-illuminated, and mounted flat against the wall of the principal building.
 - 5) Public buildings or facilities established and operated by any governmental agency.
 - 6) Licensed commercial day care facilities.
 - 7) Utility substations.
 - 8) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy.
 - 9) Commercial storage buildings used exclusively for storage and not for performance of any other services.
 - 10) Multi-family dwellings.
 - 11) Hospitals', nursing homes, and homes for the aged. Any building approved for such use shall be set back not less than fifty (50) feet from the street on which it fronts and shall have side and rear setbacks of not less than thirty (30) feet and shall meet other requirements of this Ordinance.
 - 12) Single Family-mobile home.
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SECTION 2.08.05. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use shall be prohibited in the Residential District B.

SECTION 2.08.06. AREA REGULATIONS.

- 1) Minimum Lot Requirements: The minimum lot area for residences shall be six thousand (6,000) square feet.
- 2) Maximum Lot Coverage: The maximum lot coverage for all buildings and structures shall not exceed fifty percent (50%) of the total lot area.
- 3) Minimum Yard Requirements: Residential dwellings each shall have minimum front yard depth of twenty-five (25) feet, rear yard depth of twenty-five (25) feet, and side yard depth of six (6) feet.
- 4) Height Regulations: Single Family Dwellings shall have a maximum height of 2 and one-half stories, or thirty-five (35) feet. Other Conditionally Approved Dwellings shall have a maximum height of seventy-five (75) feet for towers or steeples and not more than forty-five (45) feet for the principal building.
- 5) Accessory buildings or structures restrictions:
 - a) No such accessory structure shall be greater than fifteen (15) feet in height nor be closer than twenty (20) feet from any street line.
 - b) An accessory structure may be constructed within (2) feet of an inside lot line or alley line when the entire structure is not less than sixty (60) feet from the front line and not less than six (6) feet from the principal building. The accessory building may be constructed less than sixty (60) feet from the front line if it is entirely to the rear of an principal building on the neighboring lot.
 - c) All structures are to have a permanent foundation under them.
- 6) On a corner lot in Residence Districts, no fence, building or other structure shall be erected to a height of more than 4 feet above the elevation of established grade, at the intersection of the streets on that part of any yard which is bounded by the street lines of the intersecting streets, either at the intersection of said street lines or within 10 feet thereof; and no planting of foliage which, in the judgment of the enforcing officers, will materially obstruct the view of the drivers of vehicles approaching the street intersection shall be placed or maintained within such area.
- 7) A building which is to be used as a private garage and is not attached to another building may be erected to within one foot of an interior lot line, provided a signed statement is obtained from the adjacent property owner granting permission for the erection of said building.

CHAPTER 2.09 RESIDENTIAL DISTRICT C.

SECTION 2.09.01. PURPOSE.

The Residential District C allows for medium density one-family dwellings, Type II Manufactured homes, or one-family mobile homes.

SECTION 2.09.02. PERMITTED USES.

The following uses and structures shall be permitted in Residential District C:

- 1) Site-built single-family dwellings.
- 2) Modular homes.
- 3) Public park and recreation areas.
- 4) Real estate signs, advertising the real estate for sale on which located. Signs are not to be larger than three feet by four feet and not to remain longer than two (2) weeks following the closing of sale or such longer period as the City Council Acting as the Board of Adjustment may permit.
- 5) Churches and parish houses.
- 6) Public and private schools.
- 7) Off-street parking shall be provided for all uses established in the residential districts.
- 8) Only one building for living purposes shall be permitted on one zoning lot, except as otherwise provided herein.
- 9) Country Clubs.
- 10) Single-Family mobile homes.

SECTION 2.09.03. PERMITTED ACCESSORY USES.

The following accessory uses are permitted in all residential districts subject to further restrictions or liberalizations which are imposed by a specific district.

- 1) Private garages and private parking areas.
- 2) Private swimming pools exclusively for the use of residents of the premises and their non-paying guests and subject to any other regulations or ordinances of the City.

SECTION 2.09.04. CONDITIONAL USES.

The following uses may be permitted as a conditional use in Residential District B by the City Council Acting as the Board of Adjustment, subject to such requirements as Board deems necessary to protect adjacent property, prevent objectionable or offensive conditions and promote the health, safety and general welfare. The Board of Adjustment may grant the following uses provided the written consent of more than fifty percent (50%) of the number of owners of property within two hundred fifty (250) feet of any property line of the premises is obtained.

- 1) Bed and breakfast establishments.
- 2) Two-family dwellings.
- 3) Home occupations.
- 4) Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non-illuminated, and mounted flat against the wall of the principal building.
- 5) Public buildings or facilities established and operated by any governmental agency.
- 6) Hospitals', nursing homes, and homes for the aged. Any building approved for such use shall be set back not less than fifty (50) feet from the street on which it fronts and shall have side and rear setbacks of not less than thirty (30) feet and shall meet other requirements of this Ordinance.
- 7) Licensed commercial day care facilities.
- 8) Utility substations.
- 9) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy.
- 10) Commercial storage buildings used exclusively for storage and not for performance of any other services.
- 11) Multi-family dwellings.

SECTION 2.09.05. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use shall be prohibited in Residential District C. Commercial mobile or mobile parks are not permitted.

SECTION 2.09.06. AREA REGULATIONS.

1) Minimum Lot Requirements: The minimum lot area for residences shall be six thousand (6,000) square feet.

2) Maximum Lot Coverage: The maximum lot coverage for all buildings and structures shall not exceed fifty percent (50) of the total lot area.

