

## 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 City Engineer. In addition to submitting the completed application, the applicant shall submit the following information if deemed necessary by the Public Works Director or his/her designee:

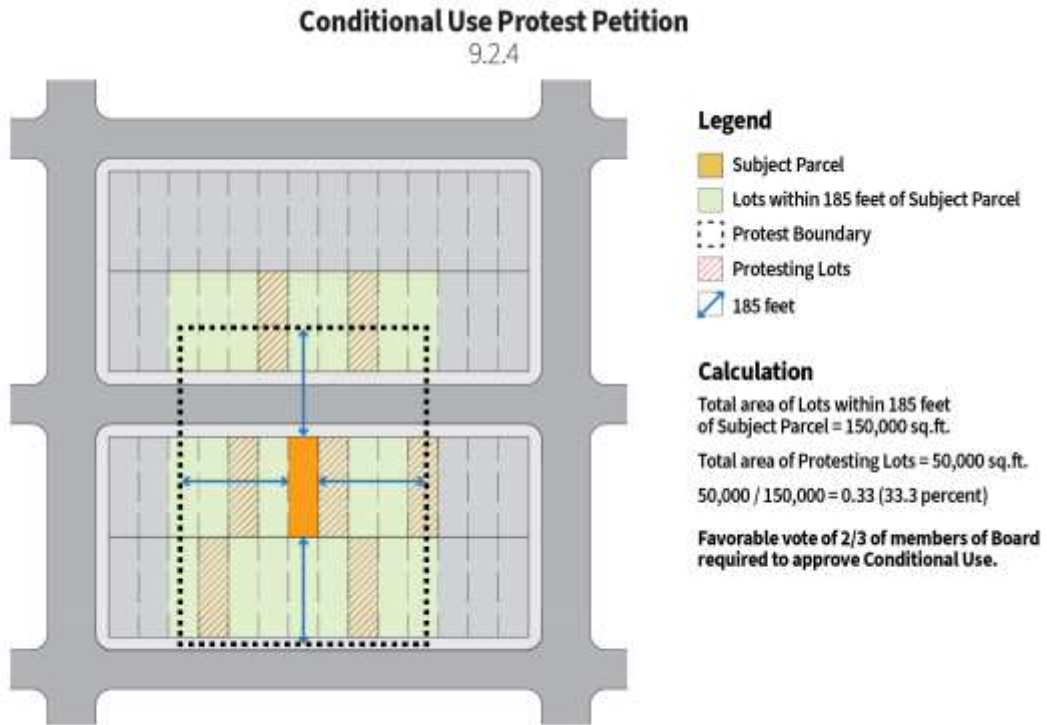
- 1) Legal owners of the property proposed for the conditional use permit.
- 2) Common street address of the property proposed for the conditional use permit.
- 3) Site plan.
- 4) Estimated impact of the conditional use on the surrounding properties and adjacent streets, including, but not limited to, 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 of Alderman or Planning and Zoning 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 9.9.2 to the City Engineer for staff review. Upon completion of staff review, the applicant shall submit the requested number of copies, incorporating any necessary changes, to the City Engineer 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 close of City Offices 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 Planning and Zoning Commission for its recommendation and report, which report shall be delivered in writing to the Board of Aldermen within 90 days from the date of acceptance of the application.
  - b. The Planning and Zoning Commission shall consider the extent to which the evidence provided demonstrates compliance with the criteria contained in this Section. In the event that the Planning and Zoning 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 of Aldermen, or it may recommend denial of the conditional use permit application. The Planning and Zoning 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 Planning and Zoning Commission, the Board of Aldermen 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 of Aldermen may deny, approve, or approve with conditions, including the adoption of the Planning and Zoning Commission's recommendations on conditions of use or a modified version thereof. The recommendations of the Planning and Zoning Commission shall not be binding on the Board of Aldermen. The Board of Aldermen may refer the application back to the Planning and Zoning Commission for further study before making its final decision.
  - c. In approving a conditional use, the Board of Aldermen 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 the owners of thirty percent or more, either of the areas of the land (exclusive of streets and alleys) included in such proposed change or within an area determined by lines drawn parallel to and one hundred and eighty-five feet distant from the boundaries of the proposed conditional use; such conditional use shall not become effective except by the favorable vote of two-thirds (2/3) of all the members of the Board of Aldermen. The 30% threshold required for a protest under this Section is determined by computing a ratio of the total area contained in the protesting lots divided by the area contained in all lots within the 185 foot radius of the subject parcel.



### 9.3 - Criteria and standards for conditional use permit approval.

**9.3.1 – Criteria.** The Board of Aldermen 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.

### 9.4 - Terms and limitations.

**9.4.1 - Permit effective date.** The conditional use permit shall become effective upon approval by the Board of Aldermen. 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 of Aldermen 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 City Engineer. Upon determination that the site plan complies with such conditions or restrictions, the City Engineer 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.

**9.4.4 - Revocation of conditional use permit.** Upon finding violation of the terms of the conditional use permit, the Board of Aldermen 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 City Engineer 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

## Section 10. – Administration and Enforcement

### 10.1 - City Engineer.

**10.1.1 – Appointment.** This Ordinance shall be enforced by the City Engineer or delegate appointed by the Board of Aldermen.

**10.1.2 – Duties.** The City Engineer 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 City Engineer shall be as follows:

- 1) Provide administrative support to the Planning and Zoning Commission, including maintaining the records thereof. Specifically, the City Engineer shall provide the Planning and Zoning 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 City Engineer 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 Section 9.
- 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) 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) Refer any violation of this Ordinance to the City Attorney for prosecution or other appropriate action when deemed necessary.

### 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. The Planning and Zoning Commission responsibilities, with respect to this Ordinance, shall include:

- 1) To review and report to the Board of Aldermen its recommendations on petitions to amend the official zoning map (e.g., rezoning).

