

Section 9 – Conditional Use Permit

9.1 - Intent and purpose.

Conditional uses are those types of uses which tend to be problematic because they; (1) have a tendency to generate significant traffic volumes and/or turning movements, (2) have operational characteristics that may have a detrimental impact on adjacent or nearby properties, or (3) have other characteristics which may impact public health, safety, or welfare; but can be approved if such uses meet the criteria established herein. Conditional uses also include public and quasi-public uses affected with the public interest. In order to ensure that detrimental impacts are avoided or mitigated to a satisfactory level, conditional uses must be reviewed, approved, and issued a conditional use permit, in accordance with the provisions of this section. Conditional uses are listed for each zoning district (see Section 3 of this ordinance).

9.2 - Procedures.

9.2.1 - Initiation of the conditional use permit process. The conditional use permit process may be initiated by submitting a completed application and supporting documentation from one or more of the owners of record or owners under contract of a lot of record, or their authorized representative, or by the Planning and Zoning Commission or the Board of Aldermen.

9.2.2 - Application and plan requirements. An application form for a conditional use permit shall be filed with the zoning enforcement officer. In addition to submitting the completed application, the applicant shall submit the following information if deemed necessary by the Director of Public Works or his/her designee:

- 1) Legal owners of the property proposed for the conditional use permit.
- 2) Common street address of the property proposed for the conditional use permit.
- 3) Site plan.
- 4) Estimated impact of the conditional use on the surrounding properties and adjacent streets, including, but not limited to, average daily and peak hour traffic generation, existing traffic volumes of adjacent streets, if available, use of outdoor intercoms, and any other operational characteristics of the proposed use that may have impacts on other adjacent or nearby properties.
- 5) Optionally, at the applicant's discretion, unless otherwise required by the Board or Commission, any perspectives, elevations, or models that will assist in clarifying the proposal.

9.2.3 - Review procedure.

- 1) Submission by applicant:
 - a. The applicant shall submit one copy of the site plan and other information required by Section 7.2-2 to the zoning enforcement officer for staff review. Upon completion of staff review, the applicant shall submit the requested number of copies, incorporating any necessary changes, to the zoning enforcement officer for distribution to the Planning and Zoning Commission and the Board of Aldermen.
 - b. The initial submittal of the application and supporting information shall be submitted not later than 5:00 p.m. of the day after the regular Board of Aldermen meeting in order to be considered at the next regularly scheduled Planning and Zoning Commission meeting.

2) Planning and Zoning Commission review:

- a. The application and supporting information shall be taken under consideration by the commission for its recommendation and report, which report shall be delivered in writing to the board within 90 days from the date of acceptance of the application.
- b. The commission shall consider the extent to which the evidence provided demonstrates compliance with the criteria contained in this section. In the event that the commission concludes that insufficient information has been provided to make a determination of compliance with such standards, it may postpone its recommendation until such time sufficient information has been provided to render a recommendation to the board, or it may recommend denial of the conditional use permit application. The commission shall recommend to the Board of Aldermen that the conditional use permit be approved, denied, or approved with conditions. Such conditions may include, but are not limited to, one or more of the following:
 - i. Size, height, and location of proposed buildings and structures;
 - ii. Landscaping and screening;
 - iii. Parking and loading requirements;
 - iv. Signage;
 - v. Traffic flow and access requirements;
 - vi. Exterior lighting;
 - vii. Hours of operation; or
 - viii. Architectural and engineering features.
- c. These conditions may be in addition to any regulations contained in the applicable zoning district or other applicable regulations of the city, to the extent that they serve to avoid or sufficiently mitigate any potential adverse impact of a conditional use.

3) Board of Aldermen action:

- a. Upon the filing of the report by the commission, the board shall proceed to hold a public hearing in relation thereto. Notice of such hearing shall comply with the public notice requirements contained in Section 14 of this ordinance.
- b. After said public hearing, the board may deny, approve, or approve with conditions, including the adoption of the commission's recommendations on conditions of use or a modified version thereof. The recommendations of the commission shall not be binding on the board. The board may refer the application back to the commission for further study before making its final decision.
- c. In approving a conditional use, the board may require greater setbacks and/or buffer areas than required by this ordinance and may include other restrictions on the development not otherwise specified or required in this ordinance, provided that such additional requirements or restrictions are reasonable and necessary to address specific issues related to the site and/or to protect areas adjacent to the proposed development.

9.2.4 – Protest. In case of a protest petition against any proposed conditional use signed and acknowledged by a minimum of thirty percent (30%) of the owners of real property within six hundred (600) feet of the parcel of land for which the conditional use is proposed, such conditional use shall not become effective except by the favorable vote of two-thirds of all the members of the board.

9.3 - Criteria and standards for conditional use permit approval.

9.3.1 – Criteria. The board shall not approve any conditional use, which they determine to:

- 1) Substantially increase traffic hazards or congestion.
- 2) Substantially increase fire hazards.
- 3) Adversely affect the character of the neighborhood.
- 4) Adversely affect the general welfare of the community.
- 5) Overtax public utilities.
- 6) Conflict with standards contained in Section 5.
- 7) Conflict with the goals and objectives or proposed land use in the comprehensive plan.