3) Minimum Yard Requirements: Residential dwellings each shall have minimum front yard depth of twenty-five (25) feet, rear yard depth of twenty-five (25) feet, and side yard depth of six (6) feet.

4) Height Regulations: Single Family Dwellings shall have a maximum height of 2 and one-half stories, or thirty-five (35) feet. Other Conditionally Approved Dwellings shall have a maximum height of seventy-five (75) feet for towers or steeples and not more than forty-five (45) feet for the principal building.

5) Accessory buildings or structures restrictions:

a) No such accessory structure shall be greater than fifteen (15) feet in height nor be closer than twenty (20) feet from any street line.

b) An accessory structure may be constructed within (2) feet of an inside lot line or alley line when the entire structure is not less than sixty (60) feet from the front line and not less than six (6) feet from the principal building. The accessory building may be constructed less than sixty (60) feet from the front line if it is entirely to the rear of an principal building on the neighboring lot.

c) All structures are to have a permanent foundation under them.

6) On a corner lot in Residence Districts, no fence, building or other structure shall be erected to a height of more than 4 feet above the elevation of established grade, at the intersection of the streets on that part of any yard which is bounded by the street lines of the intersecting streets, either at the intersection of said street lines or within 10 feet thereof; and no planting of foliage which, in the judgment of the enforcing officers, will materially obstruct the view of the drivers of vehicles approaching the street intersection shall be placed or maintained within such area.

7) A building which is to be used as a private garage and is not attached to another building may be erected to within one foot of an interior lot line, provided a signed statement is obtained from the adjacent property owner granting permission for the erection of said building.

CHAPTER 2.10 MULTI-FAMILY RESIDENTIAL DISTRICT.

SECTION 2.10.01. PURPOSE.

This district is designed to provide for moderately high density apartment development and other uses which have characteristics similar to those found in operation of apartment houses.

SECTION 2.10.02. PERMITTED USES.

The following uses and structures shall be permitted in the Multi-Family Residential District:

- 1) Site-built single-family dwellings.
- 2) Modular homes.
- 3) Public park and recreation areas.
- 4) Real estate signs, advertising the real estate for sale on which located. Signs are not to be larger than three feet by four feet and not to remain longer than two (2) weeks following the closing of sale or such longer period as the City Council Acting as the Board of Adjustment may permit.
- 5) Churches and parish houses.
- 6) Public and private schools.
- 7) Off-street parking shall be provided for all uses established in the residential districts.
- 8) Only one building for living purposes shall be permitted on one zoning lot, except as otherwise provided herein.
- 9) Country Clubs.
- 10) Two-Family Dwellings.
- 11) Rooming houses.
- 12) Multi-Family Dwellings.

SECTION 2.10.03. PERMITTED ACCESSORY USES.

The following accessory uses are permitted in all residential districts subject to further restrictions or liberalizations which are imposed by a specific district.

- 1) Private garages and private parking areas.
- 2) Private swimming pools exclusively for the use of residents of the premises and their non-paying guests and subject to any other regulations or ordinances of the City.

SECTION 2.10.04. CONDITIONAL USES.

The following uses may be permitted as a conditional use in Residential District B by the City Council Acting as the Board of Adjustment, subject to such requirements as Board deems necessary to protect adjacent property, prevent objectionable or offensive conditions and promote the health, safety and general welfare. The Board of Adjustment may grant the following uses provided the written consent of more than fifty percent (50%) of the number of owners of property within two hundred fifty (250) feet of any property line of the premises is obtained.

- 1) Bed and breakfast establishments.
- 2) Home occupations.
- 3) Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non-illuminated, and mounted flat against the wall of the principal building.
- 4) Public buildings or facilities established and operated by any governmental agency.
- 5) Hospitals', nursing homes, and homes for the aged. Any building approved for such use shall be set back not less than fifty (50) feet from the street on which it fronts and shall have side and rear setbacks of not less than thirty (30) feet and shall meet other requirements of this Ordinance.
- 6) Licensed commercial day care facilities.
- 7) Utility substations.
- 8) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy.
- 9) Commercial storage buildings used exclusively for storage and not for performance of any other services.
- 10) Professional offices in which the activities performed generate a limited amount of contact with the public.
- 11) Buildings of non-profit community organizations.

SECTION 2.10.05. PROHIBITED USES.

All uses and structures not specifically permitted or not permitted by conditional use shall be prohibited in the Residential District C. Commercial mobile or mobile parks are not permitted.

SECTION 2.10.06. AREA REGULATIONS.

- 1) Minimum Lot Requirements: The minimum lot area for residences shall be six thousand (6,000) square feet.
- 2) Maximum Lot Coverage: The maximum lot coverage for all buildings and structures shall not exceed fifty percent (50) of the total lot area.
- 3) Minimum Yard Requirements: Residential dwellings each shall have minimum front yard depth of twenty-five (25) feet, rear yard depth of twenty-five (25) feet, and side yard depth of six (6) feet.
- 4) Height Regulations: Single Family Dwellings shall have a maximum height of 2 and one-half stories, or thirty-five (35) feet. Other Conditionally Approved Dwellings shall have a maximum height of seventy-five (75) feet for towers or steeples and not more than forty-five (45) feet for the principal building.
- 5) Accessory buildings or structures restrictions:
 - a) No such accessory structure shall be greater than fifteen (15) feet in height nor be closer than twenty (20) feet from any street line.
 - b) An accessory structure may be constructed within (2) feet of an inside lot line or alley line when the entire structure is not less than sixty (60) feet from the front line and not less than six (6) feet from the principal building. The accessory building may be constructed less than sixty (60) feet from the front line if it is entirely to the rear of an principal building on the neighboring lot.
 - c) All structures are to have a permanent foundation under them.
- 6) On a corner lot in Residence Districts, no fence, building or other structure shall be erected to a height of more than 4 feet above the elevation of established grade, at the intersection of the streets on that part of any yard which is bounded by the street lines of the intersecting streets, either at the intersection of said street lines or within 10 feet thereof; and no planting of foliage which, in the judgment of the enforcing officers, will materially obstruct the view of the drivers of vehicles approaching the street intersection shall be placed or maintained within such area.
- 7) A building which is to be used as a private garage and is not attached to another building may be erected to within one foot of an interior lot line, provided a signed statement is obtained from the adjacent property owner granting permission for the erection of said building.

