

**ZONING ORDINANCE  
VILLAGE OF BISMARCK, VERMILION COUNTY, ILLINOIS**

**TITLE**

An ordinance to regulate the use of land, natural resources and structures; to regulate structures designed for trade, industry, residence or other specified uses; to regulate and limit the height, the area, the size and location of structures hereinafter to be erected or altered; to regulate and determine the area of yards, court, or other open spaces; to control congestion in the streets, to secure safety in case of fire, to prevent the overcrowding of land, to bring about the gradual conformity of the uses of land and buildings and for such purposes to divide the Village into districts and zones, to establish appeal procedures; to provide for the administration and enforcement of the provisions of this Ordinance and to prescribe penalties for the violation thereof.

“(65 ILCS 5/11-13-1) Sec. 11-13-1. To the end that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, that the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided, and that the public health, safety, comfort, morals, and welfare may otherwise be promoted, and to insure and facilitate the preservation of sites, areas, and structures of historical, architectural and aesthetic importance; the corporate authorities in each municipality have the following powers: (1) To regulate and limit the height and bulk of buildings hereafter to be erected; (2) to establish, regulate and limit, subject to the provisions of Division 14 of this Article 11, the building or set-back lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin; (3) to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings; (4) to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses; (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Division 13; (6) to fix standards to which buildings or structures therein shall conform; (7) to prohibit uses, buildings, or structures incompatible with the character of such districts; (8) to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Division 13; (9) to classify, to regulate and restrict the use of property on the basis of family relationship, which family relationship may be defined as one or more persons each related to the other by blood, marriage or adoption and maintaining a common household; and (10) to regulate or forbid any structure or activity which may hinder access to solar energy necessary for the proper functioning of a solar energy system, as defined in Section 1.2 of The Comprehensive Solar Energy Act of 1977. The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality. “

**PREAMBLE**

Pursuant to legislative authorization conferred in 65 ILCS (1998 State Bar Edition) of the State of Illinois and for the purpose of promoting and protecting the public health, safety, peace, comforts, convenience and general welfare of the inhabitants of the Village of Bismarck by protecting and conserving the character and social and economic stability of the residential, commercial, industrial, and other use areas, by securing the most appropriate use of land; preventing over-crowding; and facilitating adequate and economical provision of transportation, water, sewers, schools, recreation, and other public requirements; and by other means, all in accordance with a comprehensive plan.

**EFFECT**

The regulations contained herein are intended to govern the use of land in the Village of Bismarck and within territories located within 1.5 miles of the Village, as prescribed by Illinois Statute.

**NOW THEREFORE BE IT ORDAINED BY THE VILLAGE BOARD OF THE VILLAGE OF BISMARCK, AS FOLLOWS:**

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**ARTICLE I. TITLE**

**SECTION 1. TITLE.**

This Ordinance shall be known and may be cited as the "Village of Bismarck Zoning Ordinance," and will be referred to herein as "this Ordinance."

## **ARTICLE 2. CONSTRUCTION OF LANGUAGE AND DEFINITIONS**

### **SECTION 2.1. CONSTRUCTION OF LANGUAGE.**

The following rules of construction apply to the text of this Ordinance:

1. The particular shall control the general.
2. In case of any difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.
3. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
4. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural and the singular, unless the context clearly indicates the contrary.
5. A "building" or "structure" includes any part thereof.
6. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."
7. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
8. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either...or," the conjunction shall be interpreted as follows:
  - a. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
  - b. "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
  - c. "Either...or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.
9. Terms not herein defined shall have the meaning customarily assigned to them.

**SECTION 2.2. DEFINITIONS.**

**Abutting:** Having a common border with or being separated from such a common border by a right-of-way, alley, or easement.

**Accessory Building:** A building or portion of a building subordinate to a main building on the same lot occupied by, or denoted exclusively to, an accessory use.

**Accessory Use, or Accessory:** A structure or use that: a) is clearly incidental to and customarily found in connection with a principal building or use; b) is subordinate to and serves a principal building or a principal use; c) is subordinate in area, extent or purpose to the principal building or principal use served; d) contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal building or principal use served; and, e) is located on the same lot as the principal building or use served.

**Addition:** An extension or increase in floor area or height of a building or structure.

**Adult Entertainment Use:** (See Entertainment Use, Adult)

**Adult Foster Care Facility:** A governmental or non-governmental establishment subject to state licensing procedures as may be required having as its principal function the receiving of adults for foster care. It includes facilities and foster care family homes for adults who are aged, emotionally disturbed, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include a nursing home, a home for the aged, an alcohol or a substance abuse rehabilitation center, a hospital for the mentally ill, or similar facilities.

**Adult Foster Care Family Home:** A private residence with the approved capacity to receive not more than six (6) adults who shall be provided foster care for five (5) or more days per week, and for two (2) or more consecutive weeks. The adult foster care family home licensee shall be a member of the household and a full time occupant of the residence.

**Adult Foster Care Large Group Home:** An adult foster care facility with the approved capacity to receive at least thirteen (13), but not more than twenty (20) adults who shall be provided foster care.

**Adult Foster Care Small Group Home:** An adult foster care facility with the approved capacity between seven and twelve adults who shall be provided foster care.

**Alley:** Any dedicated public way affording a secondary means of access to abutting property, and not intended for general traffic circulation.

**Alterations:** Any change, addition, or modification in construction or type of occupancy, or in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed."

**Apartments:** A suite of rooms or a room in a multiple-family building arranged and intended for a place or residence of a single-family or a group of individuals living together as a single housekeeping unit.

**Arcade:** Arcade shall mean any place of business or establishment whose principal use shall be the housing of mechanical or electronic amusement devices. Mechanical amusement devices include any machine, which, upon the insertion of any coin, slug, token, plate or disc, or which, for a fee paid to the operator or owner, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. It shall include such devices as marble machines, skill ball, mechanical grab machines, television display devices or machines and all games, operations or transactions similar thereto whether operated principally by mechanical means or electrical means or a combination thereof, under whatever name they may be indicated or called.

**Architectural Features:** Architectural features of a building or a structure shall include cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys, and decorative ornaments.

**Automobile Repair:** The general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair; tire recapping; overall painting and undercoating of automobiles.

**Basement:** That portion of a building which is partly or wholly below grade but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story.

**Bed and Breakfast Inn:** A use which is subordinate to the principal use of a dwelling unit as a one-family dwelling unit and a use in which transient guests are provided a sleeping room and board in return for payment.

**Block:** The property abutting one (1) side of a street and lying between the two (2) nearest intersecting streets, (crossing or terminating) or between the nearest such street and railroad right-of-way, unsubdivided acreage, lake, river, or live stream; or between any of the foregoing and any other barrier to the continuity of development, or corporate boundary lines of the municipality.

**Boarding House:** A dwelling where meals, or lodging and meals, are provided for compensation and where one (1) or more rooms are occupied by persons by prearrangement for definite periods of not less than one (1) month. A boarding house is to be distinguished from a hotel, motel, bed and breakfast establishment, or a convalescent, nursing, or group home.

**Buffer Area:** An area, usually landscaped, intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.

**Building:** A structure erected on site, a mobile home or mobile structure, a pre-manufactured or pre-cut structure, above or below ground, having a roof or walls and built for, or capable of, the shelter or enclosure of persons, animals, chattels, or property of any kind.

**Building Height:** The vertical distance from grade to the top of parapet wall in the case of a flat roof, to the deck line for mansard roofs, to the mean height level between eaves and ridge for gable, hip, and gambrel roofs. The height of detached accessory structures shall be the distance from grade to the top of a parapet wall in the case of a flat roof, and to the peak of the roof for mansard, gable, hip, and gambrel roofs.

**Building Line:** A line formed by the face of the building, and for the purposes of this Ordinance, a minimum building line is the same as a front setback line.

**Business Center:** Any two (2) or more businesses which:

1. Are located on a single parcel, or
2. Are under one (1) common ownership or management and have a common arrangement for the maintenance of the grounds, or
3. Are connected by common walls, partitions, canopies, other structural members, or walkways to form a continuous building or group of buildings, or
4. Share a common parking area, or
5. Otherwise present the appearance of a single continuous business area.

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

**Clinic:** An establishment where human or animal patients who are not lodged overnight are admitted for examinations and treatment by a group of physicians, dentists, veterinarians, or similar professionals.

**Club, Private Facilities:** Any nonprofit facility established to provide recreational or social activities for the sale and exclusive use of its members, their families, and guests.

**Cluster Development:** A development design technique that concentrates buildings in specific locations on a site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas.

**Convalescent or Nursing Home:** A structure with sleeping rooms, where persons are housed or lodged and are furnished with meals, nursing, and medical care.

**Day Care Center:** A school, kindergarten, or adult care facility wherein day care, or day care and education is provided.

**Development:** The construction of a new building or other structure on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

**District:** A portion of the incorporated area of the municipality within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

**Dwelling Unit:** A building, or portion thereof, designed for occupancy by one (1) family for residential purposes and having cooking and sanitary facilities.

**Dwelling Unit, Manufactured:** Is a dwelling unit which is substantially built, constructed, assembled, or finished off the premises upon which it is intended to be located.

**Dwelling, Mobile Home:** A detached residential dwelling unit with a body width greater than eight feet, of not less than 40 feet in length, and designed for transportation, after fabrication, on streets or highways, on its own wheels, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks, or other temporary or permanent foundations, connections to utilities, and the like. A mobile home shall not be considered a travel trailer, motor home, or any other type of recreational vehicle. In addition, mobile homes which do not conform to the standards for one-family dwellings, of this Ordinance, shall not be used for dwelling purposes within the Village unless located within a mobile home park or unless used for temporary residence purposes as hereinafter provided.

**Dwelling, Multiple-Family:** A building containing three (3) or more dwelling units designed for residential use and conforming in all other respects to the standards set forth for one-family dwellings.

**Dwelling, One-Family:** A building designed exclusively for one (1) family for residential use.

**Dwelling Unit, Site Built:** Is a dwelling unit which is substantially built, constructed, assembled, and finished on the premises which are intended to serve as its final location. Site built dwelling units shall include dwelling units constructed of precut materials and panelized wall, roof and floor sections when such sections require substantial assembly and finishing on the premises which are intended to serve as its final location.

**Dwelling, Two-Family:** A building containing not more than two (2) separate dwelling units designed for residential use and conforming in all other respects to the standards set forth for one-family dwellings.

**Easement:** A property right, such as a right of way, less than fee title, over, above, on, and/or under real property for the use by the easement owner.

**Earth Berm:** A mound of earth planted with ground cover, grass, trees, or other landscaping material intended to minimize the view of parking areas and reduce noise and dust from adjacent uses and passersby.

**Elderly Housing:** A building or group of buildings containing dwellings where the occupancy of the dwellings is restricted to persons sixty (60) years of age or older, or couples where either spouse is sixty (60) years of age or older. This does not include a foster care, home for the aged, or nursing home.

**Entertainment Uses, Adult:** Any use of land, whether vacant or combined with structures or vehicles thereon by which said property is devoted to displaying or exhibiting material for entertainment, a significant portion of which includes matter or actions depicting, describing or presenting Specified Sexual Activities or Specified Anatomical Areas.

1. Adult entertainment use shall include, but not be limited to the following:
  - a. **An adult motion picture theater** is an enclosed building with a capacity of fifty (50) or more persons used for presenting material which has a significant portion of any motion picture or other display depicting or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons therein.
  - b. **An adult mini-motion picture theater** is an enclosed building with a capacity for less than fifty (50) persons used for presenting material which has as a significant portion of any motion picture or other display depicting, describing or presenting "Specified Sexual Activities" or "Specified Anatomical Areas."
  - c. **An adult motion picture arcade** is any place to which the public is permitted or invited wherein coin or slug operated or electronically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where a significant portion of images so displayed depict, describe or relate to "Specified Sexual Activities" or "Specified Anatomical Areas."
  - d. **An adult book store** is a use which has a display containing books, magazines, periodicals, slides, pictures, cassettes, or other printed or recorded material which has as a significant portion of its content or exhibit matter or actions depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" or an establishment with a (substantial) segment or section devoted to the sale or display of such material.
  - e. **An adult cabaret** is a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where a significant portion of such performances show, depict or describe "Specified Sexual Activities" or "Specified Anatomical Areas."
  - f. **An adult motel** is a motel wherein matter, actions or other displays are presented which contain a significant portion depicting, describing, or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."
  - g. **An adult massage parlor** is any place where for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatment or any other treatment or manipulation of the human body occurs as part of or in connection with "Specified Sexual Activities" or where any person providing such treatment, manipulation or service related thereto exposes "Specified Anatomical Areas."
  - h. **An adult model studio** is any place where, for any form of consideration or gratuity, figure models who display "Specified Anatomical Areas" are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such considerations or

gratuities, except that this provision shall not apply to any bona fide art school or similar education institution.

- i. **An adult sexual encounter center** is any business, agency, or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family may congregate, assemble or associate for the purpose of engaging in "Specified Sexual Activities" or exposing "Specified Anatomical Areas."
2. **Significant Portion** - As used in the above definitions, the phrase "significant portion" shall mean and include:
  - a. Any one or more portions of the display having continuous duration in excess of five (5) minutes; and/or,
  - b. The aggregate of portions of the display having a duration equal to ten (10) percent or more of the display.
  - c. The aggregate of portions of the collection of any materials or exhibits composing the display equal to ten (10) percent or more of the display.
3. **Display** - As used in the above definitions, the word display shall mean any single motion or still picture, presentation, dance or exhibition, live act, or collection of visual materials such as books, films, slides, periodicals, pictures, video cassettes or any other printed or recorded matter which is open to view or available to the general population whether for free or otherwise.
4. **"Specified Sexual Activities"**
  - a. Human genitals in a state of sexual stimulation or arousal;
  - b. Acts of human masturbation, sexual intercourse or sodomy;
  - c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
5. **"Specified Anatomical Areas"**
  - a. Less than completely and opaquely covered: 1) human genitals, pubic region; 2) buttock; and, 3) female breast below a point immediately above the top of the areola; and,
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Erected:** To have built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction, excavation, fill, drainage and the like, shall be considered a part of erection.

**Essential Services:** A public utility or municipal department utilizing underground, surface, or overhead gas, electrical, steam, fuel, or water transmission or distribution systems, collection, communication, supply or disposal system, but not including buildings.

**Excavation:** Any breaking of ground, except common household gardening and ground care.

**Family/Single Family:**

1. One or more individuals living together in a one dwelling unit who are related by blood, marriage, or adoption; or

2. One or more individuals unrelated by blood, marriage, or adoption living together in a one dwelling unit in a non-transient domestic relationship as a single housekeeping unit; or
3. An adult foster care family home, as defined in this Ordinance:

'Family/single family' specifically excludes clubs, fraternities, sororities, motels, hotels, boarding houses, and adult foster care large group homes and adult foster care small group homes, as defined in this Ordinance.

**Fence:** Any permanent or seasonal partition, structure, or gate erected upon or near, but not limited to, the dividing line between adjoining property owners, for the purpose of separating, screening, enclosing or protecting property. Hedges, ornamental shrubs, trees and bushes shall be considered fences when placed in a manner or position to serve as such and to prevent passage across.

**Flood plain (Flood Prone Area):** Any land area susceptible to being inundated by water from an existing watercourse such as a stream, river, or drainage/ponding area.

**Floor Area, Gross:** The sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) buildings. The "floor area" of a building shall not include the basement floor area except when more than one-half (1/2) of the basement height is above grade. "Floor-area" shall include elevator shafts and stairwells at each floor, floor space used for mechanical equipment (except equipment, open or enclosed, located on the roof), attic space having headroom of seven feet, ten inches or more, interior balconies, and mezzanines. Any space devoted to off-street parking or loading shall not be included in "floor area."

