

## CHAPTER 40. ZONING ORDINANCE

40.01 Purpose: This Zoning Ordinance is adopted in order to protect and to promote adequate light, pure air and safety from fire and other dangers 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 and that the public health, safety, comfort, morals and welfare may otherwise be promoted. Specifically, the purposes of the Zoning Ordinance are as follows:

40.01.01 To regulate and limit the height and bulk of buildings hereafter to be erected;

40.01.02 To establish, regulate and limit the buildings or setback lines on or around any street, trafficway, drive or parkway;

40.01.03 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;

40.01.04 To regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential and other uses;

40.01.05 To divide the entire municipality and all contiguous territory not more than one and one-half miles beyond the corporate limits of the Village of Pesotum and not included within any municipality into districts of such number, shape, area and of such different classes according to the use of lot area, area of open spaces or other classifications as may be deemed best suited to carry out the purposes of this Article;

40.01.06 To fix standards to which buildings or structures therein shall conform;

40.01.07 To prohibit uses, buildings or structures incompatible with the character of such district;

40.01.08 To prevent additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Article.

### 40.02 Definitions:

40.02.01 Except where specifically defined herein, all words used in this Ordinance shall carry their customary meanings. Words used in the present tense include the future tense and the plural includes the singular. The word "person" includes a firm, partnership, association or corporation, as well as an individual. The word "lot" includes the words "plot" or "parcel". The word "building" includes the word "structure". The word "shall" is always mandatory. The words

“used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged or designed to be used or occupied”.

40.02.02      Accessory Building and Use: An accessory building is a subordinate building or a portion of the main building, the use of which is incidental to or customarily found in connection with and located on the same lot as the use of the main building or principal use of the land. An accessory use is one which is incidental to or customarily found in connection with, except as otherwise provided in this Ordinance, on the same lot as the main use of the premises. When accessory is used in the text, it shall have the same meaning as an accessory use.

40.02.03      Alley: An alley is a public or private thoroughfare which affords only a secondary means of access to property abutting thereon.

40.02.04      Basement or Celler: A portion of a building located partly on wholly underground and having one-half or more of its floor to ceiling height below the average grade of the adjoining land.

40.02.05      Block Front: All the property on one side of the street between two other adjacent intersecting streets or between an intersecting street and a dead-end street measured along the line of the street.

40.02.06      Boarding House: A building other than a hotel where, for compensation, meals or lodging and meals are provided for three, but not more than twelve, persons.

40.02.07      Building: Any structure including a roof supported by walls, designed or intended for the support, enclosure, shelter or protection of persons, animals, chattels or property and forming a construction that is safe and stable. The word “building” shall include the work “structure”.

40.02.08      Building, Height Of: The vertical distance from the grade to the highest point of a coping of a flat roof or to the deckline of a mansard roof or to the mean height level between eaves and ridge for gable, hip or gambrel roofs. The word “grade” means elevation of curb, sidewalk or average elevation of curb, sidewalk or average elevation of the ground around the structure.

40.02.09      Commission: A planning commission.

40.02.10      District: A section or sections of the Village of Pesotum, Illinois and all contiguous territory not more than one and one-half miles beyond the corporate limits of the Village of Pesotum and not included within any municipality for which the regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

40.02.11 Dwelling: Any building, or portion thereof, designed and used exclusively for residential purposes.

40.02.12 Dwelling, Single Family: A building designed for use or occupied exclusively by one family.

40.02.13 Dwelling, Two Family: A building designed for use or occupied exclusively by two families.

40.02.14 Dwelling, Multiple: A dwelling containing more than two dwelling units.

40.02.15 Dwelling Unit: A room or group of rooms within a dwelling and forming a single habitable unit with the facilities for living, sleeping and cooking.

40.02.16 Family: One or more persons occupying a dwelling and living as a single housekeeping unit and doing their own cooking on the premises.

40.02.17 Floor Area: The sum of the gross horizontal areas of all floors of the building measured from the exterior faces of the exterior walls or from the centerline of a wall separating buildings, but not including cellar, garage or basement space not used for retailing and not including accessory off-street parking or loading space.

40.02.18 Garage, Private: An accessory building used principally for the housing of motor vehicles without the equipage for operation, repair, hire or sale.

40.02.19 Garage, Public: A garage other than a private garage.

40.02.20 Grade: See Section 40.02.08.

40.02.21 Home Occupation: Any occupation which is clearly incidental and secondary to the use of the premises for dwelling and which is carried on wholly within a dwelling by a member of a family residing on the premises in connection with which there is no advertising other than an identification sign of not more than one square foot in area and no display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling and in connection with which not more than one person outside the family is employed and no equipment used which creates offensive noise, vibration, smoke, dust, odors, heat or glare. When within the above requirements, a home occupation includes, but is not limited to, the following: (a) art studio; (b) dressmaking; (c) professional office of a physician, dentist, lawyer, engineer, architect, accountant, salesman, real estate agent, insurance agent or other similar occupation; (d) teaching, with musical instruction limited to one or two pupils at a time; (e) beauty salon; (f) nursery or truck gardening. A home occupation, as herein defined, shall not include any uses listed in Section 40.05 of this Ordinance.

40.02.22        Institution: A building occupied by a non-profit establishment for public use.

40.02.23        Lodging House or Rooming House: A building or place where lodging is provided by prearrangement for definite periods, for compensation, for three or more, but not exceeding twelve, individuals.

40.02.24        Lot: A parcel of land occupying or intended for occupancy by use permitted in this Ordinance, including one main building, together with its accessory buildings, and the open spaces and parking spaces required by this Ordinance and having its principal frontage upon a street.

40.02.25        Lot, Corner: A lot abetting upon two or more streets at their intersection.

40.02.26        Lot, Double Frontage: A lot having a frontage on two non-intersecting streets as distinguished from a corner lot.

40.02.27        Lot of Record: A lot or parcel of land, the plat, map or deed to which has been recorded in the Office of the County Recorder of Champaign County, Illinois prior to the adoption of this Ordinance.

40.02.28        Major Street: A street designated as a major street or master street on an official plan.

40.02.29        Motel: A building or group of buildings in which lodging and an individual automobile parking space in close proximity are provided for transients traveling by motor vehicle.