~~7.3-2 – Standards:~~

~~(A) General: Every conditional use shall comply with the regulations of the district in which it is located, and in addition, with the conditions and requirements specified herein.~~

~~(B) Special conditions:~~

~~1. Non-residential uses in residential districts:~~

~~a. Access to the parking lot shall be located, where possible, on nonresidential streets.~~

~~b. Except as otherwise specified in this subsection, the minimum building setback from adjacent residential properties shall be one hundred and fifty (150) feet.~~

~~2. Schools: Playgrounds shall be separated from adjacent residential properties by a planting strip of at least twenty (20) feet in width and fenced with an opaque wood or masonry wall of six (6) feet in height.~~

~~3. Parks:~~

~~a. Permanent service structures shall not occupy more than ten (10) percent of the total area of the park.~~

~~b. All play facilities within one hundred feet (100) of any residential area shall be separated from it by an opaque wood or masonry wall of six (6) feet in height.~~

~~4. Hospitals: The minimum building setback from adjacent residential properties shall be three hundred fifty (350) feet, with parking areas located no closer than one hundred (100) feet.~~

~~5. Libraries: The minimum building setback from adjacent residential properties shall be one hundred fifty (150) feet.~~

~~7.3-3 – Standards for motor vehicle oriented businesses:~~

~~(A) Motor vehicle oriented businesses may only be permitted as a conditional use in the C-1 Commercial District or in the PD Planned Development Districts. When approved as a conditional use, the motor vehicle oriented businesses must comply with all applicable requirements of~~

Commented [JW1]: 64.271. Change in regulations and districts, hearing before commission — effect of protest (noncharter first class counties). — 1. The regulations imposed under authority of sections [64.211 to 64.295](#) may be amended, supplemented or changed from time to time by the county commission after the order establishing the same has gone into effect, but no such amendment shall be made without a report and recommendation from the planning board after public hearing before the board, public notice of which shall be given in the same manner as provided for the hearing in section [64.231](#).

2. The districts created under authority of sections [64.211 to 64.295](#) may be amended, supplemented or changed from time to time by the county commission after the order establishing the same has gone into effect, but no such amendment shall be made without a report and recommendation from the planning board after a public hearing before the board. The hearing shall be held in any one place in the county designated by the planning or zoning board regardless of the location of the land affected by the amendment. Public notice of the hearing shall be given in at least one publication in a newspaper of general circulation in the county at least fifteen days before the date of the hearing.

3. In case of written protest against any proposed amendment, signed and acknowledged by the owners of thirty percent of the frontage within one thousand feet to the right or left of the frontage proposed to be changed, or by the owners of thirty percent of the frontage directly opposite, or directly in the rear of the frontage proposed to be altered, or in cases where the land affected lies within one and one-half miles of the limits of a municipality, by the city council or zoning board of any such municipality, filed with the county clerk, such amendment may not be passed except by the favorable vote of two-thirds of all the members of the county commission.

(L. 1959 S.B. 309 § 12, A.L. 1988 H.B. 923, A.L. 1994 H.B. 1175)

Commented [JW2]: Moved to use provisions

~~Section 7. When approved in a Planned Development District, the motor vehicle-oriented businesses must comply with all applicable regulations of Section 4.~~

~~(B) Traffic requirements: All Motor vehicle oriented businesses require a conditional use permit. Any existing motor vehicle oriented business that plans to modify the configuration of the site in any manner, will require an amended conditional use permit. Petitions for conditional use or amended conditional use permits will require the applicant to submit a traffic impact study (or analysis) and an access management plan, prepared by a traffic engineer and signed by a registered professional engineer. (See Definitions, Section 3).~~

~~(C) Site design standards: The following site design standards shall be met for all motor vehicle oriented businesses:~~

~~1. — Minimum lot area: Twenty thousand (20,000) square feet.~~

~~2. — Minimum lot frontage: One hundred fifty (150) feet. On corner lots, the frontage requirements shall apply to only one (1) side.~~

~~3. — Limit of pump islands with convenience stores: Convenience stores with fuel pumps shall be limited to the maximum number of pump islands that can be accommodated without jeopardizing traffic safety. A general guideline shall be one (1) pump island per minimum seven thousand five hundred (7,500) square feet of site area. Square feet of site area is calculated by subtracting out the area designated for the convenience store. A pump island is the raised concrete platform that the MPDs (multiple petroleum product dispensers) sit atop. Each MPD shall allow no more than two (2) vehicles to fuel simultaneously.~~

~~4. — Setbacks: From public streets and property lines shall be as follows:~~

~~a. — Front yard: There shall be a front yard having a depth of not less than thirty (30) feet. Where a lot is located at the intersection of two (2) or more streets, the front yard requirements shall apply to each street, except that the buildable width of the lot shall not be reduced to less than thirty (30) feet in which latter event the board of aldermen may waive this requirement to the street which will least affect other property values. No accessory building, service islands, and other service or pick-up facilities shall project beyond the front building setback line.~~

~~b. — Side yard: There shall be a side yard on each side of the building of not less than fifteen (15) feet. Side yard requirements shall be seventy-five (75) feet where abutting any residential district.~~

~~c. — Rear yard: There shall be a rear yard having a depth of not less than fifteen (15) feet. Rear yard requirements shall be seventy-five (75) feet, where abutting any residential district.~~

~~(D) Used oil storage: All used oils and other similar materials and products shall be stored only in underground or inside areas.~~

~~(E) Vehicular areas:~~

~~1. — The entire area used by vehicles for parking, storage, and service, etc., shall be paved with asphaltic concrete, concrete, or other material approved by the director of public works.~~