**Floor Area, Residential:** For the purpose of computing the minimum allowable floor area in a residential dwelling unit, the sum of the horizontal areas of each story of the building shall be measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) dwellings. The floor area measurement is exclusive of areas of basements, unfinished attics, attached garages, breezeways, and enclosed and unenclosed porches.

**Foster Care:** The provision of supervision, personal care, and protection in addition to room and board, for twenty-four (24) hours per day, five (5) or more days per week, and for two (2) or more consecutive weeks of compensation.

**Frontage:** That portion of a lot which abuts a public right-of-way or private road.

**Garage, Private:** An accessory building or portion of a main building designed or used solely for the storage of motor-driven vehicles, boats, similar vehicles and household items owned and used by the occupants of the building to which it is accessory.

**Garage, Service:** Any premises used for the storage or maintenance of motor-driven vehicles, or where any such vehicles are equipped for operation, repaired, or kept for remuneration, hire, or sale.

**Gasoline Service Station:** A place for the dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles, together with the sale of minor accessories and services for motor vehicles, but not including automobile repair.

**Governmental Agency:** Any department, commission, independent agency, or instrumentality of the United States, of a state, county, incorporated or unincorporated municipality, authority, district, or governmental unit.

**Grade:** The ground elevation established for the purpose of regulating the number of stories and the height of buildings. The building grade shall be the level of the ground adjacent to the walls of the building if the finished

grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building, measured at a distance four (4) feet out from the edge of the building.

**Greenbelt:** A strip of land of definite width and location reserved for the planting of shrubs and/or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this Ordinance.

**Health Care Facility (Hospital):** A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis and treatment of human disease, pain, injury, deformity or physical condition allowing overnight stay, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, tuberculosis hospital, chronic disease hospital, maternity hospital.

**Historic District:** An area containing buildings or places in which significant and notable historic events occurred or which has special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community; these events or features having such significance to warrant conservation and preservation.

**Home for the Aged:** A supervised personal care facility, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility, that provides room, board, and supervised personal care to twenty-one (21) or more unrelated, non-transient, individuals sixty (60) years of age or older. Home for the aged includes a supervised personal care facility for twenty (20) or fewer individuals sixty (60) years of age or older when the facility is operated in conjunction with and as a distinct part of a licensed nursing home.

**Home Occupation:** An accessory use of a dwelling that constitutes either entirely or partly, the livelihood of a person living in the dwelling, said use shall be conducted entirely within the dwelling and carried on by the inhabitants therein and having no external effects.

**Hotel:** A building or part of a building, with a common entrance or entrances, in which the dwelling units or rooming units are used primarily for transient occupancy, and in which one (1) or more of the following services are offered: maid service, furnishing of linen, telephone, secretarial, or desk service, and bellboy service. A hotel may include a restaurant or cocktail lounge, public banquet halls, ballrooms, or meeting rooms.

**Junk Yard:** An area where waste, used or secondhand materials are bought and sold, exchanged, stored, baled, packed, disassembled, or handled including but not limited to: scrap iron and other metals, paper, rags, rubber tires, and bottles. A "Junk Yard" includes automobile wrecking yards and includes any open area of more than 200 square feet for storage, keeping, or abandonment of junk.

**Kennel:** Any lot or premises on which three (3) or more dogs, cats, or other household pets are either permanently or temporarily boarded.

**Loading Space:** An off-street space on the same lot with a building, or group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

**Lot:** A measured portion of a parcel or tract of land, which is legally described and recorded.

**Lot Area:** The total horizontal area within the lot lines of the lot.

**Lot, Corner:** A lot abutting on and at the intersection of two or more streets.

**Lot Coverage:** The part or percent of the lot occupied by buildings including accessory buildings.

**Lot Depth:** The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

**Lot, Interior:** Any lot other than a corner lot.

**Lot Lines:** The lines bounding a lot as defined herein:

1. **Front Lot Line:** In the case of an interior lot, is that line separating said lot from the streets. In the case of a corner lot, both lot lines abutting street frontage shall be considered Front Lot Lines.
2. **Rear Lot Line:** That lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten feet long lying farthest from the front lot line and wholly within the lot. In the case of a corner lot, the Rear Lot Line shall be the lot line opposite the Front Lot Line.
3. **Side Lot Line:** Any lot line other than the front or rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

**Lot of Record:** A lot which actually exists in a subdivision plat as shown on the records of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded. Whenever an owner has combined two (2) or more lots as contained on any recorded plat or described by metes and bounds into a single building site, said combination of lots shall be deemed to be a single lot of record for the purposes of this Ordinance.

**Lot, Through:** Any interior lot having frontage on two (2) more or less parallel streets as distinguished from a corner lot.

**Lot, Width:** The horizontal straight line distance between the side lot lines, measured between the two (2) points where the front setback line intersects the side lot lines or in the case of a corner lot, the side lot line and opposite lot line.

**Lot, Zoning:** A single tract of land, which may include one or more lots of record, which conforms with this Ordinance with respect to area, size, dimensions and frontage in the district.

**Main Building:** A building in which is conducted the principal use of the lot upon which it is situated.

**Major Thoroughfare:** An arterial street which is intended to serve as a large volume traffic way for both the immediate municipal area and the region beyond, and is designated as a major thoroughfare, parkway, freeway, expressway, or equivalent term on the Major Thoroughfare Plan to identify those streets comprising the basic structure of the Major Thoroughfare Plan.

**Master Plan:** The Comprehensive Land Use Plan prepared and adopted by the Village pursuant to law.

**Mezzanine:** An intermediate floor in any story occupying space not to exceed one-third (1/3) of the floor area of such story.

**Mini-Warehouse (Self-Storage Facility):** A facility consisting of a building or a group of buildings in a controlled-access compound, where individual stalls or lockers are rented out to different tenants for the dead storage of customers' goods and wares.

**Mobile Home Park:** A parcel of land which has been planned and improved for the placement of mobile homes for residential use.

**Motel:** A series of attached, semi-detached, or detached rental units containing a bedroom, bathroom which provide for overnight lodging and are offered to the public for compensation and cater primarily to the public traveling by motor vehicle.

**Motorized Home:** A self-propelled motor vehicle which provides some or all of the amenities of day-to-day living while used as a means of transportation for recreational or travel purposes.

**Municipality:** The Village of Bismarck, Vermilion County, Illinois.

**Nonconforming Building:** A building or portion thereof lawfully existing at the effective date of this Ordinance, or amendments thereto and that does not conform to the provisions of the Ordinance in the district in which it is located.

**Nonconforming Lot:** Any lot, outlet, or other parcel of land which does not meet the land area or dimension requirements of this Ordinance.

**Nonconforming Use:** A use which lawfully occupied a building or land at the effective date of this Ordinance, or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

**Normal Grade Level:** Normal grade shall be construed to be the lower of: 1) the existing grade prior to construction; or 2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the fence. In cases in which the normal grade cannot reasonably be determined, the fence height shall be computed on the assumption that the elevation of the normal grade at the base of the fence is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the zoning lot, whichever is lower.

**Nursery, Plant Materials:** A space, building or structure, or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping.

**Nursing Home:** A nursing care facility, including a county medical care facility, but excluding a hospital, which provides organized nursing care and medical treatment to seven (7) or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

**Occupied:** To be, or intended to be, arranged, designed, built, altered, converted to, rented or leased.

**Off-Street Parking Facility:** A facility providing vehicular parking spaces, off the public right of way, with adequate drives and aisles for maneuvering, so as to provide access and exit for the parking of more than three (3) vehicles.

**Open Air Business Use:** An open air business use, as used herein, shall be deemed to include any business when said business is not conducted from a wholly enclosed building.

**Open Front Store:** A business establishment so developed that service to the patron may be extended beyond the walls of the structure, not requiring the patron to enter the structure. The term "Open Front Store" shall not include automobile repair or gasoline service stations.

**Overnight Lodging Facility (Hotel/Motel/Motor Inn):** An establishment or building(s) providing a number of bedrooms, baths, etc., for the accommodation of travelers or other transient guests.

**Parking Space:** An area of definite length and width, for the purpose of parking motor vehicles, said area shall be exclusive of drives, aisles or entrances giving access thereto, and shall be fully accessible for the parking of permitted vehicles.

**Planned Commercial or Shopping Center:** A group of commercial establishments, connected or on single parcel or lot, planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

**Porch:** A projection on a building or structure containing a floor, which may be either totally enclosed or open.

**Principal Use:** The main use to which the premises are devoted.

**Public Building:** A building that is owned by the public, is all or a part thereof designated for and open to use by members of the general public, and not including patios and appurtenances.

**Public Utility:** A person, firm, or corporation, municipal department, board or commission duly authorized to furnish and furnishing under federal, state, or municipal regulations to the public: gas, steam, electricity, sewage disposal, communication, transportation or water.

**Recreational Vehicle:** A vehicle, other than an automobile, which moves one (1) or more persons over the ground, air, water, ice, or snow, and which is either self-propelled or connects to a vehicle which is self-propelled, and is intended for use off the public road system, and/or for recreational use. Excluded are private automobiles and commercial trucks and trailers.

**Restaurant:**

1. **Standard Restaurant:** A standard restaurant is any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state, and whose design or principal method of operation includes the consumption of food on the premises.
2. **Carry-Out Restaurant:** A carry-out restaurant is any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state, and whose design or method of operation encourages the consumption of food off-site or it may permit incidental consumption on the premises.
3. **Drive-In/Drive-Through Restaurant:** Any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state, and whose design, method of operation, includes one (1) or both of the following characteristics:
  - a. Foods, frozen desserts, or beverages are served directly to the customer in a motor vehicle, either by a carhop, or by other means which eliminate the need for the customer to exit the motor vehicle.
  - b. The consumption of foods, frozen desserts, or beverages within a motor vehicle parked upon the premises, within the restaurant building, or at other facilities on the premises outside the restaurant building, is permitted.

**Right-of-Way:** The right or privilege, acquired through accepted usage or contract, to pass over a designated portion of the property of another. A right-of-way may be either public or private and usually is occupied or intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer or other similar uses.

**Room:** For the purpose of determining lot area requirements and density in a multiple-family district, a room is a living room, dining room, great room, or the like, or a bedroom equal to at least eighty (80) square feet in area. A room shall not include the area in kitchen, sanitary facilities, utility provisions, corridors, stairways, hallways, and storage. Plans presented showing one (1), two (2), or three (3) bedroom units and including a "den," "library," or other extra room shall count such extra room as a bedroom for the purpose of computing density.

**Setback:** The distance required to obtain minimum front, side, or rear yard open space provisions of this Ordinance.

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**Special Use:** Any use of land listed as a Principal Use Permitted Subject to Special Conditions which, due to its potential effect on adjacent lands, in particular, and the overall Village in general, requires approval by the Village Board according to the standards as provided in this Ordinance.

**Story:** That part of a building, except a mezzanine as defined herein, included between the surface of one floor and the surface of the next floor, or if there is no floor above, then the ceiling next above. A basement shall not be counted as a story.

**Story, Half:** An uppermost story lying under a sloping roof having an area of at least 200 square feet with a clear height of seven feet. For the purposes of this Ordinance, the usable floor area is only that area having at least five feet clear height between floor and ceiling.

**Street:** A public dedicated right-of-way, other than an alley.

**Structure:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

**Swimming Pool:** Any permanent or portable pool, used for swimming or bathing over 24 inches in depth, or with a surface area exceeding 160 square feet.

**Temporary Use or Temporary Building:** A use or building permitted by the Board of Appeals to exist temporarily during a specified period of time or until a specific event occurs.

**Use:** The purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied.

**Variance:** Permission to depart from the literal requirements of the Zoning Ordinance.

**Variance, Non-use:** A departure, other than use or usage, from the provisions of the Zoning Ordinance relating to setbacks, side yards, frontage requirements, lot size, parking, signage, and other requirements of the applicable zoning district.

**Variance, Use:** A variance granted for a use or structure that is not permitted in the applicable zoning district.

**Wall, Obscuring:** A structure of definite height and location to serve as an obscuring screen in carrying out the requirements of this Ordinance.

**Wellhead Protection:** See Section 19.2 of this Ordinance for wellhead protection definitions.

**Yards:** That portion of a lot between the outermost boundaries and the main building thereon, and as defined herein:

1. **Front Yard:** An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest point of the main building. In the case of corner lots, front yard shall be deemed to exist along each street frontage.
2. **Rear Yard:** An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the nearest point of the main building. In the case of a corner lot, the rear yard may be opposite either street frontage.
3. **Side Yard:** An open space between a main building and the side lot line, extending from the front yard to the rear yard, the width of which is the horizontal distance from the nearest point on the side lot line to the nearest point of the main building.

**Zoning District:** A zoning district is a portion of the Village within which, on a uniform basis, certain uses of land and buildings are permitted and within which contain yard, open spaces, lot area, and other requirements are established by this Ordinance.

**ARTICLE 3. ZONING DISTRICTS AND MAPS**

**SECTION 3.1. DISTRICTS ESTABLISHED.**

For the purpose of this Ordinance, the Village of Bismarck is hereby divided into the following districts:

- A-1,           Light Agricultural District
- A-2           General Agricultural District
- R-1,           Low-Density Residential District
- R-2,           Medium-Density Residential District
- C-1,           Central Business District
- C-2,           Service/Business District
- I-1,           Research/Industrial District

**SECTION 3.2. DISTRICT BOUNDARIES.**

The boundaries of these districts are hereby established as shown on the Zoning Districts Map, Village of Bismarck Zoning Ordinance, which accompanies this Ordinance, and which map with all notations, references, and other information shown thereon shall be as much a part of this Ordinance as if fully described herein.

**SECTION 3.3. DISTRICT BOUNDARIES INTERPRETED.**

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

1.       Boundaries indicated as approximately following the centerlines of streets, highways, or alleys, shall be construed to follow such centerlines.
2.       Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3.       Boundaries indicated as approximately following corporate limits shall be construed as following actual corporate limits.
4.       Boundaries indicated as following railroad lines shall be construed to be the midway between the main tracks.
5.       Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerline of streams, rivers, canals, or other bodies of water shall be construed to follow such centerlines.
6.       Boundaries indicated as parallel to or extensions of features indicated in Subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the official Zoning Map shall be determined by the scale of the map.

7. Where physical or natural features existing on the ground are at variance with those shown on the official Zoning Map, or in other circumstances not covered by Subsections 1 through 6 above, the Board of Appeals shall interpret the district boundaries.
8. Insofar as some or all of the various districts may be indicated on the Zoning Map by patterns which, for the sake of map clarity, do not cover public rights-of-way it is intended that such district boundaries do extend to the center of any public right-of-way.

**SECTION 3.4. ZONING OF VACATED AREAS.**

Whenever any street, alley or other public way, within the Village of Bismarck shall be vacated, such street, alley or other public way or portion thereof, shall automatically be classified in the same zoning district as the property to which it attaches.

**SECTION 3.5. ZONING OF ANNEXED AREAS.**

Wherever any area is annexed to the Village of Bismarck, the following will apply:

1. Land that is annexed into the Village shall be classified as being in the zoning district, as defined by this Ordinance, most appropriate to the Village of Bismarck. Such classification shall be recommended by the Planning Commission to the Village Board, which shall establish the same by the procedures used for amending ordinances of the Village.

**ARTICLE 4. A-1 LIGHT AGRICULTURAL DISTRICT**

**SECTION 4-1. INTENT.**

This zoning district is intended to allow areas in and near the Village to be retained in agriculture use; prevent scattered non-farm growth; preserve woodlands and wildlife areas, and retain open space in its natural state. The requirements of the district are designed so as to prevent unwarranted premature urban development from encroaching upon legitimate agricultural areas, thus disrupting the agriculture resources, environment, and economy. It is essential that development in areas which are predominately agricultural be based on sound principles which realize the importance of such activities to the economy and welfare of the Village, while also minimizing impacts to adjacent residential.