ARTICLE III ADMINISTRATION

CHAPTER 3.01 GENERAL

SECTION 3.01.01. PERMITS REQUIRED.

No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the City Council. No permits shall be required by property owners to perform standard maintenance on existing structures. No permit shall be issued by the City Council except in conformity with the provisions of this ordinance or a written order from the City Council acting as the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.

SECTION 3.01.02. APPLICATIONS.

All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the City Council, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. Such plans and data accompanying the permit shall be final and conclusive, and a deviation there from shall require a new permit.

The City Council shall return one copy of the permit application to the applicant, after such copy has been marked either approved or disapproved and attested to by the Mayor of the City of Onida on such copy. The City Council shall retain the original of the permit application and site plan, similarly marked. The City Council shall then, if the application is approved, issue a signed building permit; or if the application is disapproved the City Council shall notify the party making the application as to rejection of said plans.

SECTION 3.01.03. FEE SCHEDULE.

The City Council shall by resolution establish a schedule of fees, charges, and expenses and a collection procedure for building permits, conditional use permits, variances, amendments, appeals, and other matters pertaining to this ordinance. The schedule of fees may be altered or amended only by the City Council. The current fee schedule shall be available from the City Finance Office. All fees shall be the property of the City and shall be paid over to the City Finance Officer for credit to the General Fund of the City, which under no condition shall be refunded. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

SECTION 3.01.04. ISSUANCE OF PERMITS.

Permits issued on the basis of plans and applications approved by the City Council authorize only the use, arrangement, and construction set forth in such approved plans and applications, and other use, arrangement, or construction at variance with that authorized shall be deemed violation of this Ordinance, and punishable as provided by Section 1.02.02 of this Code.

SECTION 3.01.05. EXPIRATION OF USE OF PERMIT.

If the work desired in any use permit has not begun within ninety (90) days from the date of issuance thereof, said permit shall expire; it shall be canceled by the City Council, and written notice thereof shall be given to the persons affected. If the work described in any use permit has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be canceled by the City Council, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new permit has been obtained.

SECTION 3.01.06. BUILDING PERMITS.

No new development, change of use, moving in/moving out of structures, demolition, or other action which may be regulated by the provisions of this ordinance including use, height, number of occupants, lot area, off street parking or yard requirements, shall occur without a building permit issued by the City Council. Building permits issued on the basis of plans and applications approved by the City Council authorize only the use, arrangement, or construction set forth in such approved plans and specifications. Any use, arrangement, or construction at variance without authorization shall be deemed a violation of this regulation and shall be punishable as provided by this regulation. The failure to obtain the necessary building permit shall be punishable under this regulation. A building permit is not required by property owners to perform standard maintenance on existing structures.

1) An application for a building permit, accompanied with the appropriate fee, available from the City Finance Office, shall be completed by the landowner requesting the Building Permit. Completed applications shall be returned to the City Council for review. To be considered complete, the application form shall be accompanied by the following additional items:

- a) Applications for building permits shall be accompanied by a site plan drawn to scale with the following information indicated in order to determine compliance with this Ordinance.
- i. A site plan, drawn to scale, showing the exact size, shape, and dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and structures, and the exact size and location on the lot of the structure or building proposed to be repaired, altered, erected, or moved, and the size, arrangement, number of parking stalls, movement of vehicles and ingress and egress drives for all off-street parking and loading facilities.
 - ii. The location of the said lot with respect to existing rights-of-way and adjacent lots.

- iii. A letter of certification stating that the lot to be built upon has been accurately surveyed. This requirement may be waived by the City Council in the event lot markers (pins) have been located.
- iv. Any other information which the City Council may deem necessary for consideration in enforcing the provisions of this Ordinance.
- v. The City Council in cases of permits to alter the interior of any existing structure may waive any of the above requirements.

2) One copy of the application shall be returned to the applicant, after the City Council has marked such copy as either approved or disapproved, and attested to the same by the Mayor of Onida signing said copy of the plans. The City Council for city records shall retain one copy of the application, similarly marked.

3) The City Council shall then, if the applicant is approved, issue a signed building permit. If the City Council determines the proposed action would not be in compliance with the provisions of these regulations, a building permit may not be issued, and the applicant may then appeal the action of the City Council to the City Council acting as the Board of Adjustment.

4) Building permits shall be posted in a conspicuous place upon the premises and visible from a public right-of-way at all times from the beginning until completion of such construction, alteration, or repair.

5) With application for a building permit, the site must be clearly staked out and/or plans that clearly indicate the structure to be erected or remodeled, or alterations of the exiting structure will be examined by the City Council or a designated City employee.

6) The City Council or a designated City employee will again examine the site after the completion of the foundation and rafters of the structure and will grant permission to proceed if complied with application.

CHAPTER 3.02 BOARD OF ADJUSTMENT.

SECTION 3.02.01. ESTABLISHMENT.