~~2. — A raised curb shall be placed at the edge of all pavements.~~

~~3. — All hydraulic hoists, pits, lubrication, washing, repair, and service not of an emergency nature or unusual short-term minor work shall be conducted entirely within a building.~~

~~(F) Ingress and egress:~~

~~1. — The minimum width of driveways at the property line shall be twenty-four (24) feet, and the maximum shall be fifty (50) feet.~~

2. ~~The minimum distance of any driveway to any side property line shall be twenty-four (24) feet. This distance shall be measured from the side property line to the intersection of the street right-of-way and the edge of the driveway.~~
 3. ~~Driveway openings shall be limited to one (1) drive per one hundred (100) feet of lot frontage. For parcels with frontage on more than one street the number of driveway openings shall be based on the frontage length on each street individually.~~
 4. ~~The minimum distance a driveway into the site from a street intersection shall be thirty (30) feet measured from the intersection of the street rights-of-way to the nearest end of the curb radius of the proposed driveway.~~
 5. ~~The angle of driveway intersection with the street shall be based upon reasonable criteria for safe traffic movements and shall be approved by the director of public works.~~
 6. ~~Motor vehicle oriented businesses adjacent to or integrated in a shopping center or cluster of commercial facilities shall use the common access with other business establishments in that center.~~
- (G) ~~Screening: All motor vehicle oriented businesses shall provide for screening and buffer areas in a manner which conforms with the regulations set forth in Section 5.13 of this ordinance.~~
- (H) ~~Storage of flammable materials: Flammable materials used in the conduct of motor vehicle oriented businesses when stored above ground, shall be stored within the building setback lines. All storage of flammable materials shall be subject to the approval of the appropriate fire district.~~
- (I) ~~Other conditions: The planning and zoning commission may recommend, and the board of aldermen may require, provisions for other conditions which will tend to eliminate or reduce public nuisances caused by noise, heat, odor, smoke, dust, vibration, glare, flooding, and traffic congestion and promote the purpose of this zoning ordinance.~~
- (J) ~~Termination or lapse of conditional use permit:~~
1. ~~When a motor vehicle oriented business' conditional use permit is authorized by the board of aldermen, the continuation of such use shall be dependent upon the conditions established under the permit and this section; and in the event of a change of condition or noncompliance with conditions, the board shall have the authority to revoke the conditional use permit after affording the permittee the right to be heard.~~
 2. ~~When a motor vehicle oriented business' building becomes vacant and its conditional use permit not utilized for a period of one (1) year, the permit shall lapse and the use of the land thereafter conform to the use permitted in the zoning district in which it is located.~~

9.4 - Terms and limitations.

9.4.1 - Permit effective date. The conditional use permit shall become effective upon approval by the board. In the event that an application for a conditional use permit is filed in conjunction with a change of zoning, the permit shall not become effective until the date of enactment of the ordinance authorizing the zoning change.

9.4.2 - Site plan approval and issuance of permit. If the board approves a conditional use permit with conditions or restrictions that affect the site plan as previously submitted, said site plan shall be revised to reflect such applicable conditions or restrictions and submitted to the zoning enforcement officer. Upon determination that the site plan complies with such conditions or restrictions, the enforcement officer shall issue a written statement that it complies with the conditions of the conditional use permit issued by the Board of Aldermen.

9.4.3 - Failure to commence construction or operation. Unless otherwise stated in the conditions of a particular conditional use permit, substantial construction work or operation of the conditional use (where construction is

not involved) shall be null and void if construction has not commenced within 15 months and is not completed within 30 months after the date of adoption of the ordinance approving the conditional use permit.

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9.4.4 - Revocation of conditional use permit. Upon finding violation of the terms of the conditional use permit, the board shall have the authority to revoke the permit after notice to the permittee and/or property owner and affording the same the opportunity to be heard.

9.4.5 - Transferability. All conditional use permits shall be approved for the specific tract or parcel of land and may not be transferred to any other location. Once an approved conditional use is established, the conditional use permit may be transferred to a successor landowner or operator upon delivery to the enforcement officer of the written acceptance of the terms and conditions of the conditional use permit by such successor.

9.5 -- Fees

Prior to processing any conditional use permit application, the applicant or developer shall pay any fee required in full and deposit with the City such amounts as required by the fees, penalties, and fines schedule for the City of Sunset Hills municipal code as it may be amended or replaced-

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Conditional use permit:

≤ one (1) acre: Two hundred fifty dollars (\$250.00)-

> one (1) acre: Two hundred fifty dollars (\$250.00) plus twenty-five dollars an acre or fraction thereof over one (1) acre.

(Ord. No. 1721, § 1, 4 22 2008)

Section 10. - Administration and Enforcement

10.1 - Zoning enforcement officer.

10.1.1 - Appointment. This ordinance shall be enforced by the zoning enforcement officer who shall be the city engineer or delegate appointed by the Board of Aldermen.

10.1.2 - Duties. The zoning enforcement officer shall be responsible for interpreting and administering the provisions of this ordinance and shall have primary responsibility for the enforcement of this ordinance by means of the duties specified herein. Without limiting the generality of the previous sentence, the duties and authority of the enforcement officer shall be as follows:

- 1) Provide administrative support to the Planning and Zoning Commission, including maintaining the records thereof. Specifically, the enforcement officer shall provide the commission with review, analysis, reports, and recommendations on:
 - a) Petitions for rezoning (zoning map amendments);
 - b) Proposed text amendments to this ordinance;
 - c) Conditional use permit applications; and

d) Planned developments.