**SECTION 4.2. PRINCIPAL USES PERMITTED.**

Land buildings, and structures in this zoning district may be used for the following purposes only:

Farms for both general and specialized crop farming, together with a farm dwelling and buildings and other installations necessary to such farms including temporary housing for migratory workers provided such housing and its sanitary facilities are in conformance with all requirements of the Vermilion County Health Department and/or any other federal, state and/or local regulating agency having jurisdiction.

Greenhouses, nurseries, orchards, vineyards, apiaries, and berry farms.

Riding stables, where horses are boarded and/or rented.

Livestock Operations when conducted on a minimum of 15 acres with a total of no more than 50 animal units. The number of animal units shall be computed by multiplying the number of animals by the following:

Type of Livestock	Multiplier
Feeder Cattle	1.0
Dairy Cattle	1.4
Swine under 25 kg	0.3
Swine over 25 kg	0.4
Sheep	0.1
Horses	2.0
Poultry	0.1
Other Livestock under 25 kg	0.4
Other Livestock over 25 kg	0.5

Single family residential dwelling units, subject to lot size requirements in Article 19.

**SECTION 4.3. SPECIAL USES.**

The following Special Uses shall be permitted, subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 5/11-13-1.1 Illinois State Bar Edition 1998, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

1. Home occupations in accordance with Section 15.15 when authorized as a special use by the Planning Commission. In consideration of such authorization, the Planning Commission shall consider the following standards:

- The nature of the home occupation;
- The effect of the home occupation of the surrounding neighborhoods;
- The environmental effects of the home occupation;
- The nature of the surrounding neighborhood;
- Potential traffic congestion as a result of the home occupation;
- Provision for parking for traffic or clientele which may result from the operation of the home occupation; and
- Other features that may impact surrounding land use.

2. Removal and processing of topsoil, sand, gravel, or other such minerals.

3. Kennels.

4. Roadside stands when authorized as special uses by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

- The proposed location of the roadside stand;
- The size, nature, and character of the building and/or structure to be utilized for the roadside stand;
- The type and kind of produce and goods to be sold at the roadside stand;
- The proximity of the roadside stand to adjoining properties;
- The time and/or season during which the roadside stand will operate;
- The parking facilities provided for the roadside stand;
- Any traffic congestion or hazards which would result from the roadside stand; and
- The effect of the roadside stand on adjoining properties and the surrounding neighborhood.

5. Campgrounds when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:

- The location of the proposed campground in respect to whether the land is presently being utilized or is capable of being utilized or is capable of being used for the production of agricultural crops;
- The location of the proposed campground in respect to whether it could interfere with or substantially hinder any existing or potential future farming operations or activity within the immediate area;

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- The present and future ability of the township and county to provide adequate vehicular access, public safety and other necessary public services to the proposed campgrounds;
- Campgrounds shall not be located closer than one thousand (1,000) feet from an area zoned as an R-1 Low-Density Residential District or R-2 Medium-Density Residential District.

6. Livestock operations when conducted under the following conditions:

- The minimum acreage for a livestock operation shall be 30 acres to allow for the necessary land to dispose of the resultant manure.
- The maximum number of animal units shall be 200. The number of animal units shall be computed by multiplying the number of animals by the following:

Type of Livestock	Multiplier
Feeder Cattle	1.0
Dairy Cattle	1.4
Swine under 25 kg	0.3
Swine over 25 kg	0.4
Sheep	0.1
Horses	2.0
Poultry	0.1
Other Livestock under 25 kg	0.4
Other Livestock over 25 kg	0.5

- The Planning Commission, before approving such operation, shall consider the proposed use, location with respect to existing and proposed development in the area, the Village's Master Plan designation for this area, and the total amount of land involved.

**SECTION 4.4. REQUIRED CONDITIONS.**

For all nonresidential uses allowed in the district, the setbacks shall equal the height of the main building, or the setbacks required in Article 19, whichever is greater.

**SECTION 4.5. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of lot permitted by land use, and providing minimum yard setback requirements.

**ARTICLE 5. A-2 GENERAL AGRICULTURAL DISTRICT**

**SECTION 5.1. INTENT.**

This zoning district is intended to allow areas around the Village to be retained in agriculture use; prevent scattered non-farm growth; preserve woodlands and wildlife areas, and retain open space in its natural state. The requirements of the district are designed so as to prevent unwarranted premature urban development from encroaching upon legitimate agricultural areas, thus disrupting the agriculture resources, environment, and economy. It is essential that development in areas which are predominately agricultural be based on sound principles which realize the importance of such activities to the economy and welfare of the Village.

**SECTION 5.2. PRINCIPAL USES PERMITTED.**

Land buildings, and structures in this zoning district may be used for the following purposes only:

Farms for both general and specialized crop farming, together with a farm dwelling and buildings and other installations necessary to such farms including temporary housing for migratory workers provided such housing and its sanitary facilities are in conformance with all requirements of the Vermilion County Health Department and/or any other federal, state and/or local regulating agency having jurisdiction.

Greenhouses, nurseries, orchards, vineyards, apiaries, and blueberry farms.

Riding stables, where horses are boarded and/or rented.

Livestock Operations when conducted on a minimum of 30 acres with a total of no more than 200 animal units. The number of animal units shall be computed by multiplying the number of animals by the following:

Type of Livestock	Multiplier
Feeder Cattle	1.0
Dairy Cattle	1.4
Swine under 25 kg	0.3
Swine over 25 kg	0.4
Sheep	0.1
Horses	2.0
Poultry	0.1
Other Livestock under 25 kg	0.4
Other Livestock over 25 kg	0.5

Single family residential dwelling units when associated with an agricultural operation, subject to lot size requirements in Article 19.

**SECTION 5.3. SPECIAL USES.**

The following Special Uses shall be permitted, subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 5/11-13-1.1 Illinois State Bar Edition 1998, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

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1. Home occupations in accordance with Section 15.15 when authorized as a special use by the Planning Commission. In consideration of such authorization, the Planning Commission shall consider the following standards:
  - The nature of the home occupation;
  - The effect of the home occupation of the surrounding neighborhoods;
  - The environmental effects of the home occupation;
  - The nature of the surrounding neighborhood;
  - Potential traffic congestion as a result of the home occupation; and
  - Provision for parking for traffic or clientele which may result from the operation of the home occupation.
- Other features that may impact surrounding land use.
  2. Removal and processing of topsoil, sand, gravel, or other such minerals.
  3. Kennels.
  4. Roadside stands when authorized as special uses by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:
    - The proposed location of the roadside stand;
    - The size, nature, and character of the building and/or structure to be utilized for the roadside stand;
    - The type and kind of produce and goods to be sold at the roadside stand;
    - The proximity of the roadside stand to adjoining properties;
    - The time and/or season during which the roadside stand will operate;
    - The parking facilities provided for the roadside stand;
    - Any traffic congestion or hazards which would result from the roadside stand; and
    - The effect of the roadside stand on adjoining properties and the surrounding neighborhood.
  5. Campgrounds when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:
    - The location of the proposed campground in respect to whether the land is presently being utilized or is capable of being utilized or is capable of being used for the production of agricultural crops;

- The location of the proposed campground in respect to whether it could interfere with or substantially hinder any existing or potential future farming operations or activity within the immediate area;
- The present and future ability of the township and county to provide adequate vehicular access, public safety and other necessary public services to the proposed campgrounds;
- Campgrounds shall not be located closer than one thousand (1,000) feet from an area zoned as an R-1 Low-Density Residential District or R-2 Medium Density Residential District.

6. Livestock operations when conducted under the following conditions:

- The minimum acreage for a livestock operation shall be 40 acres to allow for the necessary land to dispose of the resultant manure.
- The number of animal units shall be less than 1000. The number of animal units shall be computed by multiplying the number of animals by the following:

Type of Livestock	Multiplier
Feeder Cattle	1.0
Dairy Cattle	1.4
Swine under 25 kg	0.3
Swine over 25 kg	0.4
Sheep	0.1
Horses	2.0
Poultry	0.1
Other Livestock under 25 kg	0.4
Other Livestock over 25 kg	0.5

- The Planning Commission, before approving such operation, shall consider the proposed use, location with respect to existing and proposed development in the area, the Village’s Master Plan designation for this area, and the total amount of land involved.

7. Confined Animal Feeding Operations as defined under the federal Clean Water Act and subject to all federal, state and county regulations.

8. Adult entertainment uses as defined by this Ordinance, when not located within 500 feet from any other adult entertainment use and when not located within 500 feet of any “R” district.

**SECTION 5.4. REQUIRED CONDITIONS.**

For all nonresidential uses allowed in the district, the setbacks shall equal the height of the main building, or the setbacks required in Article 19, whichever is greater.

**SECTION 5.5. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of lot permitted by land use, and providing minimum yard setback requirements.

**ARTICLE 6. R-1, LOW-DENSITY RESIDENTIAL DISTRICT**

**SECTION 6.1. INTENT.**

The R-1 Low-Density Residential District is established as districts in which the principal use of land is for large lot, one-family dwellings and compatible agricultural uses in areas where public water and wastewater infrastructure is not available or planned. For the R-1 Low-Density Residential District, in promoting the general purpose of this Ordinance, the specific intent is:

1. To allow the construction of one-family dwellings and compatible agricultural uses.
2. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this Ordinance.
3. To discourage any use which, because of its character or size, would create requirements and costs for public services, such as police protection, water supply and sewerage.

**SECTION 6.2. PRINCIPAL USES PERMITTED.**

In a Low-Density Residential District, no building or land shall be used and no building shall be erected except for one or more of the following specified uses unless otherwise provided in this Ordinance:

1. Farms for both general and specialized crop farming, together with a farm dwelling and buildings and other installations necessary to such farms including temporary housing for migratory workers provided such housing and its sanitary facilities are in conformance with all requirements of the Vermilion County Health Department and/or any other federal, state and/or local regulating agency having jurisdiction.
2. Greenhouses, nurseries, orchards, vineyards, apiaries, and blueberry farms.
3. Riding stables, where horses are boarded and/or rented.
4. Single family residential dwelling units, subject to lot size requirements in Article 19.
5. Bed and breakfast operations in accordance with Section 15.16.

**SECTION 6.3. SPECIAL USES.**

The following Special Uses shall be permitted, subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 5/11-13-1.1 Illinois State Bar Edition 1998, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

1. Churches and other facilities normally incidental thereto subject to the following conditions:
  - a. The principal buildings on the site shall be set back from abutting properties zoned for residential use not less than fifteen (15) feet.
  - b. Buildings of greater than the maximum height allowed in Article 19, Schedule of Regulations may be allowed provided front, side, and rear yards are increased above the minimum required yards by one (1) foot for each foot of building height that exceeds the maximum height allowed.

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2. Public utility buildings and uses (without storage yards) when operating requirements necessitate the locating of said building within the district in order to serve the immediate vicinity. Further, no building and/or structure shall be located in any required yard.
3. Day care centers including adult day care use (not including dormitories) provided that for each person so cared for, there shall be provided and maintained a minimum of one hundred fifty (150) square feet of open space. Such space shall have a total minimum area of not less than five thousand (5,000) square feet and shall be fenced and screened from any adjoining lot in any residential district.
4. Home occupations in accordance with Section 15.15 when authorized as a special use by the Planning Commission. In consideration of such authorization, the Planning Commission shall consider the following standards.
  1. The nature of the home occupation;
  2. The effect of the home occupation of the surrounding neighborhoods;
  3. The environmental effects of the home occupation;
  4. The nature of the surrounding neighborhood;
  5. Potential traffic congestion as a result of the home occupation; and
  6. Provision for parking for traffic or clientele which may result from the operation of the home occupation.
  7. Other features that may impact surrounding land use.
5. Any other use which is determined by the Planning Commission to be of the same general character as, and compatible with, the above permitted uses.

**SECTION 6.4. REQUIRED CONDITIONS.**

For all nonresidential uses allowed in the residential districts, the setbacks shall equal the height of the main building, or the setbacks required in Article 19, whichever is greater.

**SECTION 6.5. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of lot permitted by land use, and providing minimum yard setback requirements.

**ARTICLE 7. R-2, MEDIUM-DENSITY RESIDENTIAL DISTRICT**

**SECTION 7.1. INTENT.**

The Medium-Density Residential District is established as a district in which the principal use of land is for one-family dwellings. For the Medium-Density Residential District, in promoting the general purpose of this Ordinance, the specific intent is:

1. To encourage the construction of, and the continued use of the land for one-family dwellings.
2. To prohibit business, commercial or industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of one-family dwellings in the district.
3. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this Ordinance.
4. To discourage any land use which would generate traffic on minor or local streets other than normal traffic to serve the residences on those streets.
5. To discourage any use which, because of its character or size, would create requirements and costs for public services, such as fire and police protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for one-family dwellings.

**SECTION 7.2. PRINCIPAL USES PERMITTED.**

In the Medium-Density Residential District, no building or land shall be used and no building shall be erected except for one or more of the following specified uses unless otherwise provided in this Ordinance:

1. One-family and two-family detached dwellings, occupied by a single family, as defined in this Ordinance.
2. Publicly owned and operated parks, parkways and recreational facilities.
3. Cemeteries which lawfully occupied land at the time of adoption of this Ordinance.
4. Public, parochial and other private schools offering courses in general education and not operated for profit.
5. Bed and breakfast operations in accordance with Section 15.16.

**SECTION 7.3. SPECIAL USES.**

The following Special Uses shall be permitted, subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 5/11-13-1.1 Illinois State Bar Edition 1998, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

1. Churches and other facilities normally incidental thereto subject to the following conditions:
  - a. The principal buildings on the site shall be set back from abutting properties zoned for residential use not less than fifteen (15) feet.

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- b. Buildings of greater than the maximum height allowed in Article 19, Schedule of Regulations may be allowed provided front, side, and rear yards are increased above the minimum required yards by one (1) foot for each foot of building height that exceeds the maximum height allowed.
2. Public utility buildings and uses (without storage yards) when operating requirements necessitate the locating of said building within the district in order to serve the immediate vicinity. Further, no building and/or structure shall be located in any required yard.
3. Multi-family residential dwelling units when authorized as a special use by the Planning Commission. In consideration of such authorization, the Planning Commission shall consider the following standards.
  1. Access to public roadways;
  2. The effect of the traffic generated on the surrounding neighborhoods;
  3. The environmental effects of the development;
  4. Access to public water and wastewater supply;
4. Day care centers including adult day care use (not including dormitories) provided that for each person so cared for, there shall be provided and maintained a minimum of one hundred fifty (150) square feet of open space. Such space shall have a total minimum area of not less than five thousand (5,000) square feet and shall be fenced and screened from any adjoining lot in any residential district.
5. Home occupations in accordance with Section 15.15 when authorized as a special use by the Planning Commission. In consideration of such authorization, the Planning Commission shall consider the following standards.
  1. The nature of the home occupation;
  2. The effect of the home occupation of the surrounding neighborhoods;
  3. The environmental effects of the home occupation;
  4. The nature of the surrounding neighborhood;
  5. Potential traffic congestion as a result of the home occupation; and
  6. Provision for parking for traffic or clientele which may result from the operation of the home occupation.
  7. Other features that may impact surrounding land use.
6. Any other use which is determined by the Planning Commission to be of the same general character as, and compatible with, the above permitted uses.

**SECTION 7.4. REQUIRED CONDITIONS.**

For all nonresidential uses allowed in the residential districts, the setbacks shall equal the height of the main building, or the setbacks required in Article 19, whichever is greater.

**SECTION 7.5. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of lot permitted by land use, and providing minimum yard setback requirements.

**ARTICLE 8. (RESERVED)**

**ARTICLE 9. (RESERVED)**

**ARTICLE 10. C-1, CENTRAL BUSINESS DISTRICT**

**SECTION 10.1. INTENT.**

The C-1, Central Business District, is designed to cater to the needs of the local consumer population. It is generally characterized by an integrated cluster of establishments serviced by common parking areas, and generating pedestrian traffic and ancillary vehicular trips.