A Board of Adjustment is hereby established, which shall consist of the members of the City Council, as provided for in the provisions of Chapter 11-4, South Dakota Codified Laws and Amendments. The City Council shall act as the "Board of Adjustment" and herein be referred to as the "Board of Adjustment."

SECTION 3.02.02. PROCEDURES FOR MEETING.

The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Mayor acting as chairman and at such other times as the Board of Adjustment may determine. The Mayor acting as chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board of Adjustment shall keep minutes of its meetings and proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official action, all of which shall be filed in the City Finance Office of the City of Onida, South Dakota and shall be a public record.

SECTION 3.02.03. POWERS AND DUTIES OF BOARD OF ADJUSTMENT.

The Board of Adjustment shall have the following powers and duties:

1) Administrative Review:

a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the City Council in the enforcement of this Ordinance.

b) To hear and decide appeals to decisions made by the City Council regarding building permits, conditional uses, variances, zoning amendments and other matters relating to the enforcement of this ordinance.

c) Conditional Uses: To hear and decide only such conditional uses as the Board of Adjustment is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance.

d) Variances: To hear requests for variances from this ordinance in instances where strict enforcement would cause unnecessary hardship, and to authorize upon appeal in specific cases

such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

SECTION 3.02.04. HEARINGS; APPEALS; NOTICES

Appeals to the Board of Adjustment concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer of the governing body of the City affected by any decision of the City Council. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days of such lesser period as may be provided by the rules of the Board, by filing with the City Council and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The City Council shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the City Council or other administrative officials in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

SECTION 3.02.05. STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action appealed from unless the City Council from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would, in the City Council's opinion, cause an imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the City Council from whom the appeal is taken and on due cause shown.

CHAPTER 3.03 PROCEDURES FOR CONDITIONAL USES, VARIANCES AND ZONING AMENDMENTS.

SECTION 3.03.01. CONDITIONAL USES.

Conditional uses are allowed for certain uses in some districts, as identified in Article II District Regulations. Uses not listed in Article II District Regulations as eligible for a conditional use Permit shall not, in any circumstances, be granted a conditional use Permit. The following procedure for requesting a conditional use Permit shall be followed:

1) The Board of Adjustment shall follow the following procedure in considering the recommendation of the City Council. A conditional use Permit from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

a) An application for a conditional use Permit, available from the City Finance Office, shall be completed by the landowner requesting the conditional use Permit. Any required attachments and fees as in Section 3.01.03 shall further accompany the application. The written application for a conditional use shall indicate the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested; Completed applications shall be returned to the City Council for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by Section 3.03.01 has changed since the original Building Permit application, the revised, update or corrected information shall accompany the application for a Conditional Use Permit.

b) The City Council shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The City Council's recommendation shall include a summary of the application, and reasons and justification for either approval of or disapproval of the application.

c) The City Council shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The City Council shall notify the adjacent landowners (excluding streets and alley) by mail at the expense of the applicant, at least one week before the public hearing. The City Council shall publish notice of the public hearing, with all costs to be paid by the applicant, not less than ten (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed Conditional Use Permit.

d) A public hearing shall be held. Any party may appear in person, or by agent or attorney.

e) The Board of Adjustment shall rule that it is empowered under the section of this ordinance described in the application to grant the Conditional Use, and that the granting of the Conditional Use will not adversely affect the public interest.

f) Before any Conditional Use Permit shall be issued, the Board of Adjustment shall make a written finding certifying compliance with the specific rules governing individual

Conditional Uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:

- i) Utilities, refuse, and service areas, with reference to locations, availability, and compatibility;
- ii) Screening and buffering with reference to type, dimensions, and character;
- iii) Required yards and other open space; and
- iv) General compatibility with adjacent properties and other property in the district.
- v) Entrance and exit to property and proposed and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- vi) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties.
- vii) Off-street parking and loading areas where required, with particular attention on effects of the conditional use on adjoining properties and properties generally within the district.

2) In order to preserve the intent of these Zoning Regulations and to protect the public interest, the Board of Adjustment may attach conditions to a conditional use Permit. A Conditional Use Permit shall remain valid only as long as the original applicant complies with any terms and conditions of the Conditional Use Permit, as attached by the Board of Adjustment.

3) Approval or denial of any application for a Conditional Use Permit shall be by a two-thirds (2/3) majority of all members of the Board of Adjustment.

SECTION 3.03.02. VARIANCES.

Variations are designed to allow some flexibility in the Zoning Regulations, in cases where the exceptional shape of a parcel of land, in cases where use of a property is overwhelmingly affected by exceptional topographic conditions, or any other extraordinary situation or condition of such a parcel of land. Variations are to be approved only when a property owner demonstrates that the provisions of all or part of these Zoning Regulations present an undue hardship on such property owner's use of such parcel land. A variance shall include a description of the specific regulatory item or items in these Zoning Regulations, which are found to produce, said undue hardship. Variations shall only be granted when the Board of Adjustments finds that such relief from these Zoning Regulations will be neither detrimental to the public good nor in conflict with the intent of these Zoning Regulations.