As needed, the enforcement officer shall obtain and compile the comments from other city staff with respect to the above subjects.

- 2) Determine whether applications for building permits comply with applicable requirements of this ordinance.
- 3) Administer the conditional use permit provisions contained in Article 7.
- 4) Provide administrative support to the board of adjustment, including maintaining records thereof. This includes receiving, filing, and forwarding to the board of adjustment, all information constituting the record upon which actions appealed from are taken.
- 5) Supervise the preparation of updates to the official zoning map.
- 6) Except as otherwise provided for in this ordinance, notify in writing any person responsible for violating any of the provisions of this ordinance, indicating the nature of the violation and ordering the necessary corrective action.
- 7) May cause the cessation of any erection, construction, reconstruction, alteration, conversion, maintenance or use in violation of this ordinance by issuing a stop work or stop use order.
- 8) May refer any violation of this ordinance to the city attorney for prosecution or other appropriate action when deemed necessary.
- 9) The enforcement officer may adopt such administrative policies as necessary to the carrying out of such duties.

10.2 - Planning and Zoning Commission.

The Planning and Zoning Commission of the City of Sunset Hills, which has been duly created by the Board of Aldermen, is the commission referred to in this ordinance. The Planning and Zoning Commission responsibilities, with respect to this ordinance, shall include:

- 1) To review and report to the board its recommendations on petitions to amend the official zoning map (e.g., rezoning).
- 2) To review and report to the board its recommendations on proposed text amendments to the regulations contained in this ordinance.
- 3) To review and report to the board its recommendations on conditional use permit applications.
- 4) To review and recommend approval or disapproval of preliminary and final "development plans" to the board.
- 5) Other such responsibilities as delegated by the board in order to effectuate the provisions of this ordinance.

10.3 - Building permits.

No building permit shall be issued until the application for such permit has been determined by the zoning enforcement officer to be in compliance with the provisions of this ordinance or with a written order from the board of adjustment in the form of an administrative review decision on an appeal or variation as provided in Section 9 of this ordinance.

10.4 - Enforcement.

10.4.1 - Construction and use must comply with approved plans and permits. All permits issued on the basis of plans and/or applications approved by the board, commission and/or the zoning enforcement officer authorize only the use, arrangement, and/or construction set forth in such approved plans and/or applications and no other use, arrangement, or construction.

10.4.2 - Entry and inspection of land and buildings. The mayor, members of the Board of Aldermen, members of the Planning and Zoning Commission, the zoning enforcement officer, the building commissioner, and the Director of Public Works are hereby empowered in the performance of their duties, to enter upon any property in the City of Sunset Hills for the purpose of making inspections, examinations, and surveys, or to place and maintain thereon monuments, markers, notices, signs, or placards required to effectuate the purpose and provisions of this ordinance.

10.5 - Violations and penalties

10.5.1 - Procedure to prevent violations. The zoning enforcement officer, in addition to remedies provided in this section, may institute any appropriate action or proceeding to prevent any unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. The zoning enforcement officer is empowered to cause any building, structure, place, or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this ordinance.

10.5.2 - Penalties.

The owner or general agent of the building or premises where a violation of any provision of this ordinance has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant or any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) and costs, or imprisonment for a period not to exceed ninety (90) days or by both such fine and imprisonment for each and every day that such violation continues.

Any person who, having been served with an order to remove any such violation, shall fail to comply with said order within 90 days after service thereof, or shall continue to violate any provision of this ordinance in the respect named in such order shall also be subject to a civil penalty in accordance with the fees, fines, and penalties schedule for the City of Sunset Hills municipal code.

Section 11. - Appeals and Variances

11.1 - Board of adjustment

11.1.1 - Appointment; term; vacancies and organization.

- 1) The board of adjustment shall consist of five members, who shall be residents in the City of Sunset Hills. The term of office of the members of the board of adjustment shall be for five years.

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- 2) Three alternate members may be appointed to serve in the absence of or the disqualification of the regular members. All members and alternates shall be removable for cause by the Board of Aldermen upon written charges and after public hearing.
 - 3) The board of adjustment shall elect its own chairperson who shall serve as such for one year.
 - 4) Vacancies on the board shall be filled for the unexpired term of any member whose term becomes vacant in the same manner as provided for the appointment of such member.

11.1.2 - Powers and duties. The board of adjustment shall have the following powers and duties:

- 1) To hear and decide all matters referred to it or upon which it is required to pass under this ordinance.
- 2) To hear appeals in the manner prescribed in Section 11.2 of this section where it is alleged there is error in any order, requirement, decision, or determination made by the zoning enforcement officer in the administration and enforcement of this ordinance.
- 3) To vary or modify in the manner prescribed in Section 11.3 of this section the application of any of the provisions of this ordinance where there are practical difficulties or unnecessary hardships in the carrying out the strict letter of this ordinance, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

11.1.3 - Procedures.

- 1) Meetings shall be held at the call of the chairperson and at such other times as the board may determine.
- 2) Hearings and rules:
 - a) All meetings of the board shall be open to the public.
 - b) The board shall set a date for any required hearings and public notice of them shall be given to the parties in interest. Notice of the public hearing shall be given in accordance with the requirements of section 14 of this ordinance.
 - c) All testimony at such hearings shall be given under oath. The chairperson or, in her/his absence the acting chairperson, shall administer the oaths and may compel the attendance of witnesses.
 - d) The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed within the office of the board (office of the zoning enforcement officer) and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the board for that purpose.