**SECTION 10.2. PRINCIPAL USES PERMITTED.**

In the Central Business District, no building or land shall be used and no building shall be erected except for one or more of the following specified uses unless otherwise provided in this Ordinance:

1. Office-type business related to executive, administrative, or professional occupations including, but not limited to, offices of a lawyer, accountant, insurance/real estate agent, architect, engineer, and similar occupation.
2. Clinics, except veterinary clinics having outdoor runs.
3. Medical, dental, and optical laboratories that provide testing services or provide medical or dental devices such as artificial limbs, teeth, eye glasses, etc.
4. Banks, credit unions, savings and loan associations, and similar uses.
5. Business service establishments such as typing services, photocopying services; quick-printing establishments, office supply stores, and similar establishments.
6. Any retail business whose principal activity is the sale of merchandise in an enclosed building, such as but not limited to: groceries, meats, dairy products, baked goods or other foods, drugs, dry goods, clothing and notions or hardware.
7. Personal service establishments which perform services on the premises, such as but not limited to: repair shops (watches, radio, television, shoe and etc.), tailor shops, beauty parlors or barber shops, photographic studios, and self-service laundries and dry-cleaners.
8. Standard or carry-out restaurants.
9. Post office buildings.
10. Health and athletic clubs.
11. Any service establishment of an office, showroom or workshop nature of an electrician, decorator, dressmaker, tailor, baker, painter, upholsterer or an establishment doing radio or home appliance repair, photographic reproduction, and similar service establishments that require a retail adjunct.
12. Governmental administration buildings, museums, and libraries.

**SECTION 10.3. SPECIAL USES.**

The following Special Uses shall be permitted subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 1998 Illinois State Bar Edition, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

1. Residential units when the following conditions are met:
  - a. The dwelling unit(s) shall be provided on any floor other than a floor where grade level access is provided.
  - b. The minimum floor area per unit shall equal five hundred (500) square feet for a one bedroom unit, seven hundred (700) square feet for a two bedroom unit, nine hundred (900) square feet for a three bedroom unit, and one thousand one hundred (1,100) square feet for units containing four bedrooms.
  - c. Off-street parking shall be provided in the ratio of one (1) parking spaces for each residential unit provided.
2. Any other use which is determined by the Planning Commission to be of the same general character as, and compatible with, the above permitted uses.

**SECTION 10.4. REQUIRED CONDITIONS.**

Outdoor storage of commodities shall be expressly prohibited.

**SECTION 10.5. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements.

**ARTICLE 11. C-2, SERVICE/BUSINESS DISTRICT**

**SECTION 11.1. INTENT.**

The C-2, Service/Business District is designed to provide sites for more diversified business types which would often be incompatible with the pedestrian movement in the Central Business District and which are oriented to serving the needs of "passer-by" traffic and locations for planned shopping centers. Many of the business types permitted also generate greater volumes of traffic and activities that must be specially considered to minimize adverse effects on adjacent properties.

**SECTION 11.2. PRINCIPAL USES PERMITTED.**

In a Service/Business District, no building or land shall be used and no building shall be erected except for one or more of the following uses unless otherwise provided in this Ordinance:

1. Any retail business whose principal activity is the sale of merchandise in an enclosed building, such as but not limited to: groceries, meats, dairy products, baked goods or other foods, drugs, dry goods, clothing and notions or hardware.
2. Dry cleaning establishments or pick-up stations, dealing directly with the consumer. Central dry cleaning plants serving more than one retail outlet shall be prohibited.
3. Standard or carry-out restaurants.
4. Private clubs, fraternal organizations, and lodge halls.
5. Overnight lodging facility, subject to the following.
  - a. Access shall be provided so as not to conflict with the adjacent business uses or adversely affect traffic flow on a major thoroughfare.
  - b. Each unit shall contain not less than two hundred fifty (250) square feet of floor area.
  - c. No guest shall establish permanent residence at a motel for more than thirty (30) consecutive days within any calendar year.
6. Bowling alley, billiard hall, indoor archery range, indoor tennis courts, indoor skating rink, or similar forms of indoor commercial recreation when located at least one hundred (100) feet from any front, rear or side yard of any residential lot in an adjacent residential district.

Arcades as defined and permitted by all municipal regulations shall only be permitted in this district as accessory use to any of the above permitted in this item 4. Any such use shall only be accessible and directly supervised from within the building and shall not in any manner constitute a principal use of the premises.
7. Plant material nursery and other open air business uses.

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8. Automotive service facilities providing: tire (but not recapping), battery, muffler, rust proofing/undercoating, auto glass, reupholstering, wheel balancing, shock absorbers, wheel alignments, and minor motor tune-ups only, when developed in accordance with the following:
  - a. There shall be no outside display of any parts and/or products.
  - b. Any repair and/or replacement activity shall be conducted within a totally enclosed building.
  - c. All new, used, and/or discarded parts shall be stored within a completely enclosed building approved by the Building Department or other building official designated by the Village Board.
  - d. Any such activity shall be located not less than twenty-five (25) feet from a property line.
  - e. There shall be no outside parking and/or storage or any partially dismantled or inoperative vehicles.
  - f. In operations such as automobile reconditioning, but not necessarily limited to, such activities there shall be no releasing of toxic gases, liquids, or materials in any form into the atmosphere, the water or sewer systems of the Village of Bismarck or on, or into the earth and further, no adverse affects shall be created by any activity on adjacent property or development.
9. Bank, credit unions, savings and loan associations, and similar uses including those offering drive-through facilities.
10. Veterinary hospitals and clinics having boarding facilities.
11. Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
12. New and used car salesrooms, showrooms, and offices.

**SECTION 11.3. SPECIAL USES.**

The following Special Uses shall be permitted subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 5/11-13-1.1 Illinois State Bar Edition 1998, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

1. Vehicle dealers with outdoor sales space and/or repair facilities for the sale of new or secondhand automobiles, house trailers, recreational vehicles, or rental trailers and/or automobiles, all subject to the following:
  - a. The lot or area shall be provided with a permanent, durable and dustless surface, and shall be graded and drained as to dispose of all surface water accumulated within the area.
  - b. Access to the outdoor sales area shall be at least sixty (60) feet from the intersection of any two (2) streets.
  - c. Any servicing of vehicles including major motor repair and refinishing shall be subject to the following requirements:
    - (1) Any such activities shall be clearly incidental to the sale of said vehicles and shall occur within a completely enclosed building.

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- (2) Partially dismantled and/or damaged vehicles shall be stored within an enclosed building.
      - (3) New, used and/or discarded parts and supplies shall be stored within a completely enclosed building.
      - (4) Any such activity shall be located not less than fifty (50) feet from any property line.
      - (5) There shall be no external evidence, beyond the building, by way of dust, odor, or noise of such activities.
    - d. All lighting shall be shielded from adjacent residential districts.
2. Business in the character of a open front store or, a fast food or drive-in restaurant subject to following conditions:
  - a. A setback of at least sixty (60) feet from the right-of-way line of any existing or proposed street must be maintained.
  - b. Access points shall be located at least sixty (60) feet from the intersection of any two (2) streets.
  - c. All lighting shall be shielded from adjacent residential districts.
  - d. A six (6) foot high completely obscuring wall shall be provided when abutting or adjacent districts are zoned for R-1 Low-Density Residential District, R-2 Medium-Density Residential District, and a C-1 Central Business District. The height of the wall shall be measured from the surface of the ground. Said wall shall further meet the requirements of Section 15.22, General Provisions.
3. Gasoline service station for the sale of gasoline, oil and minor accessories only, and repair work but not including vehicle body repair, painting, tire recapping, engine rebuilding, auto dismantling, and such other activities whose external effects could adversely extend beyond the property line, subject to the following conditions:
  - a. The curb cuts for access to a service station shall not be permitted at such locations that will tend to create traffic hazards in the streets immediately adjacent thereto. Entrances shall be no less than twenty-five (25) feet from a street intersection (measured from the road right-of-way) or from adjacent residential districts.
  - b. The minimum lot area shall be fifteen thousand (15,000) square feet, and so arranged that ample space is available for motor vehicles which are required to wait. Gasoline service stations which are intended solely for the sale of gasoline, oil and minor accessories and have no facilities for repair or servicing or automobiles (including lubricating facilities) may be permitted on lots of ten thousand (10,000) square feet, subject to all other provisions herein required.
  - c. The view of all rest room doors shall be shielded from adjacent streets and residential districts.
  - d. Tow trucks (wreckers) and vehicles under repair shall not be permitted in the front yard.
  - e. The parking of vehicles on site shall be limited to those which may be serviced within a twenty-four (24) hour period.
  - f. A ten (10) foot landscaped greenbelt shall be provided along all street frontages.
4. Any other use which is determined by the Planning Commission to be of the same general character as, and compatible with, the above permitted uses.

**SECTION 11.4. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of the lot by permitted land use, and providing minimum yard setback requirements.

**ARTICLE 12. (RESERVED)**

**ARTICLE 13. I-1, RESEARCH/INDUSTRIAL DISTRICT**

**SECTION 13.1. INTENT.**

The I-1 Research/Industrial District is designed so as to accommodate industrial activities and research uses whose external and physical effects are not intensive, and detrimental to the community and its public infrastructure. I-1 Research/Industrial Uses are restricted to the area of the district and shall in no manner affect in a detrimental way any of the surrounding districts.

The general goals of this use district include, among others, the following specific purposes:

1. To provide sufficient space, in appropriate locations, to meet the needs of the Municipality's expected future economy for additional research/industrial and related uses.
2. To protect abutting residential districts by separating them from research/industrial activities, and by prohibiting the use of such research/industrial areas for new residential development.
3. To promote development which is free from danger of fire, explosions, toxic and noxious matter, radiation, and other hazards, and from offensive noise, vibration, smoke, odor and other objectionable influences.
4. To protect the most desirable use of land in accordance with a well considered plan. To protect the character and established pattern of adjacent development, and in each area to conserve the value of land and buildings and other structures, and to protect the Municipality's tax revenue.

**SECTION 13.2. PRINCIPAL USES PERMITTED.**

In a Research/Industrial District, no building or land shall be used and no building shall be erected except for one or more of the following specified uses unless otherwise provided in this Ordinance:

1. Any use charged with the principal function of basic research, design and pilot or experimental product development when conducted within a completely enclosed building.

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2. Retail uses which have an industrial character in terms of either their outdoor storage requirements or activities (such as, but not limited to, lumber yard, building materials outlet, upholsterer, cabinet maker).
3. Laboratories - experimental, film, or testing.

**SECTION 13.3. SPECIAL USES.**

The following Special Uses shall be permitted subject to the conditions hereinafter required for each use, subject to any and all reasonable conditions which may be imposed in accordance with 65 ILCS 5/11-13-1.1 Illinois State Bar Edition 1998, as may be amended, and further subject to the review and approval by the Planning Commission and Village Board as specified in Section 16.2, "Review and Approval of Special Uses," and Section 16.1, "Review and Approval of Site Plan," of this Ordinance.

1. Mini-warehouses (self-storage facilities) subject to the following conditions:
  - a. The minimum size of the site devoted to such use shall not be less than three (3) acres.
  - b. Building setbacks shall be as follows: Front yard not less than twenty (20) feet; side and rear yard not less than ten (10) feet.
  - c. Building separation between self-storage buildings on the same site shall be fifteen (15) feet, as measured from side-to-side or front to rear, or equal to the building height, whichever is greater.
    - d. The total lot coverage of all structures shall be limited to fifty (50) percent of the total lot area.
  - e. A sight-proof barrier shall be provided around the perimeter of the development. Said barrier shall be located at the setback line and may consist of either the solid facades of the storage structures or a fence. If a fence is provided, it shall be a minimum of six (6) feet in height and shall be constructed of brick, stone, masonry units, or wood products which are determined by the Village to be durable and weather resistant.
  - f. A ten (10) feet landscaped greenbelt shall be provided between the property line and required barrier along all street frontages. A five (5) foot landscaped greenbelt shall be provided between the property line and barrier where the site abuts any residential district. All materials shall be planted in conformance with Section 15.20.
  - g. Parking shall be provided in the ratio of one (1) space for each two thousand (2,000) square feet of gross building area. At a minimum, two (2) parking spaces must be assigned to, and located conveniently to, each individual storage building. In addition, two (2) spaces for the resident manager, and one (1) additional space for each additional employee shall be provided adjacent to the rental office.
  - h. Internal driveway aisles shall be a minimum of twenty-four (24) feet in width.
  - i. All off-street parking areas and driveways shall be hard surfaced and drained in accordance with Section 15.8.
  - j. All ingress and egress from this site shall be directly onto a collector or major thoroughfare as identified on the Village's Master Plan.
  - k. Building height shall not exceed one (1) story fifteen (15) feet except that a caretaker or resident manager's unit may be allowed a building height of two (2) stories twenty-five (25) feet.
  - l. No single storage building shall exceed five thousand (5,000) square feet.
  - m. All storage on the property shall be kept within an enclosed building.

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- n. The use of the premises shall be limited to storage only, and shall not be used for any auction, or sales, or storage and transfer business; for the servicing, repair, or fabrication of any vehicle, boat, trailer, appliance, or similar item; or for the operation of power tools, compressors, kilns, or similar equipment; except, that limited sales to tenants of products and supplies incidental to the principal use, such as packing materials, identification labels, rope, locks, tape, etc., shall be permitted on the site devoted to this use. The storage of combustible or flammable liquids, combustible fibers or explosive materials, as defined in applicable fire protection code(s), or toxic materials are expressly prohibited.
- 2. Any other use which is determined by the Planning Commission to be of the same general character as, and compatible with, the above permitted uses.

**SECTION 13.4. REQUIRED CONDITION**

- 1. Open storage facilities shall be totally obscured by a wall on those sides abutting R-1 Low-Density Residential District, R-2 Medium-Density Residential District, a C-1 Central Business District Districts, and on any front yard abutting a public thoroughfare except as otherwise provided in Section 15.7. In I-1 Districts, the extent of such a wall may be determined by the Planning Commission on the basis of usage. Such a wall shall not be less than four feet six inches (4'-6") in height and may, depending upon land usage, be required to be eight (8) feet in height, and shall be subject further to the requirements of Section 15.22, General Provisions. The height shall be determined in the same manner as the wall height is above set forth.
- 2. All activities and uses within the District shall conform to the following performance standards.
  - a. **Smoke**

A person or industry shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant that exceeds existing federal and/or state standards and statutes regulating such emissions.
  - b. **Open Fires**

A person or industry shall not burn any combustible refuse in any open outdoor fire within the District.
  - c. **Noxious Gases**

No noxious or malodorous gases shall be allowed to escape into the atmosphere in concentrations which are offensive, which produces a public nuisance or hazard on any adjoining lot or property, or which could be detrimental to human, plant, or animal life.
  - d. **Air Contaminants**

A person or industry shall not discharge from any source whatsoever such quantities of air contaminants or other material that exceed existing federal and/or state standards and statutes regulating such air discharges.
  - e. **Glare and Heat**

Any operation or activity producing glare shall be so conducted that direct and indirect illumination from the source of light shall not cause illumination in excess of one-half (0.5) of one (1) foot candle when measured at any adjoining residence or business district boundary line. Flickering or intense source of light shall be so controlled as not to cause a nuisance across any lot lines.