40.02.30        Nonconforming Use: Any building or land lawfully occupied by a use at the time of passage of this Ordinance and all amendments thereto which does not conform with the use regulations of the district within which it is located.

40.02.31        Parking Space: A surfaced area, enclosed or unenclosed, sufficient in size to store one automobile (not less than nine feet wide and twenty feet long) connected to a public street or alley by a surfaced driveway and permanently reserved for the parking or storage of one motor vehicle.

40.02.32        Premises: A lot, together with all buildings and structures thereon.

40.02.33        Plat, Lot: A drawing of a lot showing its dimensions, the building arrangement thereon and such other information as may be needed for enforcement of this Ordinance.

40.02.34        Sign: A sign is any structure or part hereof, or any device attached to, painted on, or represented on a building or other structure, upon which is displayed or included any letter, work model, banner, flag, pennant, insignia, decoration, device or representation used as, or which is in the nature of an

announcement, direction, advertisement or other attention-directing device. A sign shall not include a similar structure or device located within a building except for illuminated signs within show windows. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation or association of nations, or of any state, city or other political unit, or any political, charitable, educational, philanthropic, civic, professional, religious or like campaign, drive, movement or event.

40.02.35        Sign Area: That area within a line including the outer extremities of all letters, figures, characters and delineations or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it be columns, a pylon or a building or part thereof, shall not be included in the sign area.

40.02.36        Story: That portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the floor and ceiling next above it.

40.02.37        Story, Half: A space under a sloping roof which has the line of intersection of roof decking and wall space not more than three feet above the top floor level, and in which space not more than sixty per cent of the floor area is habitable.

40.02.38        Street: Any public or private way set aside as a permanent right-of-way for street purposes.

40.02.39        Street Line: A dividing line between a lot, tract or parcel of land and a contiguous street.

40.02.40        Structure: Anything constructed or erected, the use of which requires permanent location on the ground.

40.02.41        Structural Alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

40.02.42        Trailer: Any structure designed to be used for living, sleeping, business or storage purposes which has no foundation other than wheels, blocks, skids, jacks, horses or skirting and which has been or reasonably may be equipped with wheels or other devices for moving the structure from place to place, whether by motive power or other means. No trailer, as herein defined, shall be construed as a dwelling. The term "trailer" shall include house car and railroad camp car.

40.02.43        Trailer Camp: An area used or designed for use by five or more trailers, house or camp cars or other portable or mobile shelters used for living purposes.

40.02.44 Yard: An open space on the same lot with a building, unobstructed from the ground upward and measured as the minimum horizontal distance between the lot line and the main building.

40.02.45 Yard, Front: A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the street line and the main building or any projections thereof other than the projections of uncovered steps, uncovered balconies, terraces, or uncovered porches. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension. On corner lots at the entrance of a Cul-de-sac, the front yard shall be considered as parallel to the street serving and forming the Cul-de-sac.

40.02.46 Yard, Rear: A yard extending across the rear of the lot between the side lot lines measured between the rear lot lines and the rear of the main building or any projection other than steps, unenclosed porches or entrance way.

40.02.47 Yard, Side: A yard between the main building and the side line of the lot, and extending from the front lot line to the rear yard, and being the minimum horizontal distance between a side lot line and side of the main buildings or any projections thereof.

40.02.48 Bed and Breakfast Establishments: An operator-occupied residence providing accommodations for a charge to the public with no more than five (5) guest rooms for rent, in operation for more than ten (10) nights in a twelve (12) month period. Breakfast may be provided to the guests only. Bed and Breakfast establishments shall not include motels, hotels, boarding houses, lodging houses or food service establishments.

#### 40.03 Compliance with Regulations:

40.03.01 Except as hereinafter provided, no building or land shall hereinafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located.

40.03.02 No building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, or to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such buildings is located.

40.03.03 No part of a yard or other open space required about any building for the purpose of complying with the provisions of this Ordinance shall be included as a part of a yard or other open space similarly required for another building.

40.03.04 All territory which may hereafter be annexed to the Village of Pesotum shall be classified in the Residential District until, within a reasonable time following annexation, the annexed territory shall be appropriately classified by ordinance in accordance with Section 40.11 of this Ordinance.

40.04 Nature: The Zoning Ordinance consists of a zoning map describing certain districts and a set of regulations set forth in this Ordinance.

40.05 Districts:

40.05.01 The districts into which the Village and contiguous territory is divided by the Zoning Ordinance shall be designated as follows:

Agricultural District  
Residential District  
Commercial District

40.05.02 The boundaries of these districts are shown on the "District Map" which accompanies and is made a part of this Ordinance. The original of this map is properly attested and on file with the Village Clerk, and said map and all the information shown thereon shall have the same force and effect as if fully set forth or described herein.

40.05.03 The District Map shall be corrected and brought up to date in January of each year.

40.06 Boundaries: Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply.

40.06.01 Where district boundaries are indicated as approximately following the center lines of alleys, streets or highways, said alley, street lines, or highway right-of-way lines shall be construed to be such boundaries.

40.06.02 Where district boundaries are so indicated that they approximately follow the lot lines, such lines shall be construed to be said boundaries.

40.07 Permitted Uses in Agricultural District: The following uses shall be permitted:

40.07.01 Farming, including the usual farm buildings and structures.

40.07.02 Truck and flower gardening, nurseries, orchards and greenhouse.

- 40.07.03 One-family dwelling.
- 40.07.04 Two-family dwelling. A private entrance, separate kitchen, and sanitary facilities must be provided for each dwelling unit.
- 40.07.05 Churches.
- 40.07.06 Public elementary and high schools, or private schools with a curriculum the same as ordinarily given in public elementary and high schools.
- 40.07.07 Publically owned and operated property.
- 40.07.08 Country clubs and golf courses except miniature courses and practice driving tees.
- 40.07.09 Other private clubs or recreational uses except skeet or gun clubs or commercial amusement enterprises.
- 40.07.10 Roadside stands offering for sale only farm products which are produced on the premises.
- 40.07.11 Hospital or institution of an educational, religious, charitable or philanthropic nature, when located on a site of at least five acres; provided that such buildings shall not occupy more than ten per cent of the total area of the lot and shall be set back from all yard lines at least two feet for each foot of building height.
- 40.07.12 Veterinary hospital for the keeping of small domestic animals; provided that any building housing animals be located at least one hundred feet from all property lines.
- 40.07.13 Commercial grain elevators and the usual accessory structures, including buildings for seasonal or temporary storage of grain whenever such elevator and temporary storage are located upon or adjacent to a railroad right-of-way.
- 40.07.14 Pumping or booster stations along a pipe line or substations along an electric transmission line.
- 40.07.15 Home occupation.
- 40.07.16 Accessory buildings and uses customarily incident to any of the above uses.
- 40.07.17 Church bulletin boards, and temporary signs not exceeding twenty square feet in area, appertaining only to the lease, hire or sale of a building or premises, or the sale of products grown and sold on the premises, provided, however, that not more than one sign of the above character shall be permitted on



any lot or tract. Billboards or signs advertising products not grown on the premises will not be permitted.