11.1.4 - Vote required. The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the zoning enforcement officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to affect any variation in this ordinance.

11.1.5 - Judicial review of decision of the board of adjustment. All decisions of the board of adjustment shall be subject to judicial review in the manner provided by RSMo 89.110.

11.2 - Appeals

11.2.1 - Initiation. Appeals to the board of adjustment may be taken by any person aggrieved, by any neighborhood organization as defined in RSMo ~~32.102~~ §9.100 representing such person, or by any officer, department, board, or bureau of the City of Sunset Hills affected by any decision of the zoning enforcement officer.

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11.2.2 - Time for appeals. Such appeals shall be taken within a reasonable time, not to exceed 30 days from the time the incident appealed from occurred.

11.2.3 - Filing. The aggrieved party shall file his/her appeal, specifying the grounds thereof, with the zoning enforcement office and with the board of adjustment including all papers constituting the record upon which the action appealed from was taken. The appeal shall include, but not be limited to:

- 1) A copy of the order, requirement, decision, or determination of the zoning enforcement officer which the applicant believes to be in error.
- 2) A clear and accurate, written description of the proposed use, work, or action to which the appeal is involved and a statement justifying the applicant's position.
- 3) Where necessary, a plot plan, drawn to scale, in duplicate showing existing conditions and proposed plans for the area in question.

11.2.4 - Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer certifies by letter to the board of adjustment after the notice of appeal is filed with him, that by reason of specific facts stated in the letter, a stay would, in his/her opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed except by order of the board of adjustment or by order of a court of record upon due notice to the zoning enforcement officer and on due cause shown.

11.2.5 - Decision on appeals. The board of adjustment may affirm or reverse, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the zoning enforcement officer. The board shall render a written decision on the appeal without unreasonable delay after the close of the public hearing.

11.3 - Variations

11.3.1 - Application for a variance. An application for variance shall be filed with the zoning enforcement officer, who shall forward the application to the board of adjustment. The application shall contain the following information as well as such additional information as the board of adjustment may be necessary for the board of adjustment to make findings and render a decision on the requested variance:

- 1) The particular requirements of this ordinance that prevent the proposed construction;
- 2) The unique characteristics of the subject property, which prevent compliance with the requirements of this ordinance;
- 3) The practical difficulty or particular hardship which would result if the particular requirements of this ordinance were applied to the subject property; and
- 4) The reduction or modification of the minimum requirements of this ordinance that would be necessary to permit the proposed construction.

The burden of proof shall rest with the applicant to clearly establish that the required findings for granting a variance, as established in Section 10.3.2 of this section, are satisfied.

11.3.2 - Findings. The board of adjustment may grant variances from the strict application of this ordinance when by reason of the strict application of this ordinance or amendments thereto would result in unusual difficulty or unreasonable hardship upon the owner of said property; provided that such variance can be granted without substantial impairment of the intent, purpose, and integrity of this ordinance. It is further provided that this provision shall not permit the board of adjustment to permit a use of land not authorized by the provisions of this ordinance for a specific zoning district or to increase the height or volume of a building or structure or to increase the density of development beyond that permitted by this ordinance for any particular zoning district. Before granting a variance, there must be a finding by the board of adjustment that all of the following conditions exist:

- 1) That if the owner complied with the provisions of this ordinance, the owner would not be able to make any reasonable use of the property which is permitted in the district in which the property is located.
- 2) That the difficulties or hardships are peculiar to the property in question in contrast with those of other properties in the same district.
- 3) That the hardship was not the result of the applicant's own action and is not merely financial or pecuniary.
- 4) That the issuance of a variance will not be detrimental to the public welfare or health or injurious to other property.

11.3.3 - Non-conforming situations as a basis for variations. The existence of any non-conforming situation anywhere in the city shall not itself be considered grounds for the issuance of a variance to the regulations applicable to other property.

11.3.4 - Public hearing. The board of adjustment shall hold a public hearing, with notice thereof being provided in accordance with Section 14 of this ordinance. This notice shall contain the particular location for which the variation is requested as well as a brief description of the proposed variation.

11.3.5 - Decisions on variance applications.

- 1) The board of adjustment shall render a written decision, including findings of fact on the application for a variation without unreasonable delay. The findings of fact shall specify the reason or reasons for allowing the variation.
- 2) Conditions and restrictions:
 - a) In granting a variation, the board of adjustment may impose such conditions and restrictions upon the property benefited by the variation as may be necessary to reduce or minimize any potentially injurious effect of such variation upon other property in the neighborhood, and to carry out the general purpose and intent of this ordinance.
 - b) A variation may be issued for a specified duration as it applies to the existence of the structure for which the variation was granted.
- 3) No variation granted by the board of adjustment shall be valid for a period longer than six months from the date on which it grants the variation, unless within such period:
 - a) A building permit or other required permit is obtained and the construction, alteration, or moving of the structure is commenced.
 - b) If a building or other permit is not required, the construction of the project for which the variation was required is commenced.

- 4) The board of adjustment may grant extensions not exceeding 180 days each, upon written application, without notice or hearing.
- 5) In the event that a variation is denied, no request for the same variation shall be accepted by the city for a period of one year from the time the board of adjustment denied the original request.