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If heat is a result of an industrial operation, it shall be so insulated as to not raise the temperature at any property line at any time.

f. Noise

No activity shall emit noise in excess of the standards specified in Section 15.26.

g. Vibration

Vibrations from industrial operations and vehicular traffic in this district must be controlled to the extent that they cannot be felt past any property line.

h. Radio Transmission

For electronic equipment required in an industrial operation, the equipment shall be so shielded that its operation will not interfere with radio, television, or other electronic equipment.

i. Storage of Flammable Materials

Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire-fighting and fire suppression equipment and such safety devices as are normally used in the handling of any such material. Such hazards shall be kept removed from adjacent activities to a distance which is compatible with the potential danger involved.

j. Radioactive Materials

No activity shall emit dangerous radioactivity at any point, or unreasonable electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.

k. Water Pollution

Pollution of water shall be subject to such requirements and regulations as are established by the Village of Bismarck, Vermilion County Health Department, the Illinois State Department of Health, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency, and the U.S. Environmental Protection Agency. All discharges into public sewers shall be in accordance all applicable local, state, and federal regulations.

**SECTION 13.5. AREA AND SIZE REQUIREMENTS.**

See Article 19, Schedule of Regulations limiting the height and size of buildings, the minimum size of lot by permitted land use and providing minimum yard setback requirements.

**ARTICLE 14. (RESERVED)**

## **ARTICLE 15. GENERAL PROVISIONS**

### **SECTION 15.1. CONFLICTING REGULATIONS.**

Whenever any provision of this Ordinance imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by the provisions of any other law or ordinance, then the provisions of this Ordinance shall govern. Whenever the provisions of any other law or ordinance impose more stringent requirements than are imposed or required by this Ordinance, then the provisions of such law or ordinance shall govern.

### **SECTION 15.2. BUILDING REGULATIONS.**

#### **1. Scope**

No building or structure, or part thereof, shall hereafter be erected, constructed, used, reconstructed, altered or maintained, and no lot or land, or part thereof, shall hereafter be used or maintained and no new use made of any building, structure or land, or part thereof, except in conformity with the provisions of this Ordinance.

#### **2. Unlawful Building**

In case any building, or part thereof, is used, erected, occupied or altered contrary to law or the provisions of this Ordinance, such building shall be deemed an unlawful structure and a nuisance and may be required to be vacated, torn down or abated by any legal means, and shall not be used or occupied until it has been made to conform to the provisions of this Ordinance. Public expenditures toward abating such nuisance shall become a lien upon the land.

#### **3. Temporary Building**

No temporary building shall be erected unless a valid building permit exists for a permanent building or a new use of land on the same site. Any temporary building shall be removed from the site within thirty (30) days of issuance of a certificate of occupancy. The approval of a temporary building may not exceed one (1) year; however, the Planning Commission, may grant multiple extensions up to three (3) months each for good cause shown, when the approval is due to expire.

#### **4. Building Occupancy**

No basement shall be used or occupied as a dwelling unit at any time, nor shall a dwelling be erected in a nonresidential district, except for the living quarters of a watchman, caretaker, or resident manager.

#### **5. Frontage on a Public Street**

No building shall be erected on a lot unless said lot fronts upon a street or road that has been dedicated to the public. Multi-family developments, or commercial, office, or industrial centers need not front each such structure within the development upon publicly dedicated streets or roads, provided that adequate interior vehicular circulation and access can be assured in a site plan submitted for approval to the Village.

#### **6. One Lot, One Building**

In all districts, only one (1) principal building shall be placed on a single lot of record, except as provided by Section 15.2.

**SECTION 15.3. STRUCTURE COMPLETION AND PERSONAL CONSTRUCTION AUTHORITY.**

**1. Building Completion Period**

All structures shall be completed within one (1) year of the issue date of the building permit for such structure, unless an extension for not more than one (1) additional year is granted for good cause by the Village. When a part of the building is ready for occupancy, a temporary occupancy permit may be issued, provided that the premises complies with health and fire standards required under this Ordinance, or any other ordinance, regulation, or statute.

**2. Personal Construction Authority**

Nothing in this Ordinance shall be construed as prohibiting an owner, tenant, occupant, or land contract vendee from doing his or her own building, altering, plumbing, electrical installations, etc., provided building permits are obtained and complied with and provided the minimum requirements of the Electrical and Plumbing Codes of the State of Illinois, and the applicable County Health Department regulations are complied with.

**SECTION 15.4. NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, AND NONCONFORMING USES OF STRUCTURES AND PREMISES.**

**1. Intent**

It is the intent of this Ordinance to permit existing, legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival.

It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures, and use of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments.

Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. 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.

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

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 and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in a permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

**2. Nonconforming Lots**

In any One-Family Residential District, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record which is under separate and distinct ownership from adjacent lots at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Yard requirement variances may be sought through approval of the Planning Commission.

**3. Nonconforming Uses of Land**

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- a. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
- b. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.
- c. If such nonconforming use of land ceases for any reason for a period of more than six (6) months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for this district in which such land is located.

**4. Nonconforming Structures**

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No such structure may be enlarged or altered in a way which increases its nonconformity. For example, existing residences on lots of a width less than required herein may add a rear porch provided that other requirements relative to yard space and land coverage are met.
- b. Should such structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost, exclusive of the foundation at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance, however, this provision shall not apply to single-family and two-family residential structures.
- c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for this district in which it is located after it is removed.

**5. Nonconforming Uses of Structures and Land**

If a lawful use of a structure, or of structure and land in combination exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

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- b. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- c. If no structural alterations are made, any nonconforming use of a structure, or structure and land in combination, may be changed to another nonconforming use of the same or more restricted classification provided that the Planning Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a nonconforming use of a structure, land, or structure and land in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
- d. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
- e. When a nonconforming use of structure, or structure and premises in combination, is discontinued or ceases to exist for six (6) consecutive months or 18 months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located. Structures occupied by seasonal uses (one season out of each year) shall be excepted from this provision.
- f. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

**6. Repairs and Maintenance**

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty percent (50%) of the assessed value of the building provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**7. Special Use Interpretation**

Any special use as provided for in this Ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such district.

**8. Change of Tenancy or Ownership**

There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structures and premises provided there is no change in the nature or character of such nonconforming uses.

**9. Acquisition**

The Village Board may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses. The cost and expense, or a portion thereof, of acquiring the private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in cities. The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The Village Board may institute and prosecute proceedings for condemnation of nonconforming uses and structures under the power of eminent domain in accordance with applicable state statutes.

**SECTION 15.5. ADAPTIVE REUSE PROJECTS.**

**1. Intent**

Typically, various land use activities are provided for in one or more zoning districts. The criteria for such allocations is based upon similarities in the nature of uses and their relationship to other such uses and adjoining development. Zoning districts are also established to coordinate with and provide for the effectuation of the Village's Master Plan.

The Village does, however, possess various existing specialized structures which have become functionally obsolete for their original purpose and whose redevelopment or conversion in conformance with the Village's Master Plan would be unnecessarily burdensome. It is therefore, the intent of this section to set forth the basic qualifying criteria, project classification, development standards, and submittal requirements necessary to provide for the adaptive reuse of eligible properties within the Village to support the local economic and employment base without adversely affecting the public health, safety, and welfare of the Village as a whole.

**2. Qualifying Criteria**

- a. The Village Board shall approve the adaptive reuse of nonresidential buildings and uses. In qualifying a site for adaptive reuse, the Village Board shall find the following conditions to exist:
  - (1) The subject site is zoned in compliance with the Village's Master Plan;
  - (2) The use can no longer be reasonably continued for its existing purpose by reason of market conditions or operational constraints (i.e., limited site size, floor area deficiencies, parking or loading area, etc.)
  - (3) Site redevelopment in accordance with local development codes would be unnecessarily burdensome by reason of ordinance compliance (restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot) or cost; and,
  - (4) The subject site has frontage on, or direct access to, an improved major or secondary thoroughfare.
- b. The Village Board may not grant adaptive reuse status to any property whose principal structures are found to be destroyed by any means to the extent of more than fifty (50) percent of its replacement cost. Any subsequent use of such land shall conform to the regulations of the zoning district in which it is located.

**3. Data Required**

- a. Application for adaptive reuse project as provided under the provisions of this Ordinance shall be made to the Village Clerk by filing an application form; submitting required data, exhibits, and information; and depositing the required fee as established by resolution of the Village Board, and as may be amended from time-to-time. No portion of such fee shall be reimbursable to the applicant.
- b. An application shall contain the following:
  - (1) Applicant's name, address, and telephone number.
  - (2) Address and tax description number of the subject parcel.
  - (3) A signed statement that the applicant is the owner of the subject parcel, or is acting as the owner's representative.

- (4) A certified survey drawing of the subject parcel.
- (5) Supporting statements, evidence, data, information and exhibits which address those qualifying criteria for assessing special use permit applications outlined in Section 2 above.

**4. Public Hearing Requirements**

- a. Upon receipt of an application for an adaptive reuse project, the Planning Commission shall hold a public hearing, one (1) notice of which shall be published not less than fifteen (15) nor more than thirty (30) days prior to the public hearing date in a newspaper of general circulation in the Village and sent by first class mail to the owners of the property for which an adaptive reuse project is being considered, to the owners of record of all real property and to the occupants of all structures located within 300 feet of the boundaries of the property in question. The notice shall:
  - (1) Describe the nature of the adaptive reuse request.
  - (2) Adequately describe the property in question.
  - (3) State the date, time, and place of the public hearing.
  - (4) Indicate when and where written comments concerning the request will be received.

**5. Project Classification**

- a. Upon holding a public hearing, the Planning Commission shall determine whether the qualifying criteria have been met as set forth in paragraph 2 above.

The Planning Commission shall within thirty (30) days of making such determination forward to the Village Board its finding and recommendation.
- b. The Village Board, upon receipt of the finding, may table action for purposes of further study or gaining additional information; deny the application for adaptive reuse upon finding that the criteria have not been met, or approve the application for adaptive reuse upon finding that the qualifying criteria have been met.
- c. If the applicant for adaptive reuse is approved, the Village Board shall designate the applicant's property as either a Class I or Class II site.
  - (1) Class I sites permit the conversion of institutional or business uses in residential zones. Properties may be redeveloped/ converted to offices, multi-family developments, care facilities and similar uses deemed no more objectionable than the aforementioned uses.
  - (2) Class II sites permit the conversion of industrial uses in residential or commercial zones. Properties may be redeveloped/ converted to any Class I purpose, business uses, as well as less intensive industrial development in areas zoned for business.

**6. Development Standards**

- a. In areas meeting the above criteria, development standards may be modified by the Planning Commission upon finding adequate evidence that the proposed use:

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- (1) Will be compatibly designed, constructed, and maintained with the existing and intended character of the vicinity;
  - (2) Will not be hazardous or disturbing to existing or future neighboring uses;
  - (3) Will be served adequately by essential public services and facilities or the agencies responsible for the establishment of the proposed use shall be able to adequately provide for such services; and,
  - (4) Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive smoke, fumes, glare, noise, vibration, or odor.
- b. The Planning Commission may require such additional safeguards as deemed necessary for the protection of the general welfare and for insuring individual property rights and for insuring that the intent and objectives of this Ordinance will be observed.
- 7. Site Plan Requirements**
- a. Site plan approval shall be required in accordance with Section 16.1 of this Ordinance and all applicable ordinances.
- (1) The Planning Commission may, at its discretion, concurrently review the site plan at the time of its review of qualifying criteria.

**SECTION 15.6. ACCESSORY BUILDINGS AND STRUCTURES.**

Accessory buildings or structures, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:

1. Where the accessory building is structurally attached to a main building it shall be subject to, and must conform to, all regulations of this Ordinance applicable to the main building.
  2. Accessory buildings and structures shall not be erected in any side yard nor in any front yard.
  3. An accessory building shall not occupy more than twenty-five (25) percent of a required rear yard.
  4. No detached accessory building shall be located closer than ten (10) feet to any main building nor shall any accessory building or structure be located closer than three (3) feet to any side or rear lot line.
  5. Height of Accessory Buildings
- a. Detached accessory buildings and structures in residential districts.
- (1) A detached accessory building or structure shall not exceed one (1) story or fifteen (15) feet in height.
  - (2) The vertical exterior surface of a building, not forming part of the roof, shall not exceed a height of nine (9) feet, measured from grade to the top plate of the wall.

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- b. Detached accessory buildings and structures in nonresidential districts.
- (1) Detached accessory buildings or structures in all nonresidential districts may be constructed to equal the permitted maximum building height in said districts, subject to Board of Zoning Appeals review and approval, if the building or structure exceeds one (1) story or fifteen (15) feet in height.
  - (2) When an accessory building is located on a corner lot, the lot line of which is substantially a continuation of the front lot line of the lot to its rear, said building shall not project beyond the front yard setback required on the lot to the rear of such corner lot.
  - (3) When an accessory building in excess of two hundred (200) square feet in any Residence, Business, or Commercial District is intended for other than the storage of private motor vehicles and other household items, the accessory use shall be subject to the approval of the Planning Commission.
  - (4) Household animal enclosures, dog runs, that could or are likely to produce noise, odors, and other nuisances, shall not be located in any side yard and shall be located in the rear yard only.

## **ARTICLE 16. REVIEW AND APPROVAL PROCEDURES**

### **SECTION 16.1. REVIEW AND APPROVAL OF SITE PLANS.**

#### **1. Application**

Prior to the establishment of a new use, change of use, addition to an existing use, or the erection of any building in a zoning district, subject to the conditions listed below, a site plan shall be submitted and approved, approved with conditions, or disapproved by the Planning Commission in accordance with the Ordinance requirements of this Article.

- a. Site Plan reviews are required for all permitted principal uses and structures in all zoning districts (except for the single-family detached dwellings and their accessory uses only when said uses are not within the 100 year flood plain, and non-residential farm buildings) and all conditional approval uses in all zoning districts.

#### **2. Copies Required**

Every site plan submitted to the Planning Commission shall be in accordance with the requirements of this Ordinance. Twelve (12) complete copies of all site plans shall be filed with the Village Clerk who shall place the request on the next Planning Commission agenda.

#### **3. Information Required**

The following information shall be included on the site plan:

- a. A scale of not less than 1" equals 50" if the subject property is less than three (3) acres and 1" equals 100" if three (3) acres or more.
- b. Date, north point and scale.
- c. The dimensions of all lot and property lines, showing the relationship of the subject property to abutting properties and buildings within one hundred (100) feet.
- d. Legal description of parcel.
- e. Existing and proposed topography with contours at two (2) foot intervals, (based on U.S.G.S. datum), extending a minimum of 100 feet beyond site boundaries.
- f. An inventory of existing vegetation on the site and an indication of any alterations.
- g. The location and nature of any streams, drains, swamps, marshes, and/or unstable soils.
- h. An indication of basic drainage patterns, existing and proposed, and including any structures, retention basins and fencing which are proposed. The applicant shall contact the Municipality and municipal engineer to determine the adequacy of utility and storm water proposals, slope and sod erosion requirements to determine if any such requirements will adversely affect the site plan.

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- i. A schedule of parking needs. Separate drawings may be submitted to indicate usable floor areas, etc., for computation of parking needs.
- j. A detailed planting plan and schedule of plant materials and sizes.
- k. Cross section drawings of any walls, berms, etc.
- l. The location and width of all existing and proposed sidewalks on or bordering the subject site. Where the subject site borders a public right-of-way, a concrete sidewalk five (5) feet in width shall be provided within the public right-of-way one foot from the subjects site's property line. If a sidewalk in good condition exists within the public right-of-way, the above requirement may be waived by the Village.
- m. The location of all existing and proposed structures of the subject property and all existing structures within one hundred (100) feet of the subject property. The setbacks to all existing and proposed structures to be retained or constructed on the site shall be indicated; this includes buildings, signs, trash storage areas, walls, fences, berms, parking areas, etc. The height of all proposed structures shall also be indicated.
- n. The location of all existing and proposed drives and parking areas.
- o. The location and right-of-way widths of all abutting streets and alleys.
- p. The names, addresses, and telephone numbers of the architect, planner, designer, engineer or person responsible for the preparation of the site plan. The site plan must be sealed by a licensed architect or engineer.
- q. The names, addresses and telephone numbers, of the developers.
- r. In addition to the above information, the applicant shall submit a supplementary explanation as to the specific type(s) of activities proposed. Such information shall include, but not be limited to:
  - (1) Estimated number of employees, resident shoppers, etc.
  - (2) Hours of operation.
  - (3) Any changes anticipated in terms of dust, odor, smoke, fumes, noise, lights, etc.
  - (4) Modifications to vegetative cover, drainage patterns, earth work, problem areas.
  - (5) Any ancillary improvements that the applicant proposes to remedy or prevent problems created by the development.
  - (6) Estimated costs of proposed landscaping berms, walls, acceleration-deceleration lanes, or bypass lanes or any other required site improvement not covered in the Building Permit cost estimates, shall be provided.