40.07.18 All uses permitted in Residential District, not limited or modified herein.

40.08 Permitted Uses in Residential District: The following uses shall be permitted:

40.08.01 One-family dwelling.

40.08.02 Two-family dwelling. A private entrance, separate kitchen, and sanitary facilities must be provided for each dwelling unit.

40.08.03 Churches or similar places of worship, parish house, convent.

40.08.04 Public parks, public playgrounds.

40.08.05 Public or parochial schools and institutions of higher learning, public libraries, municipal buildings.

40.08.06 Benevolent or charitable organizations.

40.08.07 Home occupations.

40.08.08 Temporary buildings, or trailers, the uses of which are incidental to construction operations being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of such construction, whichever is sooner. No building used in this paragraph shall be used as a dwelling.

40.08.09 Accessory buildings and uses customarily incidental to the above uses, provided that any such accessory buildings is not constructed prior to the beginning construction of the main building. Such accessory buildings may include, but is not limited to, church, school and similar bulletin boards and signs not exceeding ten square feet in area pertaining to the lease, hire or sale of a building or premises.

40.08.10 Bed and Breakfast Establishments.

40.09 Permitted Uses in Commercial District Regulations: The following uses shall be permitted:

40.09.01 All uses permitted in the Residential Districts subject to all the provisions specified for such districts.

(Revised: 08-04)  
40.08.10

- 40.09.02 Amusement and recreation hall of building.
- 40.09.03 Stores and shops where goods are sold and services are rendered primarily at retail.
- 40.09.04 Cleaning or laundry establishments.
- 40.09.05 Motels, lodging houses and boarding houses.
- 40.09.06 Food lockers.
- 40.09.07 Offices, financial institutions.
- 40.09.08 Off-street automobile parking lots.
- 40.09.09 Personal services shops.
- 40.09.10 Public garages, filling stations and automobile repair shops.
- 40.09.11 Plumbing shop.
- 40.09.12 Printing shop.
- 40.09.13 Shoe, tire or electrical shop or similar trade.
- 40.09.14 Taverns.
- 40.09.15 Theatres (except drive-in theatres), assembly halls, restaurants, and cafes.
- 40.09.16 Welding shop.
- 40.09.17 Wholesale merchandising when incidental and subordinate to a primary retail business.
- 40.09.18 Accessory buildings and uses customarily incident to the above uses.
- 40.09.19 Advertising signs, related to the activity conducted on the premises, consistent with the regulations of Sections 40.11.05-B and 40.08.09 of this Ordinance.
- 40.09.20 Drive-in restaurants when all entrances or exists are within the Commercial District and it is so located, arranged and landscaped as to secure the approval after a finding of the Board of Appeals that adjacent property is adequately protected.

- 40.09.21 All uses permitted in Residential, Commercial and Agricultural District.
- 40.09.22 Wholesale merchandising or storage warehouses.
- 40.09.23 Lumber yards.
- 40.09.24 Truck terminals.
- 40.09.25 General service and repair establishments including dyeing or cleaning works or laundry, plumbing and heating, printing, painting, upholstery, tinsmithing or appliance repair shop.
- 40.09.26 Compounding of cosmetics, drugs and pharmaceutical products.
- 40.09.27 Manufacture or assembly of medical and dental equipment, drafting, optical and musical instruments, watches, clocks, toys, games and electrical or electronic apparatus.
- 40.09.28 Manufacture or assembly of boats, bolts, nuts, screws and rivets, ornamental iron products, firearms, electrical appliances, tools, dies, machinery and hardware products, sheet metal products and vitreous enameled metal products.
- 40.09.29 Manufacture or storage of food products, including beverage blending or bottling, bakery products, candy manufacture, fruit and vegetable processing and canning, packing and processing of meat and poultry products, but not distilling of beverages or slaughtering poultry or animals.
- 40.09.30 Manufacture of rugs, mattresses, pillows, quilts, millinery, hosiery, clothing and fabrics and printing and finishing of textiles and fibers into fabric goods.
- 40.09.31 Manufacture of boxes, crates, furniture, baskets, veneer and other wood products.
- 40.09.32 Generally, those light manufacturing uses similar to those listed in items 40.09.21 to 40.09.31 above which do not create any more danger to health and safety in surrounding areas and which do not create any more offensive noise, vibration, smoke, dust, lint, odors, heat or glare than that which is generally associated with light industries of the type specifically permitted.
- 40.09.33 Accessory buildings and uses including accessory signs and advertising structures related to the activity conducted on the premises but with sign area not to exceed 100 square feet.

40.10 Area and Height Regulations: Except as provided in Section 40.11, the area and height regulations shall be as follows:

40.10.01 Lot Area: Every lot used for single-family dwelling purposes shall have a minimum area of 9,600 square feet and of 11,000 square feet for a two-family dwelling. Every lot used for multiple-family dwelling purposes shall have a minimum area of 20,000 square feet, shall be set back from all yard lines at least two feet for each foot of building height and not less than the requirements set out in Sections 40.10.03, 40.10.04, 40.10.05, and 40.10.06.

40.10.02 Lot Width: Every lot used for dwelling purposes shall have a minimum width of eighty feet.

40.10.03 Front Yards: The front yard requirements are thirty feet for dwellings; forty feet for industrial and commercial buildings. Single-family dwellings, two-family dwellings and multiple-family dwellings shall not be construed as commercial buildings. The front yard requirement for dwellings fronting on the curve of a Cul-de-sac shall be fifteen feet.