- 2) To review and report to the Board of Aldermen its recommendations on proposed text amendments to the regulations contained in this Ordinance.
- 3) To review and report to the Board of Aldermen its recommendations on conditional use permit applications.
- 4) To review and recommend approval or disapproval of preliminary and final "development plans" to the Board of Aldermen.
- 5) To review and report to the Board of Aldermen its recommendations on proposed planned developments.
- 6) Other such responsibilities as delegated by the Board of Aldermen 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 City Engineer 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 11 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 of Aldermen, Planning and Zoning Commission and/or the City Engineer authorize only the use, arrangement, and/or construction set forth in such approved plans and/or applications and no other use, arrangement, or construction.

## 10.5 - Violations and penalties

**10.5.1 - Procedure to prevent violations.** The City Engineer, in addition to remedies provided in this Section, may recommend to the Board of Aldermen instituting appropriate civil 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.

**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 an ordinance violation, 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.

## 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.
- 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 of Adjustment 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 where it is alleged there is error in any order, requirement, decision, or determination made by the City Engineer 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 of Adjustment may determine.
- 2) Hearings and rules:
  - a) All meetings of the Board of Adjustment shall be open to the public.
  - b) The Board of Adjustment 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 of Adjustment (office of the City Engineer) and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the Board of Adjustment 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 City Engineer, 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 89.100 representing such person, or by any officer, department, board, or bureau of the City of Sunset Hills affected by any decision of the City Engineer.

**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 City Engineer 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 City Engineer 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 City Engineer 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 City Engineer. The Board of Adjustment 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 City Engineer, 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 11.3.2 , 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.

### 12.2 - 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.

**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 Unified Development 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 Public Works Director 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 City Engineer; 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 City Engineer, 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 City Engineer, 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 City Engineer, 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 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 of Aldermen or Planning and Zoning 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 City Engineer for staff review. Upon completion of staff review, the applicant shall submit the requested number of copies, incorporating any necessary changes, to the City Engineer 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 close of City Offices 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 Planning and Zoning Commission for its recommendation and report, which report shall be delivered in writing to the Board of Aldermen within 90 days from the date of acceptance of the application.
  - b) The Planning and Zoning 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 Unified Development Ordinance text (e.g., regarding text amendments).

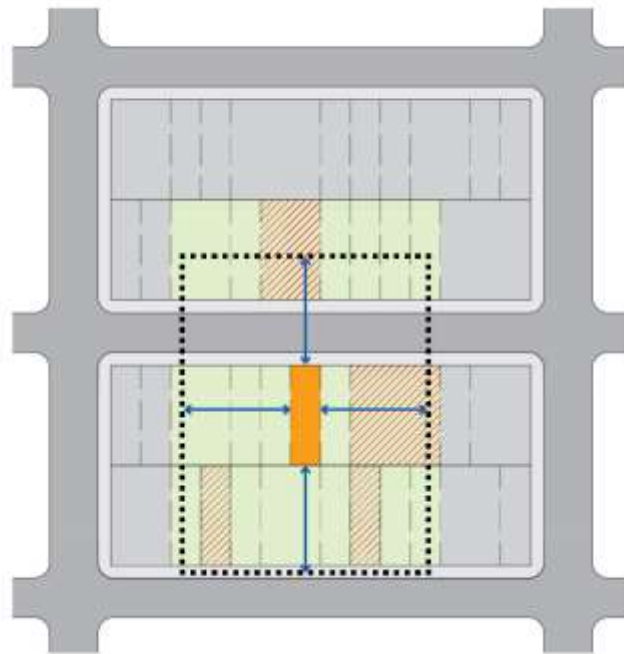
**13.2.4 - Board of Aldermen action.**

- 1) Upon the filing of the report by the Planning and Zoning Commission, the Board of Aldermen 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 of Aldermen may deny or approve the petition for amendment. The recommendations of the Planning and Zoning Commission shall not be binding on the board. The Board of Aldermen may refer the application back to the Planning and Zoning Commission for further study before making its final decision.
- 3) The Planning and Zoning Commission shall submit its report to the Board of Aldermen for actions taken. If the Planning and Zoning 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 the owners of thirty percent or more, either of the areas of the land (exclusive of streets and alleys) included in such proposed change or within an area determined by lines drawn parallel to and one hundred and eighty-five feet distant from the boundaries of the district proposed to be changed, such amendment shall not become effective except by the favorable vote of two-thirds of all the members of the Board of Aldermen. The 30% threshold required for a protest under this Section is determined by computing a ratio of the total area contained in the protesting lots divided by the area contained in all lots within the 185 foot radius of the subject parcel.



### Amendment Protest Petition 13.2.5



#### Legend

- Subject Parcel
- Lots within 185 feet of Subject Parcel
- Protest Boundary
- Protesting Lots
- 185 feet

#### Sample Calculation

Total area\* of Lots within 185 feet of Subject Parcel = 324,000 sq.ft.

Total area\* of Protesting Lots = 84,000 sq.ft.

$$84,000 / 324,000 = 0.259 (25.9\%)$$

**Favorable vote of 2/3 of members of Board is not required to approve Conditional Use.**

In this example, the total area\* of protesting lots would need to be at least 97,200 sq.ft. to meet the 30% threshold.

\*area is exclusive of streets and alleys

### 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.

## Section 14. – Public Notices

### 14.1 - Notice of public hearing of Board of Aldermen or Board of Adjustment Meeting

**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.
- 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 notice shall be placed in a visible location on the property; and
- 3) The notice 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 map amendment 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 notice shall be placed in a visible location on the property; and
- 3) The notice shall contain the same information as required under Subsection 14.1.1(3) above.