**4. Content of Site Plan File**

The site plan(s), all supplementary data, together with minutes of any meeting and/or hearings related to the proposed site plan shall become part of the official site plan file.

**5. Standards for Approval**

In the process of reviewing the site plan, the Planning Commission shall consider:

- a. Specific development requirements set forth in the Zoning Ordinance.
- b. The location and design of driveways providing vehicular ingress to and egress from the site, in relation to streets giving access to the site, and in relation to pedestrian traffic.
- c. The traffic circulation features within the site and location of automobile parking areas; and may make such requirements with respect to any matters as will assure:
  - (1) Safety and convenience of both vehicular and pedestrian traffic, both within the site and in relation to access streets.
  - (2) Satisfactory and harmonious relationships between the development on the site and the existing and prospective development of contiguous land and adjacent neighborhoods.
  - (3) Accessibility afforded to emergency vehicles.
- d. The arrangement of use areas on the site in relation to functional, efficient and compatible arrangements within the site and also to adjacent uses.
- e. The Planning Commission may further require landscaping, fences, and walls in pursuance of these objectives and same shall be provided and maintained as a condition of the establishment and the continued maintenance of any use to which they are appurtenant.
- f. In those instances wherein the Planning Commission finds that an excessive number of ingress and/or egress points may occur with relation to major or secondary thoroughfares, thereby diminishing the carrying capacity of the thoroughfare, the Planning Commission may require marginal access drives. For a narrow frontage, which will require a single outlet, the Planning Commission may require that money be placed in escrow with the Village of Bismarck so as to provide for a marginal service drive equal in length to the frontage of the property involved. Occupancy permits shall not be issued until the improvement is physically provided, or monies have been deposited with the Clerk.
- g. The cost estimates, as required in this section shall be reviewed by the appropriate Municipal Official (i.e. Village, Engineer or Planner) for their compliance with current cost estimates. These reviews and recommendations shall be forwarded to the Planning Commission for inclusion in any approved site plan.
- h. The Planning Commission may waive site plan information for topography, vegetation, problem soils, landscaping, employment data environmental considerations, etc., when such concerns are obviously not pertinent to the proposed development.
- i. The Planning Commission may seek the input from local public safety officials as part of the site plan review process, prior to approving, disapproving, or approving with conditions, the site plan.

**6. Planning Commission Actions**

The Planning Commission, upon reviewing a site plan, shall take one of the following actions:

- a. Approval - If the site plan meets all the Zoning Ordinance and related development requirements and standards, the Planning Commission shall record such approval and the Chairman shall sign three (3) copies of the site plan filing one in the official site plan file, forwarding one to the Village, and returning one to the applicant.
- b. Disapproval - If the site plan does not meet Zoning Ordinance and related development requirements and standards, the Planning Commission shall record the reasons for denial. The applicant may subsequently refile a corrected site plan under the same procedures followed for the initial submission.
- c. Conditional Approval - If minor corrections to the site are necessary, which can be clearly noted, then the Planning Commission shall so note such conditions and the Chairman shall sign three (3) site plans as conditionally approved and stating the necessary conditions. One copy shall be retained in the official site plan file, one forwarded to the Village, and one returned to the applicant.
- d. Table - If the site plan is found to be in violation of the requirements or incomplete with respect to necessary information, the Planning Commission may table action on the site plan until ordinance compliance is shown or required additional information is provided.

**7. Performance Guarantees**

To ensure compliance with the Zoning Ordinance and any condition imposed thereunder, the Planning Commission may require that a cash certified check, irrevocable bank letter of credit, or surety bond acceptable to the Village covering the estimated cost of improvements associated with a project for which site plan approval is sought, be deposited with the Village to ensure faithful completion of the improvements and also be subject to the following:

- a. The performance guarantee shall be deposited prior to the issuance of a temporary certificate of occupancy. The Village shall establish procedures whereby a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements will be made as work progresses. Any partial release of funds shall be less than ten (10) percent which shall be retained by the Municipality until all work has been completed and subsequently inspected and approved by the Village. This does not relieve the applicant from satisfying all applicable maintenance warranties and/or guarantees necessary to ensure the proper functioning of said public improvements.
- b. As used in this section, "improvements" mean those features and actions associated with a project which are considered necessary by the body or official granting zoning approval, to protect natural resources, or the health, safety, and welfare of the residents of the Village and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, landscaping, and surface drainage. Improvements do not include the entire project which is the subject of zoning approval.

**8. Period of Completion**

An approved site plan shall remain valid for a period of one (1) year from the date of approval. In the event all improvements are not installed, then any such remaining improvements shall be completed no later than July 1 of the following construction season except that the Planning Commission may, at its discretion, upon application by the owner and for cause shown, provide for up to two (2) successive twelve (12) month extensions.

**SECTION 16.2. REVIEW AND APPROVAL OF SPECIAL USES.**

**1. Application**

- a. The uses identified as special uses are recognized as possessing characteristics of such unique and special nature (relative to location, design, size, public utilities needs, and other similar characteristics) as necessitating individual standards and conditions in order to safeguard the general health, safety and welfare of the community.
- b. The Village Board, as provided herein, shall have the authority to approve special use permits, subject to such conditions of design, operation, and appropriate and reasonable safeguards as the Village may require for any special use included in the various provisions of this Zoning Ordinance.

**2. Data Required**

- a. Application for any special use permit as provided under the provisions of this Ordinance shall be made to the Village by filing an official special use permit application form; submitting required data, exhibits, and information; and depositing the required fee as established by resolution of the Village Board, and as may be amended from time-to-time. No portion of such fee shall be reimbursable to the applicant.
- b. An application for a special use permit shall contain the following:
  - (1) Applicant's name, address and telephone number.
  - (2) Address and tax description number of the subject parcel.
  - (3) A signed statement that the applicant is the owner of the subject parcel, or is acting as the owner's representative.
  - (4) A certified survey drawing of the subject parcel.
  - (5) A complete site plan containing all of the applicable data outlined in Section 16.1, review and approval of site plans.
  - (6) Supporting statements, evidence, data, information and exhibits which address those standards and requirements for assessing special use permit applications outlined in Section 16.2, part 4, below.

**3. Public Hearing Requirements**

Upon receipt of an application for a use requiring conditional approval, the Planning Commission shall hold a public hearing, one (1) notice of which shall be published not less than fifteen (15) nor more than thirty (30) days prior to the public hearing date in a newspaper of general circulation in the Village. The applicant must fulfill all conditions of 65 ILCS 5/11-13-1.1 (1998 State Bar Edition) as may be amended and all conditions by its reference to 65 ILCS 5/11-13-6 and 65 ILCS 5/11-13-7 (1998 State Bar Edition) as may be amended.

**4. Standards for Approval**

- a. The Planning Commission shall review the particular circumstances and facts applicable to each proposed special use in terms of the following standards and requirements and shall make a determination as to whether the use proposed to be developed on the subject parcel meets the following standards and requirements:
- (1) Will be harmonious with and in accordance with the general objective of the Village's Master Plan.
  - (2) Will be designed, constructed, operated, maintained, in harmony with existing and intended character of the general vicinity and so that such use will not change the essential character of that area.
  - (3) Will not be hazardous or detrimental to existing or future neighboring uses.
  - (4) Will represent a substantial improvement to property in the immediate vicinity and general benefit to the community as a whole.
  - (5) Will be served adequately by essential public services and facilities, such as highways, streets, drainage structures, police and fire protection and refuse disposal; or persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for such services.
  - (6) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
  - (7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive smoke, fumes, glare, noise, vibration or odors.
  - (8) Will be consistent with the intent and purposes of this Ordinance.
- b. If the facts regarding the special use being reviewed do not establish by a preponderance of the evidence that the standards and requirements set forth in this Zoning Ordinance will be met by the proposed use, the Planning Commission shall not recommend special condition approval to the Village Board.
- In recommending approval of a special use permit to the Village Board, the Planning Commission shall recommend imposition of such reasonable conditions of use as it deems necessary to protect the best interests of the Village and the general vicinity, to achieve the objectives of this Ordinance and to assure that the general public health, safety, and welfare will not be infringed upon.
- The Planning Commission may recommend denial, approval or approval with conditions, on a Request for Special use Approval. The recommendation on a special use shall be incorporated in a statement containing the conclusions relative to the special use under consideration which specifies the basis for the decision and any conditions recommended.
- c. Upon holding a public hearing and review of the special use request, the Planning Commission shall within thirty (30) days forward to the Village Board its finding and recommendation. The finding shall include a record of those conditions which are recommended to be imposed. The Village Board, upon receipt of the finding and recommendation, may deny, approve, or approve with conditions, any request for a special use approval. Any decision on such a request shall state the findings of fact and specify the conclusions drawn therefrom and any conditions imposed thereon. Any conditions imposed shall remain unchanged except upon the mutual consent of a majority of the Village Board and the landowner, and the Village Board shall maintain a record of all conditions that are changed. All records of proceedings hereunder shall be kept and made available to the public.
- d. The special use review and site plan review may occur concurrently at the discretion of the Planning Commission.

**ARTICLE 17. GENERAL EXCEPTIONS**

**SECTION 17.1. AREA, HEIGHT, AND USE EXCEPTIONS.**

The regulations in this Ordinance shall be subject to the following interpretations and exceptions.

**SECTION 17.2. ESSENTIAL SERVICES.**

Essential services serving the Village of Bismarck shall be permitted as authorized and regulated by law and other ordinances of the Municipality. Overhead or underground lines and necessary poles and towers to be erected to service primarily those areas beyond the Municipality shall receive the review and approval, after a public hearing, of the Village Board and after being recommended by the Planning Commission. Such review shall consider abutting property and uses as they relate to easements, rights-of-way, overhead lines, poles and towers and further, shall consider injurious effects on property abutting or adjacent thereto and on the orderly appearance of the Village of Bismarck.

**SECTION 17.3. VOTING PLACE.**

The provisions of this Ordinance shall not be so construed as to interfere with the temporary use of any property as a voting place in connection with a Municipal or other public election.

**SECTION 17.4. HEIGHT LIMIT.**

The height limitations of this Ordinance shall not apply to farm buildings, chimneys, church spires, flag poles, public monuments or television antennae for personal use; provided, however, that the Village Board may specify a height limit for any such structure when such structure requires authorization as a special use.

**SECTION 17.5. LOT AREA.**

If two or more lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said lands shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these regulations, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in these regulations.

**SECTION 17.6. YARD REGULATIONS.**

When yard regulations cannot reasonably be complied with, or where their application cannot be determined on lots of peculiar shape, topography or due to architectural or site arrangement, such regulations may be modified as determined by the Planning Commission, acting as appeal board.

**SECTION 17.7. PORCHES.**

An open, unenclosed, and uncovered porch or paved terrace may project into a front yard for a distance not exceeding ten (10) feet, but this shall not be interpreted to include or permit fixed canopies.

**SECTION 17.8. PROJECTIONS INTO YARDS.**

Architectural features, not including vertical projections, may extend or project into a required side yard not more than three (3) inches for each one (1) foot of width of such side yard; and may extend or project into a required front yard or rear yard not more than three (3) feet.

**SECTION 17.9. ACCESS THROUGH YARDS.**

For the purpose of this Ordinance, access drives may be placed in the required front or side yards so as to provide access to rear yards or accessory or attached structures. These drives shall not be considered as structural violations in front and side yards. Further, any walk, terrace or other pavement servicing a like function, and not in excess of nine (9) inches above the grade upon which placed, shall for the purpose of this Ordinance not be considered to be a structure, and shall be permitted in any required yard.

**SECTION 17.10. CANOPIES AND AWNINGS.**

Canopies and awnings offering partial protection from the weather, but not fully enclosed, and which extend into a public right-of-way or required yard, may be considered for approval subject to the following conditions:

1. Canopies and awnings extending into a public right-of-way are subject to the following requirements:
  - a. Such approval shall only be granted by the Village Board following Planning Commission recommendation.
  - b. Any such structure shall not extend closer than twenty-four (24) inches to any vehicular parking space or moving vehicle lane.
  - c. Any such structure shall not conflict with necessary sight distances for proper vehicular and pedestrian movements.
  - d. Any such structure shall not conflict with any existing or proposed: landscape features, traffic control device, adjacent properties and signs and pedestrian movements.
  - e. The height, location, materials, construction and signage involved in any such structure shall specifically be subject to review and approval by the Village Board.
  - f. The structure shall be maintained in such a manner as to continue its original appearance and provide proper safety to the persons and property it may affect.
  - g. The Village of Bismarck, its officials, employees and any of its representatives shall be guaranteed full protection against any liability or damages resulting from the construction and existence of any such structure. The nature of such protection and its continuous effect shall be subject to Village Board determination.

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2. Canopies and awnings extending into a required yard are subject to the following requirements:
  - a. Such approval shall only be granted by the Planning Commission.
  - b. Any such structure shall not extend closer than the height of the structure to any property line adjacent to a residential district.
  - c. Any such structure shall not conflict with necessary sight distances for proper vehicular and pedestrian movements.
  - d. Any such structure shall not conflict with any existing or potential development on adjacent property.
  - e. The height, location, materials, construction and signage involved in any such structure shall specifically be subject to review and approval.
  - f. The structure shall be maintained in such a manner as to continue its original appearance and provide proper safety to the persons and property it may affect.

**SECTION 17.11. DECKS.**

A deck which is associated with a residential structure shall not occupy any required rear yard, side yard or front yard area, and shall be subject to the following restrictions:

1. The portion of a deck which occupies the required rear yard shall not be above the elevation of the first floor of the residence;
2. The portion of a deck which occupies the required rear yard shall not be converted into any enclosed habitable space.
3. A deck shall be subject to lot coverage limitations.

**ARTICLE 18. PLAN UNIT DEVELOPMENTS (PUD)**

**SECTION 18.1. INTENT.**

The Planned Unit Development (PUD) regulations offer an alternative method for developing land. This alternative allows flexibility in applying certain zoning standards. Such flexibility requires a review process to safeguard health, safety and welfare. PUDs, in exchange for flexibility, may be required to provide amenities in addition to those required under traditional zoning. Required amenities are designed reduce the impacts which may result from the application flexible development standards.

The purpose for PUD regulation includes:

1. Promoting of more efficient land use.
2. Accommodating mixed land use developments which have been designed to overcome traditional land use conflicts.
3. Encouraging environmentally sensitive design.
4. Allowing for more innovative design than might be allowed through traditional zoning.
5. Promoting the efficient arrangement of buildings, circulation systems, and public services and utilities.

**SECTION 18.2. DEFINITIONS.**

**Cluster Development** shall mean a form of Planned Unit Development that allows for flexibility in building setbacks.

**Zero Lot Line Development** shall mean a form of Planned Unit Development that permits the location of each building on a lot to be situated in such a manner that one or more buildings is located without any setback from the lot line on a single side yard.

**Common Lot Line Development** shall mean a form of Planned Unit Development that permits adjoining structures along the lot line in such a manner that each structure is located on its own lot.