The following procedure for requesting a Variance shall be followed:

1) The Board of Adjustment shall follow the following procedure in considering the recommendation of the City Council. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

a) An application for Variance, available from the City Council, shall be completed by the landowner requesting the variance and shall be accompanied by any required attachments and fees as in Section 3.01.03. The written application for a variance shall indicate the section of this Ordinance under which the variance is sought and stating the grounds for which it is requested. Completed applications shall be returned to the City Council for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by Section 3.03.01 has changed since the original Building Permit application, the revised, updated or corrected information shall accompany the application for a variance.

b) The City Council shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The City Council's recommendation shall include a summary of the application, and reasons and justification for either approval or disapproval of the application.

c) The City Council shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The City Council shall notify the adjacent landowners (excluding streets and alleys) by mail at the expense of the applicant, at least one week before the public hearing. The City Council shall publish notice of the public hearing, with all costs to be paid by the applicant, no less than (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed variance.

d) A public hearing shall be held. Any party may appear in person, or by agent or attorney;

e) The Board of Adjustment shall follow the following procedure in considering the recommendation of the City Council. A variance from the terms of this ordinance shall not be granted by the Board of Adjustments unless and until:

- i) A written application for a variance is submitted demonstrating:
- ii) That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
- iii) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
- iv) That the special conditions and circumstance do not result from the actions of the applicant;
- v) Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
- vi) That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
- vii) No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

f) The Board of Adjustment shall make findings that the requirements of Section 3.03.02.1.e.i above have been met by the applicant for a variance;

g) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure; and

h) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

i) Approval or denial of any variance shall be by a two-thirds (2/3) majority of all members of the Board of Adjustment.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Chapter 1.02, Section 1.02.02 of this Code.

Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

SECTION 3.03.03. BOARD HAS POWERS OF CITY COUNCIL ON APPEALS; REVERSING DECISION OF CITY COUNCIL.

1) It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the City Council, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the City Council.

2) In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the City Council from whom the appeal is taken.

3) The concurring vote of two-thirds (2/3) majority of all members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the City Council, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

SECTION 3.03.04. APPEALS.

Any persons, or any board, taxpayer department, board, or bureau of the City aggrieved by any decision of the Board of Adjustment may seek review by a court of record of such decision, in the manner provided by the laws of the State of South Dakota.

SECTION 3.03.05. ZONING AMENDMENTS.

Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the City Council acting as the City Planning and Zoning Commission, as provided herein, the City Council may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the City Council acting as the City Planning and Zoning Commission, the City Council, or by application of one or more of the owners of property within the area requested to be changed. However, no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published once ten (10) days prior to the date of the meetings as provided in South Dakota Compiled Laws Chapter 11-4, and its and Amendments. Unless otherwise provided for in these regulations, any change in these regulations, shall require City Council approval of an ordinance describing said changes. The City Council may not consider said ordinance until the City Council acting as the Planning and Zoning Commission has delivered a recommendation to either approve or not approve said ordinance.

The following procedure for requesting a Zoning Amendment shall be followed:

- 1) The landowner or other person(s) requesting the Amendment shall complete an application for Amendment, available from the City Council. Completed applications shall be returned to the City Council for review. To be considered by the City Council acting as the Planning and Zoning Commission and City Council, the application form shall be completed and shall be accompanied by the following items:
 - a) Any required attachments and fees, including Registered or Certified Mail costs in Section 3.01.03; and
 - b) Any additional information, as requested by the City Council, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
 - c) The City Council shall review the application, and shall forward a summary of the application, and their comments regarding said application, to the City Council acting as the Planning and Zoning Commission for their review.
 - d) The City Council shall set the date, time, and place for a joint public hearing to be held by the City Council acting as the Planning and Zoning Commission and City Council. The City Council shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to the public hearing. If the proposed amendment will change the boundaries of a zoning district, the City Council shall notify all owners of property within 250 feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one week before the public hearing.
 - e) The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning and Zoning Commission.

f) The City Council acting as the Planning and Zoning Commission shall either recommend or not recommend approval of the amendment to the city council.

g) The City Council shall either approve or not approve the ordinance describing the proposed changes to these Zoning Regulations, in accordance with standard procedures for reading, approval, publication, and effective date.

h) When the City Council approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (2/3) majority of the City Council.

i) Protest Standard: The protest shall be signed by at least forty percent (40%) of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within two hundred fifty (250) feet of the area affected by the amendment.

SECTION 3.03.06. REAPPLICATION.

1) No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board, shall again be considered by the City Council acting as the Planning and Zoning Commission or Board of Adjustment before the expiration of six (6) months from the date of the final action of the City Council acting as the Planning and Zoning Commission or Board of Adjustment.

CHAPTER 3.04 DEFINITIONS.

For the purpose of this chapter certain words and terms used herein shall be defined and interpreted as follows:

All words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be used."

1) "**Agricultural Building**" is a building located on agricultural property and used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation, and which is not used by the public.

2) "**Alley**" is a narrow service way providing a secondary means of access to abutting properties.

3) "**Alter or Alteration**" is any change, addition or modification in construction or occupancy.

4) "**Apartment**" shall mean a dwelling unit as defined in this chapter.

5) **"Apartment House"** is any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building, and shall include flats and apartments.

6) **"Auto Wrecking"** is the collecting, burning out, dismantling or wrecking of used motor vehicles, wheeled or track laying equipment, or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked motor vehicles, wheeled or trailers or their parts. The dismantling and rebuilding other than custom repair, of more than one motor vehicle, piece of wheeled or track equipment, or trailer at a time even though not for profit or a principal use of a parcel of land shall be defined as auto wrecking. The storage of a partially dismantled motor vehicle, piece of wheeled or track equipment or trailer shall be considered auto wrecking.

7) **"Basement"** is that portion of a building between floor and ceiling, which is partly below and partly above grade.