40.10.04 Side Yards: The side yard requirements for dwellings shall be ten feet. No side yard is required for commercial or industrial buildings except along the side yard of a lot abutting a lot in the Residential Districts, in which case a side yard of ten feet shall be provided.

40.10.05 Rear Yards: The rear yard requirements for dwellings shall be thirty-five feet. No rear yard is required for commercial or industrial buildings except on a lot abutting a lot in the Residential Districts, in which case a rear yard of twenty-five feet shall be provided.

40.10.06 Building Height: No building shall exceed a height of thirty-five feet in the Residential and Commercial District.

40.11 The height and area regulations specified in the foregoing are modified as specified below:

40.11.01 Lot Area and Width: Any lot of record at the time of passage of this Ordinance having less area or width than herein required may be used for a single-family dwelling, providing Sections 40.10.03, 40.10.04, 40.10.05, and 40.10.06 as modified in Section 40.11 herein are complied with.

40.11.02 Front Yard: Where thirty per cent or more of a block front is improved with buildings, then no part of any new building shall project beyond a line joining the two adjacent front corners of the buildings on either side thereof, or where there is a building on only one side, beyond a line projected from the corresponding adjacent corners of a building, except that no building shall be required to provide a front yard greater than fifty feet in any event. Where an official line has been established for the future widening or opening of a street

upon which a lot abuts, then the depth of a front or side yard shall be measured from such official line.

40.11.03 Side Yard: The required side yard shall be maintained on each side of a dwelling, but such side yard may be reduced to ten per cent of the lot width on lots of less than seventy-five feet in width, provided, however, that no side yard shall be less than five feet.

A. The required side yard on the street side of a corner lot shall be fifteen feet.

B. For the purpose of side yard regulations, a two-family dwelling shall be considered as one building occupying one lot.

40.11.04 Rear Yard: The required rear yard may be reduced to twenty per cent of the depth of the lot on any lot not exceeding 125 feet in depth.

A. An accessory building may be built within a required rear yard when located at least five feet from the rear lot line and when occupying not more than thirty per cent of the area of such required rear yard. Accessory swimming pools, home barbecue grills and home incinerators, open and uncovered, may occupy a required rear yard, provided they are not located closer than five feet to the rear lot line nor closer than five feet to a side lot line.

40.11.05 All Yards: The ordinary projection of roof overhangs, cornices and ornamental features may be permitted provided that said projection shall not extend to less than four feet from any lot line.

A. Filling Station pumps and pump islands may occupy the required yards; provided, however, that they are not less than fifteen feet from street lines.

B. One directional or name sign or sign advertising products sold on the premises may occupy required yards in a district where such sign is permitted by the use regulations of this Ordinance, provided such sign is not more than twenty-five square feet in area.

C. An ornamental fence or wall not more than three and one-half feet in height may project into or enclose any required front yard. Ornamental fences or walls may project into or enclose other required yards provided such fences and walls do not exceed a height of seven feet. No fence or wall shall come closer than eighteen inches to any lot line.

D. Where a lot or tract is used for commercial or industrial purposes, more than one main building may be located on the lot or tract, but only when such buildings conform to all open space requirements around the lot for the district in which the lot or tract is located.

40.11.06 Height: Chimneys, cooling or water towers, elevators, bulkheads, fire towers, monuments, stacks, stage towers, tanks, spires, church steeples, commercial radio towers or necessary mechanical apparatus may be erected to any height not in conflict with any other ordinance of the Village of Pesotum.

A. Public, semi-public or public service buildings, hospitals, institutions, churches and schools, when permitted in a district, may be erected to exceed height limits specified for the district, provided all required yards are increased by one foot for each foot of building height above the specified height limit.

40.12 Off-Street Parking Requirements: No building shall be erected, enlarged to the extent of increasing the floor area by as much as fifty per cent, or changed in use unless there is provided on the lot or tract of land used, space for the parking of automobiles or trucks in accordance with the following minimum requirements.

Dwellings and motels – One parking space for each dwelling unit.

Commercial uses – One parking space for every three hundred square feet of floor area.

Industries – One parking space for each two employees on the maximum work shift.

40.13 Special Uses: the President and the Board of Trustees of the Village of Pesotum may, by special permit, after public hearing before the Board of Appeals and after study and report by the Planning Commission, if there is a Planning Commission created for the Village, subject to such reasonable conditions and protective restrictions as are deemed necessary, authorize the following special uses in any district except Residential from which they are otherwise prohibited:

40.13.01 Cemetery or mausoleum.

40.13.02 Drive-in theatre.

40.13.03 Funeral home.

40.13.04 Hospital, clinic or institutions, provided that less than a fourth per cent of the total land area is occupied by buildings and that all the required yards are increased by one foot for each foot of building height in excess of the height limits specified in this Ordinance.

40.13.05 Landing field or strip for aircraft.

40.13.06 Radio or broadcasting station.

40.13.07 Wholesale storage of oil, gasoline or other petroleum products; wholesale storage of fertilizers.

40.13.08 Removal of gravel, topsoil or similar natural material, with safeguard for the protection of adjoining property and the community as a whole.

40.13.09 Roadside stand.

40.13.10 Nursing or convalescent home.

40.13.11 Trailer camp, but only when complying with the following requirements:

A. All appropriate State and County laws and regulations shall be strictly observed, including, but not exclusively, sanitation regulations.

B. At least 2,000 square feet of lot area per trailer shall be provided; no trailer shall be parked closer to the street or highway than the required front yard set-back or closer than twenty-five feet to any property lines; and a clearance of not less than twenty feet shall be maintained between trailer coaches on all sides. One off-street parking space shall be provided adjacent to each trailer lot area.

C. Trailer coach spaces shall abut upon a hard surfaced driveway or accessway of not less than twenty-five feet in width.

D. Service buildings or other facilities for bathing, laundry and sanitation, as required by State and county health regulations shall be located at least twenty-five feet from the side and rear lot lines and shall be accessible to all trailer coaches by means of the access drives or hard surfaced walks.