**SECTION 18.3. ELIGIBILITY.**

No project may developed under the PUD regulation unless its meets the following requirements:

5. The minimum project size shall be 20 acres.

**SECTION 18.4. PERMITTED LAND USES.**

1. Permitted uses in a PUD shall be as follows

	<u>Underlying Zoning Classification</u>	<u>Permitted PUD Use</u>
a.	R/C-1	R-1
b.	R-1, R-2,	C-1
c.	C-1, C-2, C-3, I-1	C-1, C-2, C-3, I-1
d.	I-1	C-1, C-2,, I-1

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2. All uses shall be subject to the same zoning conditions and restrictions of the most restricted district which permits the use being developed unless otherwise specified in this ordinance.
3. Duplexes and multiple-family dwellings shall not exceed 30% the total dwellings in a residential project.
4. Commercial uses proposed as part of a residential project shall not exceed 10% of total land area.

**Area Regulations**

The fee simple transfer of ownership of a lot in an approved PUD with a zero lot line, cluster development or common lot line is permitted provided the development meets the PUD and Subdivision Regulations.

1. Cluster Developments shall comply with:
  - a) Yards along the periphery of a Cluster Development shall be provided as required by the regulation of the district in which said development is located.
  - b) Front Yard - There shall be a front yard of not less than 30 feet from the road right-of-way.
  - c) Side Yard - The total side yard 50 feet provided that no side yard is less than 20 feet.
  - d) Rear Yard - There shall be a rear yard of not less than 20 feet.
  - e) The Planning Commission may reduce any of the above yard requirements by not more than 50% on not more than 50% of the total dwelling units.
  - f) Total lots in the PUD cannot exceed the PUD area divided by the minimum lot size of the underlying zoning district. In no case shall a lot be less than 6500 sq. feet.
2. Zero Lot Line developments shall comply with:
  - a) Yards along the periphery of a PUD shall be provided as required by the regulation of the district in which said development is located.
  - b) The minimum residential lot area in Zero Lot Line Developments shall be not less than 6500 sq. feet.
  - c) The minimum lot width shall be 60 feet.
  - d) There shall be no minimum side yard on one side (zero side yard setback) and a minimum 10 foot side yard on the opposite side for Zero Lot Line. The minimum front yard setback shall be not less than 30 feet and the minimum rear yard shall be no less than 20 feet for residential use. The minimum front yard setback shall be not less than 30 feet and the minimum rear yard shall be no less than 30 feet for all other uses.
  - e) A four (4) foot easement for building wall maintenance/drainage shall be provided on the lot adjacent to the zero lot line property line, dedicated the entire length of the lot. With the exception of fences and utility appurtenances such easement shall remain clear of structures. This easement shall be incorporated into the deed transferring title to the property either as a covenant in the Owner's Certificate or in each deed transferring property in the PUD.
  - f) Total lots in the PUD cannot exceed the PUD area divided by the minimum lot size of the underlying zoning district. In no case shall a lot be less than 6500 sq. feet.
3. Common Lot Line
  1. Total lots in the PUD cannot exceed the PUD area divided by the minimum lot size of the underlying zoning district. In no case shall a lot be less than 6500 sq. feet.
    - (1) Residential - Where a common lot line structure is constructed for sale, with each unit on an individual lot, for individual ownership the dwelling is subject to a minimum lot area of 6,500 sq. feet, minimum lot width of 50 sq. feet and the setback requirements of the underlying zoning district except that no side yard setback is required for the interior portion of the lot.
    - (2) Other Districts - Where a common lot line structure is constructed for sale, with each unit on an individual lot, for individual ownership the structure is subject to the setback requirements of the underlying zoning district except that no side yard setback is required for the interior portion of the lot.

**SECTION 18.5. REVIEW AND APPROVAL PROCEDURES.**

Prior to the establishment of a PUD, a preliminary site plan shall be submitted and approved, approved with conditions or disapproved by the Planning Commission in accordance with the Ordinance requirements of this article.

**Preliminary Site Plan Approval**

An applicant wishing to develop property under the Village's PUD provisions shall first submit for approval to the Village a Preliminary Site Plan. This plan shall contain at a minimum the following information:

1. Date, north arrow and scale of not less than 1" equals 100'.
2. Legal description and common of the subject property.
3. The dimensions of all lot and property lines, showing the relationship of the subject property to abutting properties and buildings within one hundred (100) feet.
4. The names, address, and telephone numbers of the architect, planner, designer, engineer or person responsible for the preparation of the site plan and the names, addresses and telephone numbers of the developers.
5. A general description of the project and how the proposal relates to the purpose statements at the beginning of this article.
6. The proposed uses of the property including proposed lot sizes and uses, total projected commercial uses sufficient to develop preliminary parking requirements, total numbers of single-family, duplex and multi-family units, and overall site layout in sufficient detail to allow for a review of the overall development concept as well as an estimate of the total development cost.
7. Present and future zoning (if applicable).
8. Building envelopes for all parcels.
9. Whether or not the project will be phased and a description of the phases. All phases of the development must be capable of meeting all the requirements of this ordinance on their own in the event that future phases are not completed.)
10. The location of all existing and proposed streets, drives and parking areas, along with a designation of whether those areas are to be public or private.
11. The location and nature of any streams, drains, swamps, marshes, and/or unstable soils.
12. An indication of basic drainage patterns, existing and proposed.

**Hearings, Publication and Notice**

Prior to approval of the preliminary site plan, the Planning Commission shall hold a public hearing, one (1) notice of such shall be published not less than fifteen (15) nor more than thirty (30) days prior to the public hearing date in a newspaper of general circulation in the Village.

The applicant not less than fifteen (15) nor more than thirty (30) days prior to the public hearing shall send notice by first class mail to the holders of the property for which the project is proposed, to the owners of record of all real property and to the occupants of all structures located within two hundred fifty (250) feet excluding public right-of-way of the boundaries of the property in question. The notice shall include:

13. Describe the nature of the PUD request and intent to file request.
2. Adequately describe the property in question.
3. Indicate the legal owner of the property.
14. State the date, time and place for the public hearing.
5. Indicate when and where written comments concerning the proposed project will be received.
6. Indicate if property is also under consideration for rezoning.

Following the Public Hearing the Planning Commission shall review the particular circumstances and facts applicable to the proposed project in terms of the following standards and requirements and shall make a determination as to whether the proposed project meets the following standards.

1. The proposed development is in keeping with the overall goals of the Village's Master Land Use Plan.
2. The proposed development is designed to be in harmony with the existing and intended character of the general vicinity.
3. The proposed development will not be detrimental to the existing or future neighboring uses.
4. The proposed development meets the intent of the PUD Ordinance.
5. The proposed development will not be detrimental to the economic welfare of the community.

If after the Public Hearing and subsequent review of the project, the Planning Commission finds that the proposed development meets the above set forth standards, the Planning Commission shall grant the applicant Preliminary Site Plan Approval. Such approval is limited only to an approval of the overall concept, general layout and phasing scheme, and does not grant or guarantee final site plan approval. The Planning Commission may grant only conditional approval for the Preliminary Site Plan for items that it feels need to be more fully addressed and decided upon during the Final Site Plan approval process. In those cases, the Planning Commission must fully itemize those items for which it is granting only conditional approval in its motion.

Concurrent with granting Preliminary Site Plan Approval, The Planning Commission will recommend approval of rezoning the subject parcel to PUD district. This rezoning will follow standard Village procedures.

**Final Site Plan Approval**

Following approval of the Preliminary Site Plan, the applicant shall complete and submit a final site plan to the Planning Commission for Final Site Plan approval. This plan shall contain at a minimum the following information:

1. All information required under Preliminary Site Plan approval.
2. Complete engineering drawings and calculations for all roads, bridges, signs, sanitary sewer, water and storm water infrastructure.
3. All roads whether public or private shall be constructed according to applicable Village standards for public roads as found in the Village's subdivision ordinance.
4. Storm water and drainage shall be designed to Village standards as found in the Village's subdivision ordinance.
5. Floor plans and elevation drawings for all non-residential buildings.
6. Landscape plan.
7. Golf course management and/or landscape management plans.
8. The location and type of any hazardous materials or landscape maintenance chemicals to be stored on the site.
9. Master Deeds, Master Condominium documents and special subdivision regulations or covenants.
10. Detailed plans addressing any special concerns or requests of the Village raised during the Preliminary Site Plan approval phase.

The Planning Commission shall review the application for Final Site Plan approval, together with any reports from Village consultants, and approve or deny the application based upon its meeting the initial Preliminary Site Plan concept, and its meeting all the requirements of Final Site Plan approval.

**Performance Guarantees**

To ensure compliance with the Zoning Ordinance and any conditions imposed thereunder, the Planning Commission may require that a cash certified check, irrevocable letter of credit, or surety bond acceptable to the Village covering the estimated cost of improvements associated with a project, be deposited with the Village to ensure faithful completion of the improvements and also to be subject to the following:

1. The performance guarantee shall be deposited prior to the issuance of a temporary certificate of occupancy. The Village shall establish procedures whereby a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements will be made as work progresses. Any partial release of funds shall be less ten (10) percent of the amount due the applicant which shall be maintained by the Village until all work has been completed and subsequently inspected and approved by the Village or other designated Village representative.
2. This section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable letter of credit, or surety bond has been deposited.
3. As used in this section, "improvements" mean those features and actions associated with projects which are considered necessary by the body or official granting zoning approval, to protect natural resources, or the health, safety, and welfare of the residents of the Village and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, landscaping and surface drainage. Improvements do not include the entire project which is the subject of zoning approval.

**ARTICLE 19. SCHEDULE OF REGULATIONS**

**SECTION 19.1. SCHEDULE LIMITING HEIGHT, SIZE, DENSITY, AND AREA BY ZONING DISTRICT.**

The following regulations regarding lot sizes, yards, setbacks, building heights, and densities apply within the Zoning Districts as indicated, including the regulations contained in Section 19.2, Notes. No building shall be erected, nor shall an existing building be altered, enlarged or rebuilt, nor shall any open spaces surrounding any building be encroached upon or reduced in any manner, except in conformity with the regulations hereby established for the district in which such building is located. No portion of lot used in complying with the provisions of this Ordinance for yards, courts, lot area occupancy, in connection with an existing or projected building or structure, shall again be used to qualify or justify any other building or structure existing or intended to exist at the same time.

Zoning District	Min. Size Per Zoning Lot (a)		Max. Building Height		Max. Building Lot Coverage (%)	Min. Yard Setback Requirements Per Zoning Lot in Ft. (b)(c)(d)(e)(k)			Min. Liveable Floor Area in Sq. Ft. (e) (f)
	Area in Sq. Ft.	Width in Ft.	In Stories	In Feet		Front (g)(h)	Each Side	Rear	
A-1 Light Agricultural District	5 ac	250	2.5	35	20%	50	25	30	2,000
A-2 General Agricultural District	5 ac	250	1	35	10%	50	25	50	2,000
R-1 Low-Density Residential District	2.5	175	2.5	35	30%	30	10	20	2,500
R-2 Medium-Density Residential District	1 acre/ 12,000(i)	65	2.5	35	30%	30(n)	10(n)	20(n)	1,500
C-1 Central Business District	-	-	6	35	(o)	-	(r)	30 (q)	-
C-2 Service/Business District	-	-	1.5	40	(o)	25 (p)	15 (r)	30 (q)	-
I-1 Research/Industrial District	0.25 ac.	90	3	40	(o)	25 (p)	15 (r)	30 (q)(s)	-

**SECTION 19.2. NOTES TO SCHEDULE OF REGULATIONS.**

- (a) See Section 19.3, Lot Size Averaging, for flexibility allowances.
- (b) Minimum front yard setback is measured from the edge of the abutting right-of-way, based upon information and standards set forth by the Village of Bismarck.
- (c) For all nonresidential uses allowed in residential districts, the setbacks shall equal the height of the main building, or the setbacks required in Article 19, Schedule of Regulations, whichever is greater.
- (d) All side yards abutting upon a public street shall be considered as a front yard for setback purposes, except as may otherwise be required by this Ordinance.
- (e) The minimum floor area per dwelling unit shall not include area of basements, breezeways, porches or attached garages.
- (f) The minimum livable floor area per multiple-family unit shall be in accordance with the following schedule:

<u>UNIT TYPE</u>	<u>MINIMUM FLOOR AREA REQUIRED (SQUARE FEET)</u>
Efficiency	350
One Bedroom	600
Two Bedroom	800
Three or More Bedrooms	1,000

- (g) In all residential districts, the required front yard setback shall not be used for off-street parking, loading, or unloading, and shall remain as open space unoccupied and unobstructed from the ground upward except for landscaping, plant materials, vehicle access drives, or as otherwise specified by this Ordinance.
- (h) Where the average setback of the buildings existing at the time of adoption of this Ordinance within 150 feet on either side of the lot on which a building is proposed is less than 30 feet, that average distance may be used as a minimum setback.
- (i) The 12,000 square foot minimum lot size applies only when access to public water and wastewater service is available or has been committed to be available within 24 months after the lot is created.
- (j) (Reserved)
- (k) The distance between any two (2) structures within a multiple-family residential development shall not be less than thirty (30) feet.
- (l) (Reserved)
- (m) (Reserved)

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- (n) For multi-family uses in the district, front, side, or rear yards need not refer to spacing between buildings for the planned development of two or more buildings on the same parcel. In such cases, the minimum distance between any two buildings shall be regulated according to the length and height of such buildings and in no instance be less than thirty (30) feet.

The formula for regulating the required minimum distance between two buildings is as follows:

$$S = \frac{LA + LB + [2 (HA + HB)]}{6}$$

where;

- S equals required minimum horizontal distance between any wall of building A and any wall of building B or the vertical prolongation of either.
- LA equals Total length of building A. The total length of building A is the length of that portion or portions of a wall or walls of building A from which, when viewed directly from above, lines drawn perpendicular to building A will intersect any wall of building B.
- LB equals Total length of building B. The total length of building B is the length of that portion or portions of a wall or walls of building B from which, when viewed directly from above, the lines drawn perpendicular to building B will intersect any wall of building A.
- HA equals Height of building A. The height of building A at any given level is the height above natural grade level of any portion or portions of a wall or walls along the length of building A. Natural grade level shall be the mean level of the ground immediately adjoining the portion or portions of the wall or walls along the total length of the building.
- HB equals Height of building B. The height of building B at any given level is the height above natural grade level of any portion or portions of a wall or walls along the length of building B. Natural grade level shall be the mean level of the ground immediately adjoining the portion or portions of the wall or walls along the total length of the building.

See attached diagram.

- (o) The maximum percentage of coverage shall be determined by the use and provisions of required off-street parking, loading and unloading, and required yards.
- (p) Off-street parking shall be permitted to occupy a portion of the required front yard provided that there shall be maintained a minimum unobstructed landscaped setback of ten (10) feet between the nearest point of the off-street parking area, exclusive of access driveways, and the front lot line.
- (q) Loading space shall be provided in the rear yard in accordance with Section 15.12.
- (r) Off-street parking shall be permitted in a required side yard setback when said side yard abuts a nonresidential district.
- (s) All storage shall be in the rear yard and shall be completely screened with an obscuring wall or fence, not less than six (6) feet high, or with a chain link type fence and a greenbelt planting so as to obscure all view from any adjacent residential or business district or from a public street.
- (t) In the Recreation/Conservation District, the requirements for minimum lot size, maximum building height, and maximum lot coverage shall not apply to educational and municipal buildings.

**SECTION 19.3. LOT SIZE AVERAGING.**

Lot size averaging may be permitted by the Planning Commission, upon application from the Proprietor, if it determines that it will provide a better relationship of lots to the topography, vegetation or other natural or man-made features. Lot size averaging is the allowance for a change in lot area and width in a development, but with the average lot area meeting the minimum area as required in Section 19.1 for that particular Residential District.

In the case where lot size averaging is permitted, the following conditions shall be met:

1. The number of lots shall not exceed the number allowed for the zoning district in which the development is located.
2. Reduction of lot area or width below the minimum required for the zoning district shall not be permitted for more than one-third (1/3) of the total number of lots in the development.
3. No lot shall have an area or width more than ten (10) percent below that area or width required in the Schedule of Regulations.
4. All computations showing lot area and the average resulting through this technique shall be indicated on the print of the preliminary plat.
5. The submittal shall be reviewed and approved in accordance with terms of the Village's subdivision regulation ordinance.