8) **"Billboard"** is any structure or portion thereof, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes, except the name and occupation of the user of the premises, the nature of the business conducted on the premises or the products primarily sold or manufactured on the premises and having an area of 100 square feet or more. Any signboard carrying a message excepted in this definition that also carries extraneous advertising of 100 square feet or more shall be considered a billboard. This definition shall not include any board, sign or surface used to display any official notices issued by a court or public duty, or bulletin boards used to display announcement of meetings to be held on the premises on which such bulletin boards are located, nor shall it include a real estate sign advertising for sale or rent the property upon which it stands when such sign does not exceed 100 square feet.

9) **"Block"** is a piece or parcel of land entirely surrounded by public highways, streets, streams, railroad rights-of-way, parks, or a combination thereof. there may be more than one numbered block as shown on a plat, falling within a single block as herein defined.

10) **"Board"** is the City Council of the City of Onida, South Dakota.

11) **"Building"** is any structure for the support, shelter, enclosure of persons, animals, chattels, or property of any kind.

12) **"Building, Accessory"** is any subordinate building or structure, the use of which is incidental to the principal building.

13) **"Building, Existing,"** is a building erected prior to the adoption of this chapter or one for which a legal building permit has been issued.

14) **"Building, Principal"** is a building in which is conducted the primary use of the site on which it is situated. In any residential district any dwelling shall be deemed to be the principal building of the site on which it is located.

15) **"Certificate of Occupancy"** is a permit issued by the city inspector indicating that the use of the building or land in question is in conformity with this chapter and the building code of the city of Onida or that there has been a legal variance there from as provided by said chapter or code.

16) **"City Inspector"** is the officer charged with the administration and enforcement of this ordinance or his regularly authorized deputy.

17) **"Clinic, Medical"** is a building or portion of a building containing the offices and associated facilities of one or more practitioners providing medical, dental, psychiatric, osteopathic, chiropractor, physical therapy or similar services for out-patients only, with or without share or common spaces and equipment. A common area pharmacy or drug dispensary available to persons other than patients being treated therein or making charges separate from bills for professional services of said practitioners shall not be considered as a medical clinic use.

18) **"Club"** shall include clubhouse and shall mean a voluntary association of persons organized for cultural, recreational, fraternal, civic, charitable or similar purpose, but shall not include an organization or premises, the chief activity of which is a service or activity customarily carried on as a business even though it may be chartered and named for purposes herein defining a club.

19) **"Commercial Use"** is the use of any land or building designed for commercial purposes, which shall include the use of land or buildings used for retail sales and offices.

20) **"Commission, Planning"** is the city planning commission of the City of Onida, South Dakota.

21) **"Conditional Use"** is a use which is not allowed in the district as a matter of right, but which is permitted upon findings of the City Council acting as the Board of Adjustment that under the particular circumstances present, such use is in harmony with the principal circumstances present, such use is in harmony with the principal permitted uses of the district. Allowable conditional uses are specifically listed under the district regulations. Uses not so listed shall not be allowed as conditional uses but may be allowed as a special use.

22) **"Council, City"** is the City Council of Onida, South Dakota.

23) **"Country Club"** for the purpose of this chapter shall include golf courses, par-3 golf course, swimming pools, tennis clubs and neighborhood clubhouses any and each of which shall be located on a site of not less than one acre and open only to membership subscribing for the use of all facilities for a term of not less than one year and members' non-paying guests. Sleeping facilities other than quarters for one caretaker or manager and his family shall be

prohibited. Clubs operated exclusively as restaurants, cocktail lounges, card rooms, beer taverns, bowling alleys, pool and billiard parlors and similar activities normally carried on as a business shall be excluded from the definition of a country club. Nothing herein shall be construed to limit the method of operation of such facilities enumerated in this definition when owned or operated by a governmental agency.

24) "Court" is a space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls of a building.

25) "Coverage" is the percentage of lot area covered by buildings.

26) "Drive-In" may be used as noun or adjective and shall refer to a business which is designed to serve patrons while they are reposed in vehicles or by means of service windows with the intent that products may be consumed in automobiles on the premises.

27) "Dwelling" is a building or portion thereof, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, multi-family dwellings and group dwellings; provided however that the following are not dwellings:

a) Hotels, motels, tourist courts and cabins;

b) In a building that contains one or more dwelling units or lodging rooms in addition to one or more non-residential uses, the portion of such building that is devoted to such residential uses, except when accessory to the residential uses; and

c) Used for the institutional care of people such as hospitals, rest homes, orphanages, and homes for the aged.

28) "Dwelling-Multiple-Family" is a building or portion thereof accommodating three or more families living independently of each other.

29) "Dwelling-Single Family" is a building containing one dwelling unit only.

30) "Dwelling-Two Family" is a building containing two dwelling units only.

31) "Dwelling-Unit" is one or more habitable rooms which are occupied or designed to be occupied by one family with facilities for living, sleeping, cooking and eating.

32) "Dwelling-Mobile" is a vehicle used or so constructed as to permit its being used as a conveyance upon a public street or highway and duly licensable as such, and shall include self-propelled vehicles so designed, constructed, reconstructed, or added to by any means, in such manner as will permit the occupancy thereof as a dwelling or sleeping place of one or more persons and supported by wheels, jacks, or similar supports. Transportable dwellings not meeting building code requirements for dwellings shall be treated as mobile dwellings.

33) **"Family"** is an individual or two or more persons related by blood or marriage or a group of not more than five persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

34) **"Farm"** is any parcel of land containing at least ten (10) acres which is used for gain in the production of agricultural products.

35) **"Filling Station"** is any area of land, including structures thereon designed or used for the retail sale of motor vehicle fuel.