Section 12. – Non-Conforming Situations

12.1 - Applicability

12.1.1 - Non-conforming situations versus violations.

- 1) The provisions of this section shall apply to all non-conforming situations as defined herein. Establishment of any use or development of land after the effective date of this ordinance or amendment thereto, which does not comply with the regulations contained in this ordinance or amendment thereto, shall be considered a violation of this ordinance and not a non-conforming situation.
- 2) A non-conforming situation shall not be deemed to have existed on the effective date of this ordinance or amendment thereto, unless:
 - a. At the time of its creation, it was valid;
 - b. It was in existence on a continuous basis and to its fullest extent on such date; and
 - c. If such non-conforming situation is a use, such use had not been discontinued, as herein defined, on such date.

~~12.1.2 - Definitions:~~

~~Discontinuance: The non-use of the non-conforming use for six (6) consecutive months.~~

~~Non-conforming situation: A non-conforming situation is one which lawfully existed prior to the effective date of this ordinance or any amendment thereto, and which fails to conform to one (1) or more of the applicable regulations of this ordinance or such amendment thereto. For purposes of this Section, non-conforming situations are divided into the following categories:~~

~~(A) — Non-conforming use: A non-conforming situation that occurs when property is used for a purpose made unlawful by the regulations of this ordinance which govern the use of property, including uses that do not comply with the performance standards established in Section 5.17 of this ordinance.~~

~~(B) — Dimensional non-conformity: A non-conforming situation that involves any of the following:~~

~~1. — The height of a structure, or the relationship between an existing building or buildings and other buildings or lot lines, which does not conform to the applicable dimensional regulations (e.g., setbacks) contained in this ordinance;~~

~~2. — A lot of record that does not meet the minimum area or dimensional requirements of the district in which the lot is located;~~

Commented [JW6]: Moved to definitions section

~~3. Development of property, including buildings and other improvements thereon, which do not comply with regulations governing intensity of use, such as density (e.g., dwelling units per acre), and maximum building or site coverage;~~

~~4. Provision of off-street parking or loading spaces which does not meet the minimum requirements, or exceptions thereto, as specified in Section 6 of this ordinance; or~~

~~5. Any other situation where improvements to land do not comply with any quantitative or dimensional standard applicable to such improvement.~~

~~Where such a dimensional non-conformity relates to a building or structure, the term "non-conforming structure" shall be considered synonymous with the term dimensional non-conformity.~~

12.2 - Non-conforming uses

12.2.1 - Authority to continue use. Any non-conforming use of part or all of a structure or any non-conforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the following provisions:

- 1) Ordinary repair and maintenance:
 - a. Normal maintenance and incidental repair or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring, or plumbing, may be performed on any structure; provided, however, that this subsection shall not be deemed to authorize any violation of paragraphs (2) through (5) below, and subsections 12.2.2, 12.2.3 and 12.2.4 of this ordinance.
 - b. Nothing in this section shall be deemed to prevent the strengthening or restoring of a structure to a safe condition or to comply with health or safety laws, provided such restoration shall be subject to the conditions set forth in this ordinance.
- 2) Remodeling: No structure shall be remodeled unless the use thereof shall thereafter conform to all provisions of this ordinance. For purposes of this section, the term "remodel" shall mean to reconstruct or relocate exterior walls, bearing walls or bearing partitions; or to substantially alter the exterior appearance of a building by adding or removing architectural elements, by changing the roof line, or by closing up or relocating door or window openings.
- 3) Expansion of use: A non-conforming use of a lot or building shall not be enlarged, expanded, or extended to occupy a greater area of lot or building than was occupied on the effective date of this ordinance, or amendment thereto, and no additional accessory use, building or structure shall be established thereon.
- 4) Enlargement of building or structure: No building or structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to in any manner, unless such building or structure addition and the entire use thereof (both existing space and the addition) shall thereafter conform to all of the provisions of this ordinance.
- 5) Moving: No structure that is devoted in whole or in part to a non-conforming use shall be moved, in whole or in part, to any other location on the same or any other lot, unless the entire structure and use thereof shall thereafter conform to all of the provisions of this ordinance after being so moved. No non-conforming use of land shall be moved, in whole or in part, to any other location on the same or any other lot, unless such use shall thereafter conform to all of the provisions of this ordinance after being so moved.

12.2.2 - Change of use. A non-conforming use shall not be changed to any use other than a permitted use in the zoning district in which the property is located. When a non-conforming use has been changed to any permitted use, it shall not thereafter be changed back to a non-conforming use.

12.2.3 - Discontinuance of use. When a non-conforming use is discontinued for a period of six (6) months or more, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land or building shall comply with the provisions of this ordinance.

Commented [JW7]: Added 6-month definition for discontinued

12.2.4 - Non-conforming accessory uses. No use which is accessory to a principal non-conforming use shall continue after such principal use has been discontinued.

12.2.5 - Status of conditional uses.