40.13.12 Dragstrips.

40.13.13 Recreational Vehicle Park, and accessory facilities, including general store and bathing, laundry and sanitation facilities, for the temporary use, comfort and convenience of travelers, provided that all appropriate and applicable state and county laws and regulations shall be strictly observed, including, but not exclusively, sanitary regulations.

40.13.14 Adult Businesses

A. DEFINITIONS. For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All words and phrases used in this ordinance which are not defined herein shall have the meaning ascribed to such words and phrases in common usage.

i. ADULT BUSINESS. Any establishment having as a substantial or significant portion of its stock in trade or business activity in a use such as, but not limited to the following: Adults-Only Bookstores, Adults-Only Motion Picture Theaters, Adult Entertainment Centers, Massage Parlors, Rap Parlors, Adults-Only Cabarets or Adults-Only Saunas, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

ii. ADULT ENTERTAINMENT BUSINESS. Synonymous with "Adult Business," as defined herein.

iii. ADULT ENTERTAINMENT CENTER. An enclosed building or part of an enclosed building, which contains one or more coin-operated mechanisms which when activated permit a customer to view a live person nude or in such attire, costume or clothing as to expose to view the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; or, female breast, at or below the areola thereof. In addition, the viewing of a live person, in the above-described manner, after paying of any admission or fee for the viewing of same activity.

iv. ADULTS-ONLY. Any items or activities emphasizing, depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity.

v. ADULTS-ONLY BOOKSTORE. An adults-only establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality, sadomasochistic activity. An establishment, having adults-only items as a substantial or significant portion of its stock that sells or displays adults-only items for sale to patrons therein.

vi. ADULTS-ONLY CABARETS AND/OR CLUBS. An establishment or place primarily in the business of featuring topless dancers, go-go dancers, exotic dancers, strippers, lap dancers, male or female impersonators or similar entertainers, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

vii. ADULTS-ONLY MOTION PICTURE THEATER. An enclosed building used regularly and routinely for presenting adults-only material distinguished or characterized by an emphasis



on matter depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation by patron therein.

viii. BOOTH. Any enclosure that is specifically offered to patrons of an Adult Business for the private viewing of any adults-only item or movie. Said definition does not include enclosures that are used as private offices by any operator, employee or agent for attending to the tasks of their employment and are not offered for use by the public.

ix. CUBICLE. Synonymous with "booth," as defined herein.

x. DOOR. Full, complete, non-transparent closure device that obscures the view or activity taking place within the enclosure.

xi. MASSAGE PARLOR. An establishment or place primarily in the business of providing massage services, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

xii. NUDITY. The display of the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; female breast, at or below the areola thereof, with no covering or with a less than fully opaque covering; or, male genitalia, in a discernible turgid state, with or without covering.

xiii. OBSCENE. Any material or performance is obscene if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value. [Statutory Reference: 720 ILCS 5/11-20]

xiv. OPERATOR. Any person, (whether said persons be an individual, partner, corporation, joint stock company, fiduciary, officer, director, stockholder, employee, or manager), that conducts, maintains or owns any Adult Business.

xv. PATRON. Any customer, patron or visitor to an Adult Business who is not employed by any operator of said establishment.

xvi. RAP PARLOR. An establishment or place primarily in the business of providing non-professional conversation or similar services for adults, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

xvii. ROOM. Synonymous with "booth," as defined herein.

xviii. SADOMASOCHISTIC ACTIVITY. Flagellation or torture by or upon a nude person; a person clad in undergarments, a mask or bizarre costume. In addition, the condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator and/or the recipient.

xix. SAUNA. An establishment or place primarily in the business of providing a steam bath and or massage services, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

xx. SELL. Includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

xxi. SEXUAL CONDUCT. Ultimate sex acts (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity. In addition, physical contact, intended to stimulate or arouse sexually the initiator and or the recipient, with a person's unclothed genitalia, buttocks, perineum, anal or pubic regions, or female breast.

xxii. UNDER AGE. Any person under eighteen (18) years of age, the legally minimum age at which one can purchase or view adults-only items. [Statutory Reference: 720 ILCS 5/11-20]

xxiii. WALL SIGN. Any flat sign which is placed against a building or other structure and attached thereto in such manner that only one side is visible.

**B. SPECIAL USE PERMIT REQUIRED.**

i. No Adult Business may operate within the Village of Pesotum without first having obtained a special use permit. A separate special use permit must be acquired for each Adult Business. It shall likewise be unlawful for any such business to sell or offer for sale any adults-only items in violation of the terms and conditions of such special use permit.

ii. A special use permit issued by the Village is required for and with respect to any building location and premises, within the boundaries of the Village, at or upon which an Adult Business is to be operated.

iii. All special use permit procedures and criteria are as noted in the Village of Pesotum Code, including but not limited to Sections 40.13 and 40.13.14.

iv. No special use permit shall be held in existence by the mere payment of fees.

C. LOCATION RESTRICTIONS. The use of property for an Adult Business can have potentially harmful secondary effects on surrounding areas, and may have a deleterious effect upon the use and enjoyment of adjoining properties.

Such secondary effects can include, but not limited to, a tendency to attract an undesirable quantity and quality of transients, to effect property values adversely, to cause an increase in crime, especially prostitution, to contribute to the blighting or down-grading of the surrounding neighborhood/area, and to encourage residents and businesses to move elsewhere.

As such, all Adult Business, excepting non-conforming uses as described below, must comply with the following location restrictions:

i. All Adult Businesses shall be located within a Non-residential District or Zone.

ii. No Adult Business shall be located within five thousand (5,000) feet of any residential zone, single or multiple family dwelling, church, school, licensed day-care facility or park. Said distance shall be measured from property line to property line.

iii. No Adult Business shall be located within two thousand (2,000) feet, (excluding streets, alleys and public ways), of another Adult Business. Said distance shall be measured from property line to property line.

iv. Adult Businesses in violation of paragraphs (i), (ii) and (iii) shall be permitted as non-conforming uses where said Adult Businesses were established and operated continuously prior to the effective date of this Ordinance, provided that no such Adult Business may be enlarged or increased in size or may be discontinued in use for a period of more than one-hundred eighty (180) days.