36) **"Flammable Liquids"** shall mean any liquid having a flash point below 200 degrees F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F. Flammable liquids shall be divided into three classes as follows:

- a) Class 1A. Shall include those having flash points below 73o F and boiling point below 100o F.
- b) Class 1B. Shall include those having flash points below 73 degrees F and having boiling point at or above 100o F.
- c) Class 1C. Shall include those having flash points at or above 73o F.

37) **"Floor Area"** is the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

38) **"Garage"** is a building or portion thereof in which a self-propelled vehicle containing gasoline, distillate or other volatile, flammable liquid in its tank, is stored, repaired, or kept.

39) **"Garage, Private"** is an accessory building or portion of a building, not more than twelve hundred square feet (1200 sq. ft.) in area, designed or used for the storage of personal motor vehicles and other customary household articles which are owned and used by the occupants of the building to which it is accessory. Accessory use of pole type construction may be allowed provided it is built according to an engineered design. Any such accessory use shall have an exterior aesthetically similar in texture and appearance to the exterior of the dwelling.

40) **"Gas Dispensing Station"** is any building or premises which provides for the retail sale of gasoline or oil. No automobile repair work may be done upon the premises containing a gas dispensing station.

41) **"Golf Course"** as used herein, shall mean standard sized layouts of at least nine holes and shall not include miniature golf courses, par-3 golf courses, pitch and putt courses or driving ranges.

42) "Grade (adjacent Ground Elevation)" is the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point five feet (5) distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than five feet (5) distant from said wall. In case walls are parallel to and within five feet (5) of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way.

43) "Ground Coverage" is the area of a zoning lot occupied by all buildings expressed as a percentage of the gross area of the zoning lot.

44) "Home Occupation - General" is a business occupation or profession carried on within a residential dwelling by the resident thereof; and which shall have the following characteristics:

a) There shall be no external evidence of the occupation with the exception of one unlighted name plate of not more than one square foot in area attached flat against the building. Advertising displays and advertising devices displayed through a window of the building shall not be permitted.

b) There shall be no emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or electronic disturbance detectable at the zoning lot line.

c) The activity shall employ only members of the immediate family of the resident of the dwelling.

d) There shall not be a stock of good on the premises in excess of 30 cubic feet in volume, none of which shall be of a flammable nature.

e) There shall be no signs, radio, television, newspaper, handbill or similar type of advertising linking the address of the premises with the home occupation.

f) Said home occupation shall not involve continual visits by the general public.

g) The above listed characteristics of a home occupation shall not be construed to restrict the sale of garden produce grown on the premises, provided this exception shall not extend to allow the operation of a commercial greenhouse or nursery, or the existence of stands or booths for the display of produce grown on the premises.

h) Said occupation may include the caring for not more than 12 children at one time for hire.

i) Room or board for hire, but not for more than 2 persons. Any business, occupation or profession the operation of which does not meet the aforesaid characteristics shall not be interpreted to be a home operation despite the fact that it may attempt to operate in a residential building.

j) The conducting of a barber and/or beauty shop, a clinic, a commercial stable, a commercial kennel, a tourist home, a restaurant or a tea room, a convalescent home, a mortuary establishment or any similar use shall not be deemed to be a home occupation.

45) "Hospital" is an institution in which sick or injured persons are given medical or surgical care.

46) "Hotel" is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or occupied for sleeping purposes by guests.

47) "Junk or Salvage Yard" is a place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, or other used materials are bought, sold, exchanged, stored, baled or cleaned and places or yards for the storage of salvaged metal, materials and equipment, but not including pawn shops and establishments for the sale, purchase or storage of used cars or trucks in operable condition, boats or trailers in operable condition, salvaged machinery in operable condition, and used furniture and household equipment in useable condition and not including the processing of used, discarded or salvaged materials as part of manufacturing operations.

48) "Lot" is a zoning lot unless the context shall clearly indicate a lot of record, in which case a "lot" is a lot of record.

49) "Lot Corner" is a zoning lot situated at the intersection of two streets, or bounded on two or more adjacent sides by street right-of-way lines or in the case of curved right-of-way lines, when the extension of tangents at the side lot lines yields an internal angle which does not exceed 135 degrees.

50) "Lot Interior" is a zoning lot other than a corner lot.

51) "Lot, Depth of" is the mean horizontal distance between the front and rear lot lines.

52) "Lot Line" is a boundary of zoning lot. Lot line is synonymous with property line.

53) "Lot of Record" is land designated as a separate and distinct parcel in a subdivision, the plat of which has been recorded in the office of the county register of deeds of Hughes County, South Dakota, parcel of land, the deed to which was recorded in the office of said recorder prior to the adoption of this chapter.

54) "Lot Width" is the distance between side lot lines measured at the rear of the required front yard on a line parallel with a line tangent to the street right-of-way line.

55) "Lowest Floor" is the lowest floor of the lowest enclosed area (including basement). An unfinished or floor resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor;

provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements.

56) "Manufacturing/Processing, Light" is those manufacturing processes that are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial or industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

57) "Minor Repair - Automobile" is the replacement of minor assemblies or parts and tune-up of automobiles, or trucks of less than 15,000 pounds gross license weight, but not including body and fender work, painting, engine overhaul or similar type of work.

58) "Mobile Home" is a mobile dwelling.

59) "Mobile Home Park or Manufactured Home Park" is a tract of land that is used, designed, maintained, or held out for rent to accommodate two or more mobile homes. Mobile homes located in a mobile home park are used only to provide living and sleeping accommodations, a mobile home park does not include an automobile or mobile home sales lot on which unoccupied mobile homes are parked for inspection or sale. The term mobile home shall include mobile dwelling.