**ARTICLE 20. APPEAL PROCEDURES**

**SECTION 20.1. INTENT.**

An appeals procedure is herein established in order that the objectives of this Ordinance may be fully and equitably achieved, that a means shall be provided for competent interpretation of this Ordinance, that adequate but controlled flexibility be provided in the application of this Ordinance, that the health, safety, and welfare of the public is secured, and that justice be done.

**SECTION 20.2. MEMBERSHIP.**

The Board of Appeals shall consist of seven members and shall operate by all bylaws as approved therein. All members shall be appointed by the Village President and confirmed by the Village Board. The Board shall hear and consider appeals in such a way that the objectives of this Chapter shall be observed, public safety secured, and substantial justice done.

**SECTION 20.3. MEETINGS.**

1. All meetings of the Board of Appeals shall be held at the call of the Chairman and at such times as such Board may determine.
2. All hearings conducted shall be open to the public. The Board of Appeals shall keep minutes of its proceedings showing the vote of each member in question, or if absent, or failing to vote, indicating such fact; and shall also keep records of its hearings and other official actions in the office of the Village Clerk, and shall be a public record.
3. The Board of Appeals shall not conduct business unless a majority of the members are present. The concurring vote of a majority of the full membership of the Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which they are required to pass under an ordinance, or to effect a variation in an ordinance.
4. The Board of Appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony, and the production of books, papers, files, and other evidence pertinent to the matters before it.

**SECTION 20.4. APPEAL AND NOTICE REQUIREMENTS.**

1. An appeal to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the Village. The appeal shall be taken within 45 days of the action complained of by filing, with the officer from whom the appeal is taken and with the Board of Appeals a Notice of Appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Appeals, after notice of appeal has been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case, the proceedings shall not be stayed, otherwise than by a restraining order which may be granted by a court of record.
2. The Zoning Board of Appeals shall hold a public hearing of which there shall be a notice of the time and place of the hearing published at least once, not more than 30 nor less than 15 days before the hearing, in one or more newspapers published in the Village, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the municipality which is published in Vermilion County. This notice shall contain the particular location for which the variation is requested as well as a brief statement of what the proposed variation consists.

**SECTION 20.5. JURISDICTION.**

The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision of determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done in accord with 65 ILCS 5/11-13-5 (1998 State Bar Edition). Nothing herein contained shall be construed to give or grant to the Board of Appeals the authority to make changes in the Zoning Ordinance or the Zoning Map acting under the authority of appeal board. The power and authority to rezone is reserved to the Village Board in the manner provided by 65 ILCS 5/11-13-14 (1998 State Bar Edition) and as may be amended.

**SECTION 20.6. POWERS AND DUTIES.**

The Board of Appeals shall have the following specified powers and duties:

**1. Administrative Review**

To hear appeals and make recommendations to Village Board where it is alleged by the appellant that there is an error in any order, requirement, permit, decision, or refusal made by any administrative official in carrying out, or enforcing, any provisions of this Ordinance.

**2. Interpretation**

To hear and make recommendations to Village Board in accordance with the provisions of this Ordinance:

- a. Appeals for the interpretation of the provisions of the Ordinance.
- b. Requests to determine the precise location of the boundary lines between the zoning districts as they are displayed on the Zoning Map, when there is dissatisfaction with the decision on such subject.

**3. Variances**

The Board of Appeals shall have the power to make recommendations to the Village Board, upon appeal, specific variances from such dimensional requirements as lot area and width regulations, building height and square foot regulations, yard width and depth regulations, such requirements as off-street parking and loading space, and sign regulations, and other similar requirements as specified in the Ordinance. In its consideration of the standards of practical difficulties or particular hardship, the Board of Appeals shall require evidence that:

- (1) the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; and
- (2) the plight of the owner is due to unique circumstances; and
- (3) the variation, if granted, will not alter the essential character of the locality.
- (4) A variation shall be permitted only if the evidence, in the judgment of the Board of Appeals, sustains each of the three conditions enumerated herein.

**4. Approval of Temporary Uses**

The Board of Appeals shall have the power to grant permits authorizing temporary land uses for:

- a. Seasonal sales of produce, firewood or Christmas trees, and similar uses; under the following conditions:
  - (1) Zoning Districts Where Permitted
    - (i) Temporary uses shall be restricted to nonresidential zoning district.
    - (ii) The Village Board or its designee may administratively approve temporary uses on for profit enterprises on private property that meet all setbacks and that do not reduce available parking by more than 10%.
    - (iii) The Village Board or its designee may administratively approve temporary uses for all non-profit and 501(c)3 enterprises, schools and churches.
  - (2) Application and Submittal Requirement

The application for a temporary use permit shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:

    - (i) The shape, location, and dimensions of the lot, including the shape, size, and location of all buildings or other structures already on the lot, off-street parking layout, and the location of any designated fire lanes.
    - (ii) The materials to be utilized in and the shape, size, and location of all buildings and structures to be erected or moved onto the lot, including all tents, tables, stands, or display racks.
    - (iii) The anticipated automobile traffic flow to and from the lot and any adjacent thoroughfares, loss of off-street parking spaces, if any, as well as the anticipated flow of pedestrian traffic upon lot sidewalks.
  - (3) Time Limitations
    - (i) A temporary use permit for the sale of Christmas trees, seasonal items such as flowers and similar uses shall by its terms be effective for no longer than thirty (30) days. No more than one (1) temporary use permit for the sale of Christmas trees shall be issued for any given location within a single calendar year.
    - (ii) A temporary use permit for a vegetable, fruit or produce stand or for the sale of firewood or similar use shall, by its terms, be effective for no longer than three (3) months. No more than one (1) temporary use permit for such uses shall be issued for any given location within a single calendar year.
- b. Permit uses which do not require the erection of any capital improvement of a structural nature, not otherwise permitted in any district (such as art fairs, carnivals, and civic festival events), not-to-exceed twelve (12) months.

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In classifying uses as not requiring capital improvement, the Board of Appeals shall determine that they are either demountable structures related to the permitted use of land; recreation developments, such as, but not limited to: golf driving range and outdoor archery courts; or structures which do not require foundations, heating systems, or sanitary connections.

- c. The granting of the temporary use shall be approved in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
- d. No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance.

**5. Essential Services**

The Board of Appeals shall review and approve, after a public hearing, the location of overhead or underground and necessary poles and towers to be erected to service primarily those areas beyond the municipality.

**6. Standards for Approval for Temporary Uses and Essential Services**

A temporary use permit shall only be granted if the Board of Appeals determines that the proposed use, including the erection of any temporary building or structure, will:

- a. Provide adequate light and ventilation between buildings and structures.
- b. Provide adequate automobile and pedestrian traffic flow and provide adequate off-street parking.
- c. Provide adequate lot access for fire protection purposes.
- d. Not adversely affect the stability and integrity of the zoning plan prescribed by this Ordinance or otherwise interfere with the protection of public health, safety, and general welfare.
- e. Not be incompatible with or otherwise adversely affect the physical character of the community and, in particular, the surrounding area with a distance of one thousand (1,000) feet.
- f. When the proposed temporary use is to be conducted on an otherwise vacant or unused lot, the use shall comply with all applicable zoning regulations for the district in which the temporary special use is to be located, including all requirements pertaining to lot size, height, setback, open space ratio, maximum percentage of covered lot area, and off-street parking.

**SECTION 20.7. PROHIBITED VARIANCES.**

- 1. A use variance shall not be permitted, except as described under Section 20.6 (4), Approval of Temporary Uses.

**SECTION 20.8. ATTACHMENT OF CONDITIONS.**

The Board of Appeals may impose conditions upon an affirmative decision. The conditions may include, conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all the following:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well being of those who will use the land use or activity under consideration, residents, and landowners immediately adjacent to the proposed land use, or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the Ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.
4. The conditions imposed with shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of changes granted in conditions.

**SECTION 20.9. FEES.**

The Village Board may from time-to-time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeal proceedings. At the time an application is filed, said fee shall be paid to the Village Clerk.

**SECTION 20.10. REHEARING.**

1. The decision of the Village Board shall be final. However, a person having an interest affected by the Village Board may appeal to circuit court.
2. The Village Board is without general authority to reconsider a matter it has decided and from reversing its previous decision unless the facts and circumstances which actuated the decision have so changed as to vitiate or materially affect the reason which produced and supported it, and no vested rights have intervened.

**ARTICLE 21. ADMINISTRATION AND ENFORCEMENT**

**SECTION 21.1. ENFORCEMENT.**

The provisions of this Ordinance shall be administered and enforced by the Village or by such deputies of his department as the Village may delegate to enforce the provisions of this Ordinance.

**SECTION 21.2. (RESERVED)**

**SECTION 21.3. PLOT PLAN.**

The Village shall require that all applications for Site Plans shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:

1. The actual shape, location, and dimensions of the lot.
2. The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of any building or other structures already on the lot.
3. The existing and intended use of the lot and of all such structures upon it, including, in residential areas, the number of dwelling units the building is intended to accommodate.
4. Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this Ordinance are being observed.

**SECTION 21.4. PERMITS.**

The following shall apply in the issuance of any permit:

**1. Permits Not to be Issued**

No Site Plan Permit shall be issued for the erection, alteration or use of any building or structure or part thereof, or for the use of any land, which is not in accordance with all provisions of this Ordinance.

**2. Permits for New Use of Land**

No land heretofore vacant shall hereafter be used or an existing use of land be hereafter changed to a use of a different class or type unless a certificate of occupancy is first obtained for the new or different use.

**3. Permits for New Use of Buildings**

No building or structure, or part thereof, shall be changed to or occupied by a use of a different class or type unless a certificate of occupancy is first obtained for the new or different use.

**4. Permits Required**

No building or structure, or part thereof, shall be hereafter erected, altered, moved, or repaired unless a Site Plan Permit shall have been first issued for such work. The terms "altered" and "repaired" shall include any changes in structural parts, stairways, type of construction, type, class or kind of occupancy, light or ventilation, means of egress and ingress, or other changes affecting or regulated by the Village of Bismarck Building Code, or this Ordinance, except for minor repairs or changes not involving any of the aforesaid features.

Permit Required:

New Home  
Moved in Home  
Garage  
New room addition to existing home  
Non-existing driveway entrances

No Permit Required:

Old porch replacement  
Deck replacement  
Ramp Construction (I.D.E.A.)  
Roofing  
Electrical  
Masonry  
Interior remodeling  
Restoration projects in existing old buildings  
Upgrades to existing driveways (i.e., new rock, tar and chip, Asphalt, culverts)  
Siding  
Window replacement  
Awnings

**SECTION 21.5. CERTIFICATES.**

No land, building, or part thereof, shall be occupied by or for any use unless and until a certificate of occupancy shall have been issued for such use. The following shall apply in the issuance of any certificate:

**1. Certificate Not to be Issued**

No certificates of occupancy shall be issued for any buildings, structure or part thereof, or for the use of any land, which is not in accordance with all the provisions of this Ordinance.

**2. Certificates Required**

No building or structure, or parts thereof, which is hereafter erected, or altered, shall be occupied or used or the same caused to be done, unless and until a certificate of occupancy shall have been issued for such building or structure.

**3. Certificates Including Zoning**

Certificates of occupancy as required by the Village Building Code for new buildings or structures, or parts thereof, or for alterations to or changes of use of existing buildings or structures, shall also constitute certificates of occupancy as required by this Ordinance.

**4. Record of Certificates**

A record of all certificates issued shall be kept on file in the Village, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the property involved.

**5. Certificates for Dwelling Accessory Buildings**

*Bismarck Zoning Ordinance*

Buildings or structures accessory to dwellings shall not require separate certificates of occupancy but may be included in the certificate of occupancy for the dwelling when shown on the plot plan and when completed at the same time as such dwellings.

**6. Application for Certificates**

Application for certificates of occupancy shall be made in writing to the Village on forms furnished by that Department, and such certificates shall be issued within ten (10) days after receipt of such application if it is found that the building or structure, or part thereof, or the use of land is in accordance with the provisions of this Ordinance. If such certificate is refused for cause, the applicant therefore shall be notified of such refusal and cause thereof, within the aforesaid ten (10) day period.

**SECTION 21.6. FINAL INSPECTION.**

The holder of every building permit for the construction, erection, alteration, repair, or moving of any building structure or part thereof, shall notify the Village immediately upon the completion of the work authorized by such permit, for a final inspection.

**SECTION 21.7. FEES.**

Fees for inspection and the issuance of permits or certificates or copies thereof required or issued under the provisions of this Ordinance may be collected by the Building Inspector in advance of issuance. The amount of such fees shall be established by resolution of the Village Board and shall cover the cost of inspection and supervision resulting from enforcement of this Ordinance.

**ARTICLE 22. AMENDING THE ORDINANCE**

All amendments to the Zoning Ordinance must be reviewed by the Village Planning Commission. Amendments may take the form of the Village Board proposal, staff initiated recommendations or citizen petitions, for either zoning text or zoning district boundary changes. In any event, the Planning Commission shall hold a public hearing as provided in 65 ILCS 5/11-13-14 and 65 ILCS 5/11-13-3.1 (1998 State Bar Edition) and as may be amended. After the public hearing has been closed, the Planning Commission shall submit a report and recommendations to the Village Board on the proposed change.

Citizen petitions for zoning ordinance amendments shall be submitted to the Village Clerk on standard forms provided at least fifteen (15) days prior to the next regularly scheduled Planning Commission meeting. At the next regularly scheduled meeting, the Planning Commission shall set a date for a public hearing to receive public comment. The standard forms shall be completed in the manner prescribed and such documents, as required by the Ordinance, shall be filed with the Clerk. A fee schedule, as provided by resolution of the Village Board, shall be levied against each petition to cover the cost of administering the application process and for advertising public hearings and other incidental costs relative to said petition. The Village Clerk shall transmit the application to the Planning Commission.

A petition for rezoning, once denied by Village Board, shall not be resubmitted for recommendation or action within one (1) year from date of denial.

If the Village Board does not take any action to resolve a petition for rezoning after public hearing within six (6) months beginning with the initial day of filing, said petition shall be determined to have been denied.

**ARTICLE 23. REPEAL OF PRIOR ORDINANCE**

The Zoning Ordinance adopted by the Village of Bismarck, known as Ordinance No. \_\_\_ and all amendments thereto, are hereby repealed. The repeal of the above Ordinance and its amendments does not affect or impair any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time enforced, prosecuted or inflicted.

**ARTICLE 24. INTERPRETATION**

In the interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience or general welfare. It is not intended by this Ordinance to repeal, abrogate, annul, or in anyway to impair or interfere with any existing provision of law or ordinance other than the above described Zoning Ordinance, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to the use of buildings or premises; provided, however, that where this Ordinance imposes a greater restriction than is required by existing ordinance or by rules, regulations or permits, the provisions of this Ordinance shall control.

**ARTICLE 25. VESTED RIGHT**

Nothing in this Ordinance should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification or any permissible activities therein; and, they are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of public health, safety, and welfare.

**ARTICLE 26. ENFORCEMENT, PENALTIES AND OTHER REMEDIES**

**SECTION 26.1. VIOLATIONS.**

Any person, firm or corporation violating any of the provisions of this Ordinance shall be subject to a fine of not less than seven hundred fifty (\$750.00) Dollars and the costs of prosecution, and a separate offense shall be deemed committed upon each day during or when a violation occurs or continues.

**SECTION 26.2. RIGHTS AND REMEDIES ARE CUMULATIVE.**

The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

**ARTICLE 27. SEVERANCE CLAUSE**

This Ordinance and the various parts, sections, subsections, paragraphs, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, paragraph, sentence, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.