D. PHYSICAL LAYOUT. The use of booths, rooms or cubicles in an Adult Business can, by reason or their design and intended use, facilitate the spread of sexually transmitted diseases (both fatal and non-fatal). Insofar as the Village has a substantial government interest in protecting the public health, safety and welfare of its citizens and all persons within the Village, the following standards have been propounded to eliminate the possibility of infection by contagious sexually transmitted diseases.

i. All booths, rooms or cubicles for the private viewing of any adults-only items or movies shall comply with the following standards:

(a) They be totally accessible both to and from lighted aisles and public areas of the Adult Business;

(b) The bottom surfaces of any doors shall measure at least forty-two (42) inches from the floor surfaces;

(c) No surfaces intended for seating may be located therein;

(d) No doors may be fixed with, or obstructed by, any lock mechanism or other control-type device;

(e) They shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a solid wall without any opening and extending from the floor to a height of at least six (6) feet;

(f) They shall be lit by light bulbs of 100-150 foot candles of light when the Adult Business is open for business;

(g) All doors or openings shall be sufficiently unobstructed such that an operator, employee or agent may determine the number of persons within any booth, room or cubicle;

ii. Only one person shall occupy a booth, room or cubicle at any time; and, at no time, shall the occupant therein engage in any type of sexual conduct resulting in the discharge of any bodily fluids while within a booth, room or cubicle;

iii. All wall and floor surfaces must be of a light-colored, non-absorbent, smooth texture that is easily cleaned;

iv. All public areas of an Adult Business shall be lit by light bulbs of 100-150 foot candles of light when the Adult Business is open for business.

E. PROHIBITED CONDUCT. The operator of any Adult Business shall neither participate in nor suffer or permit any of the following prohibited acts to occur on the premises:

i. Sexual conduct, including but not limited to any demonstration, dance, performance or exhibition on the licensed premises by any employee, agent, entertainer or patron, where said person engages in any of the following conduct:

- (a) Exposure of the genitalia pubic hair, buttocks, perineum, anal or pubic region; or,
- (b) Exposure of any device, costume or covering which gives the appearance of or simulates the genitalia, pubic hair, buttocks, perineum, anal or pubic region; or,
- (c) Exposure of any portion of the female breast at or below the areola thereof; or,
- (d) Performance or simulated performance of ultimate sexual acts or explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity; or,
- (e) Fondling of his or her own genitals or the genitalia of another person.

ii. Employment or use of the services of any person in or upon the premises of the Adult Business while such person is unclothed or in such attire, costume or clothing so as to result in conduct prohibited in paragraph (A) above.

iii. Admission of any underage patron into or upon the premises of the Adult Business.

iv. Patronage, frequenting or loitering of any underage person in any Adult Business.

v. Allowance of any underage person to view, accept or otherwise possess any adults-only item on the licensed premises.

vi. Employment or use of the services of any underage person in or upon the premises of the Adult Business.

vii. Drunkenness, fighting, unlawful games, riotous or disorderly conduct whatsoever, in any premises kept or occupied as an Adult Business.

F. SALES VIOLATIONS.

i. No operator, agent or employee shall knowingly sell, deliver or provide, or offer or agree to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene. [Statutory Reference: 720 ILCS 5/11-20]

ii. No operator, agent or employee shall sell, deliver or provide, or offer or agree to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene after recklessly failing to exercise reasonable inspection

which would have disclosed the nature or content thereof.  
[Statutory Reference: 720 ILCS 5/11-20]

iii. No operator, agent or employee shall create, buy, procure or possess obscene matter or material with intent to disseminate it in violation of this Ordinance or State statute. [Statutory Reference: 720 ILCS 5/11-20]

iv. No operator, agent or employee shall advertise or otherwise promote the sale of material represented or held out by him to be obscene, whether or not it is obscene. [Statutory Reference: 720 ILCS 5/11-20]

v. No operator, agent or employee shall knowingly sell, deliver or provide, or offer or agree to sell, deliver or provide any child pornography, as defined by State statute. [Statutory Reference: 720 ILCS 5/11-20.1]

vi. No operator, agent or employee shall create, buy, procure or possess any child pornography with intent to disseminate it in violation of this Ordinance or State statute. [Statutory Reference: 720 ILCS 5/11 -20.1]

vii. No operator, agent or employee shall advertise or otherwise promote the sale of material represented or held out by him to be child pornography, whether or not it is child pornography.  
[Statutory Reference: 720 ILCS 5/11-20.1]

viii. No person, after purchasing or otherwise obtaining an adults-only item shall sell, deliver or allow any underage person to view an adults-only item.

ix. If an operator, agent or employee believes or has reason to believe that a sale, delivery or viewing of any adults-only item is prohibited because the prospective recipient is underage, said operator, agent or employee shall, (before making or allowing such sale, gift, delivery or viewing), require presentation of accurate identification containing proof of age, issued by a public officer in the performance of his or her official duties.

x. An operator, agent or employee may refuse to sell, deliver or allow any person to view any adults-only item, where said person is unable to produce adequate written evidence of identity and age by production of a document issued by the federal, State, or County government, or subdivision or agency thereof, including but not limited to the following documents:

(a) a motor vehicle operator's license;

(b) a registration certificate issued under the Federal Selective Act; or

(c) an identification card issued to a member of the Armed Forces.

xi. Proof that the operator, employee or agent, demanded, examined and reasonably relied upon such written evidence listed in paragraph (x) above in any transaction forbidden by this Ordinance is competent evidence that may be offered as an affirmative defense to a violation of this Ordinance.

In order to reasonably rely upon written evidence regarding a patron's identity and age, an operator, agent or employee shall use the prudent judgment of a reasonable and informed person, and shall scrutinize said written evidence of age and identity by doing the following:

(a) determine if the physical description and photograph (if any) on the document presented matches that of the presenting person;

(b) determine whether the plastic seal on the identification card is intact or broken; and,

(c) in the case of an Illinois Driver's License, determine whether the seventh and eighth digits in the driver's license number (excluding the beginning initial) match the stated date of birth located elsewhere on the driver's license.