60) "Motel" is a group of attached or detached living units with individual toilet facilities operated for transient guests and so constructed that guests' automobiles may be parked at or near the living unit.

61) "Natural Production Use" is a production use that shall be directly dependent upon the natural resources of the area; such as gravel pits, rock quarry, and areas containing natural gas.

62) "Non-conforming Building" is a building or structure or portion thereof, lawfully existing at the time this chapter or an amendment thereto becomes effective, which does not meet the area, height, yard, parking, loading or other requirements of this chapter or any amendment thereto.

63) "Non-conforming Uses" is a use that lawfully occupies a building or land at the time this chapter or an amendment thereto becomes effective but does not meet the requirements of this chapter or any amendment thereto.

64) "Occupancy" is the purpose for which a building is used, or its intended usage. The term shall also include the building or room housing such use. Change of occupancy is not intended to include change of tenants or proprietors.

65) "Open Space" is all area including off-street parking spaces not covered by buildings or structures.

66) **"Parking space Off-Street"** is an off street space available for the parking of one motor vehicle and having an area of not less than one hundred eighty (180) square feet exclusive of drive-ways and having direct access to a street or alley.

67) **"Personal Health Service"** is an establishment primarily engaged in providing health services, including, but not limited to, medical, dental, chiropractic, ophthalmology, optometry and audiology.

68) **"Personal Service Store"** is an establishment engaged in providing services involving the care of a person or their apparel, including, but not limited to laundry or dry cleaning, garment services, coin-operated laundries, photographic and art studios, beauty shops, barber shops, shoe repair, reducing salons, health clubs, clothing rental, tailor and dressmaker.

69) **"Principal Permitted Use"** is that use of a zoning lot which is among the uses allowed as a matter of right as the exclusive use of a lot under the zoning classification.

70) **"Public Utility Facility"** is telephone, electric and cable television lines, poles and equipment; water, gas and sewer pipes and valves, lift stations, telephone exchanges and repeaters and all other facilities and equipment necessary for conducting a service by a government, public utility or cable television franchise.

71) **"Repair"** is the reconstruction or renewal of any part of an existing building for the purpose of its maintenance. The word "Repair" or "Repairs" shall not apply to any change of construction.

72) **"Residential Use"** is use of land or buildings designed for residential purpose which shall include such land or building used for one or two-family residence, apartment houses and multiple family dwellings.

73) **"Retail Store"** is an establishment engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, repair shops, indoor amusement, copying services, health, professional, personal educational, and social services, and other miscellaneous services.

74) **"Rooming House or Lodging House"** is any building or portion thereof, containing not more than five guest rooms which are used by not more than five guests where rent is paid in money, goods, labor or otherwise. A lodging house shall comply with all the requirements of this chapter for dwellings.

75) **"Setback"** is the minimum horizontal distance between the property line and a building.

76) **"Sign"** is any device that directs attention to business, commodity, service or entertainment but not including any flag, badge or insignia or any government agency, or any civic, charitable, religious, patriotic or similar organizations.

77) **"Special Use"** is a use that is not a principal permitted use, accessory use or conditional use but may be permitted by the City Commission.

78) **"Stable-Private"** is an accessory building in which all of the animals housed are the property of the owner or lessee or of his immediate family.

79) **"Stable-Public"** is a building in which any animals are kept for remuneration, hire or sale.

80) **"Story"** is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six feet (6') above grade as defined herein for more than 50 percent of the total perimeter or is more than twelve feet (12') above grade as defined herein at any point, such basement, cellar or unused under-floor space shall be considered as a story.

81) **"Story-Half"** is a story under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the finished floor of such story.

82) **"Street"** is any thoroughfare of public space not less than thirty feet (30') in width that has been dedicated or deeded to the public for public use.

83) **"Structure"** is that which is built or constructed, an edifice or building or any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

84) **"Structural Alteration"** is any change in the structural members of a building, such as walls, columns, beams or girders. Vehicles duly licensed for operation upon public streets or highways shall not be considered structures.

85) **"Use"** is the purpose or purposes for which land or building is designed, arranged, or intended, or to which said land or building is occupied, maintained or leased.

86) **"Use-Accessory"** is a use customarily incidental to a principal permitted use or building and located on the same zoning lot with such principal use or building.

87) **"Use-Specifically Excluded"** is a use of land or a structure which is excluded from a district by the operation of other regulations of the district, and which is specifically enumerated as excluded for purposes of clarity of intent and ease of reference.

88) **"Yard"** is an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the lot on which a building is situated.

89) "Yard-Front" is an open space extending the full width of the zoning lot, between the main building and the front line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height except as provided herein, the depth of which shall be measured as the least distance between the front lot line and the front of such main building.

90) "Yard-Rear" is an open space extending the full width of the zoning lot between the main building and the rear lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height except as provided herein, the depth of which shall be measured as the least distance between the rear lot line and the rear of such main buildings.

91) "Yard-Side" is an open space extending from the front yard to the rear yard, between the main building and the side lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height, except as provided herein, the depth of which shall be measured as the least distance between the side lot line and the side of such main buildings.

92) "Zoning, Lot" is a single tract of land located within a single block, which at the time of filing for a building permit or a certificate of occupancy, is designated by the owner or developer as a tract to be used, developed or built upon as a unit, under single or unified ownership or control, and assigned to the particular use, building or structure, for which the building permit or certificate of occupancy are issued and including such area of land as may be required by the provisions of this chapter for such use, building or structure. The said described tract of land must be recordable in the City of Onida's Finance Office or the Office of Sully County Register of Deeds.