- 1) Any use existing as of the effective date of this ordinance or amendment thereto that was issued a conditional use permit and continues to be classified as a conditional use under the applicable district regulations of this ordinance shall not be considered a non-conforming use. Such a use may continue, subject to compliance with the conditions set forth in the conditional use permit.
- 2) Any use that was issued a conditional use permit prior to effective date of this ordinance or amendment thereto but is no longer permitted as a conditional use or as a permitted use upon such effective date, shall be considered a non-conforming use, subject to the provisions of this section.
- 3) Uses existing prior to the effective date of this ordinance, or amendment thereto, which were not classified as a conditional use, but are so classified upon such effective date, shall be deemed a lawful conforming use. In the event that such existing use is to be altered (other than maintenance and remodeling), expanded, intensified, or otherwise changed, then such use shall be required to obtain a conditional use permit, pursuant to the procedures set forth in Section 9 of this ordinance.

12.3 - Dimensional non-conformities

12.3.1 - Non-conforming lots of record.

- 1) Any lot of record at the time of adoption of this ordinance, that does not meet the requirements of this ordinance for required lot area, may be utilized for any use permitted in the zoning district in which the lot is located, provided all the requirements for such zoning district, except the required lot area, are met on said lot.
- 2) Nothing in this section shall prohibit the combination of a non-conforming lot of record with another adjoining lot, or lots, so as to create a lots that complies with the requirements of this ordinance. Such lot consolidations may be accomplished under the subdivision procedures specified in Section 7, "Subdivisions" of the City of Sunset Hills Zoning Ordinance.

12.3.2 - Non-conforming structures. Any non-conforming structure may remain as a non-conforming structure, subject to the following provisions:

- 1) Enlargement, repair, alterations: Any such structure may be enlarged, maintained, repaired or remodeled; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except as may be approved by the Director of Public Works or his/her designee.
- 2) Damage or substandard conditions: Any such structure shall be subject to the provisions of Section 12.4 of this ordinance.

- 3) Moving: No such structure shall be moved, in whole or in part, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the provisions of this ordinance after being moved.

12.4 - Damage or substandard conditions.

12.4.1 - Damage less than 50 percent of replacement value: Nothing in this Section shall be deemed to prohibit the restoration of any structure and its use where such structure has been damaged, by any means, to an extent less than fifty (50) percent of its replacement value (excluding the value of the land, the cost of preparation of land, and the value of any reusable foundation associated with such structure) at the time of damage, as determined by the zoning enforcement officer; provided, however, that the restoration of such structure and its use in no way increases any former non-conformity, and provided that restoration of such structure is begun within six months of such damage and diligently prosecuted to completion within two years following such damage.

12.4.2 - Damage greater than 50 percent of replacement value: Whenever such structure has been damaged, by any means, to an extent of more than 50 percent of its replacement value (excluding the value of the land, the cost of preparation of land and the value of any reusable foundation associated with such structure) at the time of damage, as determined by the zoning enforcement officer, the structure and use thereof shall not be restored except in full conformity with the regulations of this ordinance.

12.4.3 - Substandard conditions: When a structure is determined by the zoning enforcement officer, to be in violation of the building code or any applicable health or safety code, and the cost of placing the structure in condition to satisfy the standards under such codes exceeds 50 percent of its replacement value (excluding the value of the land, the cost of preparation of land and the value of any reusable foundation associated with such structure), as determined by the zoning enforcement officer, the structure and use thereof shall not be restored except in full conformity with the regulations of this ordinance.

Section 13. – Amendments

13.1 - Types of amendments

Amendments to this ordinance shall be classified as follows:

13.1.1 - Text amendments. Changes to the written provisions contained in this ordinance shall be referred to as "text amendments."

13.1.2 - Map amendments. Changes to the designation of and/or location of district boundaries illustrated on the official zoning map shall be referred to as "map amendments" (also referred to as "rezoning").

13.2 - Procedures

13.2.1 - Initiation of amendment

- 1) Text amendments: A petition for a text amendment may be filed by any person.
- 2) Map amendments (rezoning): Actions on map amendments may be initiated by:
 - a) Motion of the Board of Aldermen.
 - b) Motion of the Planning and Zoning Commission.

- c) Petition by one or more of the owners or authorized representatives of the owner(s) of property in the area of the proposed map amendment.

13.2.2 - Submission requirements.

- 1) *Text amendments*: A petition for text amendments to this ordinance shall set forth the new text to be added and existing text to be deleted.
- 2) *Map amendments (rezoning)*: A petition for a map amendment, which is initiated by a private party, shall include:
 - a) A legal description of the property;
 - b) A scaled map of the property, clearly showing the boundaries of the property; its current and proposed zoning district classification; and the current zoning classification of adjacent property;
 - c) A description of the proposed use of the property and the estimated impact of the proposed use on the surrounding neighborhood;
 - d) The name, address, and telephone number of the petitioner(s);
 - e) The petitioner's interest in the property, and if the petitioner is not the owner, the name, address, and telephone number of the owner(s);
 - f) Other information as required for a planned development or a conditional use; and
 - g) At the applicant's discretion, unless otherwise required by this ordinance or by the Board or Commission, a site plan, perspectives, elevations, or models that will assist in clarifying the proposed use of the property to be rezoned.

13.2.3 - Review procedure.