If from the foregoing, a reasonable person would or should doubt the authenticity of the identification card, then the person offering the identification must not be sold, delivered or allowed to view any adults-only items.

xii. No operator, agent or employee shall give away or otherwise make available any adults-only item or viewing of any adults-only item for the purpose of evading any provision of this Ordinance, when the sale or viewing of said adults-only item is prohibited shall constitute unlawful selling.

xiii. Offers or agreements to sell, deliver, provide or allow the viewing of any adults-only item at or within any premises when the sale or viewing of said adults-only item is prohibited shall constitute unlawful selling.

xiv. The use of any other shift or device to evade any provision of this Ordinance is prohibited and shall constitute unlawful selling.

G. HOURS OF OPERATION. The unlimited operation of an Adult Business can, by reason of their intended use, facilitate secondary effects

including but not limited to prostitution, disorderly conduct, performance of sexual acts or conduct in public, traffic congestion and parking problems. Insofar as the Village has a substantial government interest in preserving character and preventing deterioration of its community and minimizing the disruptive effect of such Adult Businesses on the community, the following limitations on operation times have been propounded:

- i. No operator, employee or agent of an Adult Business shall sell, deliver or allow any person to view any adults-only item between the hours of 10:00 p.m. and 10:00 a.m. on Mondays through Saturdays, nor on Sundays or recognized federal holidays. The time referred to shall be either Central Standard Time or Daylight Savings Time, whichever is in effect at the time in this State.
- ii. No operator, employee or agent of an Adult Business shall permit any person to remain on the premises during the hours specified herein and all patrons shall vacate the licensed premises during the hours specified herein.

H. SIGNS. The unregulated use of signs can result in secondary effects that create dangers to the public during periods of high winds or inclement weather, defeat the sign's informational or advertising functions

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as competitors escalate sign size and expense to attract patrons, reduce the ability of the public to interpret the intended message safely and quickly, and destroy the aesthetic quality of the community. Recognizing the Village has a substantial governmental interest in these matters, all signs advertising or promoting the sale of adults-only items must meet the following restrictions:

- i. All signs shall be flat wall signs
- ii. The total amount of allowable sign area shall be no more than fifteen (15) square feet.
- iii. No merchandise or depictions of adults-only items shall be displayed in window areas or any other area that may be viewed from a public street, alley, public way or sidewalk located in front of the building.
- iv. A one square foot sign may be placed on the door to state the hours of operation and adults-only admittance.
- v. All provisions of the Village of Pesotum Code shall control placement of signs except as clearly contradicted by this



paragraph. In the event that the provisions conflict, this paragraph shall prevail.

I. PUBLIC HEALTH STANDARDS.

i. All premises operated as an Adult Business shall be kept in clean and sanitary condition and shall be kept in full compliance with regulations issued by the County Health Department, Illinois Department of Public Health, and Illinois Environmental Protection Agency.

ii. Any Adult Business shall keep and maintain the premises equipped with running hot and cold water, shall provide separate and adequate toilet facilities for both males and females, and shall comply with all health, sanitary, zoning and inspection requirements of the Village of Pesotum Code, Champaign County, and the State of Illinois.

J. INSPECTIONS. Any Adult Business shall permit representatives of the any law enforcement agency, health department (County or State), fire department, zoning department or building department to inspect the premises of an Adult Business for the purpose of insuring compliance with this Ordinance and with State statutes, at any time the Adult Business is open for business.

K. AMORTIZATION PERIOD. Adult Businesses in violation of any restriction or regulation contained herein, excepting any location restrictions, shall come into full compliance within one (1) month from the effective date of this Ordinance.

L. VICARIOUS LIABILITY.

i. Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance, by any employee or agent of any operator, shall be deemed and held to be the act of said operator if such act or omission either with the authorization, knowledge or approval of the operator.

ii. Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance, by any employee or agent of any operator, shall be deemed and held to be the act of said operator if such act or omission occurs as a result of the operator's negligent failure to supervise the conduct of the employee or agent.

iii. Such an offense shall be punishable in the same manner as if said act or omission had been done or omitted by the operator personally.

M. PENALTY.

i. In the event that an operator, agent or employee of an Adult Business is guilty of violating any provision of this Ordinance, said person may be subject to a fine not to exceed five hundred (\$500) dollars per violation.

ii. Any person violating the provisions of this Ordinance shall be subject to an offense for each and every day on which such violation continues, and each day that the offense continues shall be regarded as constituting a separate offense.

iii. Any prosecution for violations of this Ordinance does not prohibit the Village from pursuing injunctive relief or the State Attorney's Office from pursuing criminal charges.

N. SEVERABILITY. If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, the remainder of this Ordinance shall not be effected thereby, but shall remain in full force and effect.

O. ADDITION OF SPECIAL USE. The use of property for an Adult Business in a Non-residential District or Zone may be desired by a property owner, but could have a potentially harmful influence on other uses in this district. An Adult Business, because of its nature, may have a deleterious effect upon the use and enjoyment of adjacent properties.

As such, a special use permit is necessary to insure that these adverse effects will not contribute to the blighting or down-grading of the surrounding neighborhood areas.

40.14 Nonconforming Uses: The lawful use of a building at the time of adoption of this Ordinance or of a change in the district classification may be continued even though such use does not conform with the provisions thereof. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but whenever a nonconforming use is changed to a more restricted use or to a conforming use, it shall not thereafter be changed to a less restricted use.

40.15 Extension: The nonconforming use of a building may be extended throughout those parts thereof which were manifestly arranged or designed therefor prior to adoption of this Ordinance.

40.16 Restoration: No building or trailers which have been damaged by fire, explosion, act of God, or the public enemy to the extent of more than sixty per cent of its reproduction value shall be restored except in conformity with the district regulations.

40.17 Discontinuance of Nonconforming Use: In the event that the nonconforming use of a building on premises is discontinued, such building or premises shall thereafter be used only in conformity with the regulations of the district in which it is located.

40.18 Existence of Nonconforming Uses:

40.18.01 The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

40.18.02 Whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Appeals after public hearing and notice in accordance with the rules of the Board. Public notice shall consist of posting in four prominent places in the Village or by publication of less than fifteen days prior to the hearing in a newspaper of general circulation in the Village.

40.19 Enforcement: No construction of buildings or structures, or no structural alterations of existing buildings or structures shall be commenced without a building permit having been issued. This Ordinance shall be enforced by the Building Inspector, who shall issue building permits. No building permit shall be granted by him for any purpose except in compliance with the provisions of this Ordinance. The Building Inspector shall be appointed by the Village Board of Trustees.