- 1) Submission by applicant:
 - a) The applicant shall submit three copies of the site plan and other information required by Section 13.2.2 to the zoning enforcement officer for staff review. Upon completion of staff review, the applicant shall submit the requested number of copies, incorporating any necessary changes, to the zoning enforcement officer for distribution to the Planning and Zoning Commission and the Board of Aldermen.
 - b) The initial submittal of the application and supporting information shall be submitted not later than 5:00 p.m. of the day after the regular Board of Aldermen meeting in order to be considered at the next regularly scheduled Planning and Zoning Commission meeting.
- 2) Planning and Zoning Commission review:
 - a) The application and supporting information shall be taken under consideration by the commission for its recommendation and report, which report shall be delivered in writing to the board within 90 days from the date of acceptance of the application.
 - b) The plan commission may recommend to the Board of Aldermen that the petition for amendment be approved, denied, or may recommend an alternative zoning classification (e.g., regarding rezoning petitions) or alternative zoning ordinance text (e.g., regarding text amendments).

13.2.4 - Board of Aldermen action.

- 1) Upon the filing of the report by the commission, the board shall proceed to hold a public hearing in relation thereto. Notice of such hearing shall comply with the public notice requirements contained in Section 14 of this ordinance.
- 2) After close of said public hearing, the board may deny or approve the petition for amendment. The recommendations of the commission shall not be binding on the board. The board may refer the application back to the commission for further study before making its final decision.
- 3) The commission shall submit its report to the Board of Aldermen for actions taken. If the commission has made an adverse finding, the Board of Aldermen may only approve the action requested by the applicant by the affirmative vote of not less than six members of the entire membership of the Board of Aldermen.

13.2.5 - Protest. In case of a protest petition against any proposed amendment signed and acknowledged by a minimum of thirty percent (30%) of the owners of real property within six hundred (600) feet of the parcel of land for which the amendment is proposed, such amendment shall not become effective except by the favorable vote of two-thirds of all the members of the board.

13.3 - Fees

Prior to processing any conditional use permit application, the applicant or developer shall pay any fee required in full and deposit with the City such amounts in accordance with the fees, penalties, and fines schedule of the City of Sunset Hills municipal code.

Change of zoning:

≤ one (1) acre: Two hundred fifty dollars (\$250.00).

> one (1) acre: Two hundred fifty dollars (\$250.00) plus twenty-five dollars an acre or fraction thereof over one (1) acre.

Amendment to zoning regulations:

≤ three (3) acres: One hundred dollars (\$100.00).

> three (3) acres: Two hundred dollars (\$200.00).

One hundred fifty dollars (\$150.00) for zoning amendment without regard to specific piece of property.

(Ord. No. 1721, § 1, 4-22-2008)

Section 14. – Public Notices

14.1 - Notice of public hearing

14.1.1 - Newspaper notice. A notice of every public hearing to be held under this ordinance shall be given as follows:

- 1) The notice of a public hearing shall be published, at least once, in a daily newspaper of general circulation within the city.

Commented [JW8]: 64.271. Change in regulations and districts, hearing before commission — effect of protest (noncharter first class counties). — 1. The regulations imposed under authority of sections 64.211 to 64.295 may be amended, supplemented or changed from time to time by the county commission after the order establishing the same has gone into effect, but no such amendment shall be made without a report and recommendation from the planning board after public hearing before the board, public notice of which shall be given in the same manner as provided for the hearing in section 64.231.

2. The districts created under authority of sections 64.211 to 64.295 may be amended, supplemented or changed from time to time by the county commission after the order establishing the same has gone into effect, but no such amendment shall be made without a report and recommendation from the planning board after a public hearing before the board. The hearing shall be held in any one place in the county designated by the planning or zoning board regardless of the location of the land affected by the amendment. Public notice of the hearing shall be given in at least one publication in a newspaper of general circulation in the county at least fifteen days before the date of the hearing.

3. In case of written protest against any proposed amendment, signed and acknowledged by the owners of thirty percent of the frontage within one thousand feet to the right or left of the frontage proposed to be changed, or by the owners of thirty percent of the frontage directly opposite, or directly in the rear of the frontage proposed to be altered, or in cases where the land affected lies within one and one-half miles of the limits of a municipality, by the city council or zoning board of any such municipality, filed with the county clerk, such amendment may not be passed except by the favorable vote of two-thirds of all the members of the county commission.

(L. 1959 S.B. 309 § 12, A.L. 1988 H.B. 923, A.L. 1994 H.B. 1175)

Commented [JW9]: Fees moved to Appendix A

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Commented [JW10]: Staff comment: Do we need or should we do notices/hearings for everything to avoid some confusion?

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- 2) Publication shall commence not less than 15 days before the hearing date.
 - 3) The notice shall provide the time and place of the hearing and include the following information:
 - a) A street address of the subject property or other description of the location of such property;
 - b) The name of the applicant or appellant; and
 - c) A description of the specific action being requested by the applicant or appellant.

14.1.2 - Posting of notice. In addition to the notice requirements of subsection 14.1.1 a notice shall be posted on the property in question pursuant to the following:

- 1) Posting of the notice shall commence not less than 15 days before the hearing date.
- 2) The poster or posters shall be placed in a legible and visible location on the property; and
- 3) The poster shall contain the same information as required under subsection 14.1.1 (3) above.

14.2 - Posting of notice of Planning and Zoning Commission meetings

14.2.1 - When a proposed conditional use, planned development or rezoning is scheduled to be on the agenda for a Planning and Zoning Commission meeting, a notice of such proposal shall be posted on the property in question pursuant to the following:

- 1) Posting of the notice shall commence not less than 15 days before the meeting date.
- 2) The poster or posters shall be placed in a legible and visible location on the property; and
- 3) The poster shall contain the same information as required under subsection 14.1.1(3) above.