(Revised 02-2, Added 40.13.14)  
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40.20 Building Permits:

40.18.02 The Building Inspector shall issue such permit when the use is permitted under any of the provisions of this Ordinance within ten days after proper application or upon written order of the Board of Appeals.

40.18.03 There shall be submitted with all applications for building permits one copy of a layout or plat plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and an estimate of the cost of the completed building and such other information as may be necessary to determine and provide for the enforcement of this Ordinance. This paragraph shall not be construed to require a survey.

40.18.04 One copy of such layout or plat plan shall be returned when approved by the Building Inspector.

40.30 Certificate of Occupancy:

40.30.01 No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Building Inspector stating that the building or proposed use thereof complies with the provisions of this Ordinance.

40.30.02 No nonconforming use shall be changed or extended without a Certificate of Occupancy having first been issued by the Building Inspector therefor.

40.30.03 All Certificates of Occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within ten days after the erection or alteration shall have been approved as complying with the provisions of this Ordinance.

40.30.04 The Building Inspector shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

40.30.05 No permit for excavation for or erection or alteration of or repairs to any building shall be issued until an application has been made for a Certificate of Occupancy.

40.31 Violation and Penalties: A violation of this Ordinance is a misdemeanor punishable by a fine not exceeding \$100.00 except that each day's violation may be considered a separate offense.

40.32 Composition: A Board of Appeals is hereby created which shall consist of seven members appointed by the Village Board to serve respectively for the following terms: One for one year; one for two years; one for three years; one for four years; one for five years; one for six years; one for seven years; and the successor of each member appointed to serve for a term of five years. One member of the Board of Appeals shall be designated by the Village Board as Chairman and shall hold office as Chairman until his successor is appointed. The Board of Appeals may select or appoint such other officers as it deems necessary. Vacancies upon said Board shall be filled for the unexpired term of the member whose place has become vacant in the manner provided herein for the appointment of such member.

40.33 Duties:

40.33.01 The Board of Appeals shall meet at the call of the Chairman and at such other times as it may determine. The Board of Appeals shall keep minutes of its proceedings, including findings of fact, all its determinations and decisions, the reasons therefor and the vote of each member upon every question, which minutes shall be immediately filed in the office of the Village Clerk and shall be a public record.

40.33.02 An appeal may be taken to the Board of Appeals by any person aggrieved by a decision by the Building Inspector, or an appeal may be taken by any officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as prescribed by the Board by general rule, by filing with the Board of Appeals a notice of appeal specifying the grounds thereof. A fee of \$5.00 shall accompany all notices of appeals. The fee shall be paid to the Village Clerk. The Building Inspector shall forthwith transmit to the Board of Appeals all 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 Building Inspector certified to the Board of Appeals after the 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 restraining order, which may be granted by the Board of Appeals or by a court of record on application and on notice to the Building Inspector and on due cause shown.

40.34 Powers: The Board of Appeals shall have all the power and duties prescribed by law and by this Ordinance, which are more particularly specified as follows:

40.34.01 Interpretation: Upon appeal from a decision by the Building Inspector, to decide any question involving the interpretation of any provision of this Ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

40.34.02 Variances: To vary in application, subject to the following, any of the requirements of this Ordinance with the variance shall be determined by the Board of Appeals to be in harmony with the general purpose and intent of this Ordinance, and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of the regulations of this Ordinance, but in no other case.

In determining whether such practical difficulties or particular hardship exist, the Board of Appeals shall require evidence that:

- A. 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;
- B. The plight of the owner is due to unique circumstances; and
- C. The variation, if granted, will not alter the essential character of the locality.

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.

40.35 Procedures:

40.35.01 The Board of Appeals shall act in strict accordance with the procedure specified by law and by this Ordinance. All appeals and applications made to the Board shall be in writing. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth the interpretation that is claimed, the use of which the special permit is sought, or the details of the variance sought to be granted, as the case may be.

40.35.02 The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the appeal within a reasonable time. Hearings on and all proceedings of the Board shall be in conformity with the Illinois Municipal Code of 1961 and all amendments thereto. All hearings shall be open to the public and any party in interest may appear in person or by agent or attorney.

40.35.03 In the event a Planning Commission is created, then at least ten days before the date of the hearing, the Secretary of said Board of Appeals shall transmit to the Planning Commission of the Village a copy of the said application or appeal, together with a copy of the notice of the aforesaid hearing and shall request that the Planning Commission submit to the Board of Appeals its advisory opinion on such application or appeal and the Planning Commission shall submit a report of such advisory opinion prior to the date of said hearing. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each resolution shall be filed in the office of the Village Clerk by case number under one or other of the following headings: Interpretations; Variances; together with all documents pertaining thereto. The Board of Appeals shall notify the Village Board of Trustees and the Planning Commission of each special permit and each variance granted under the provisions of this Ordinance. The concurring vote of four members of the Board of Appeals is necessary to reverse any order, requirement, decision or determination of the Building Inspector, or to decide in favor of the application any matter upon which it is required to pass, or to effect any variation in the Ordinance, or to recommend any variation or modification in the Ordinance to the corporate authorities.

40.36 Amendments of Regulations and Districts: The regulations imposed and the districts created may be amended from time to time by ordinance after the ordinance establishing them has gone in effect, but no such amendments shall be made without a hearing before the Board of Appeals. Notice shall be given of the time and place of the hearing, not more than thirty days nor less than fifteen days before the hearing, by publishing a notice thereof at least once in one or more newspapers published in the municipality. In case of a written protest against any proposed amendment of the regulations or districts, signed and acknowledged by the owners of twenty per cent of the frontage proposed to be altered, or by the owners of twenty per cent of the frontage immediately adjoining or across an alley therefrom or by the owners of twenty per cent of the frontage directly opposite the frontage proposed to be altered, is filed with the Clerk of the municipality, the amendments shall not be passed except by a favorable vote of two-thirds of all of the Trustees of the Village Board of Trustees.

40.37 Separability Validity: The invalidity of any section or provision of this Ordinance in a particular application thereof shall not invalidate such section or provision as to other unrelated applications.