

ZONING ORDINANCE
TOWN OF HERKIMER, NEW YORK

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ZONING ORDINANCE - TOWN OF HERKIMER, N.Y.
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AMENDED ZONING ORDINANCE
TOWN OF HERKIMER, NEW YORK

For the purpose of promoting the health, safety, morals, or the general welfare of the community, and to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, water, sewerage, schools, parks and other public requirements, under and pursuant to Article 16 of Chapter 62 of the Consolidated Laws, the height and size of buildings, structures and land for trade, industry, residence or other purposes are hereby restricted and regulated as hereinafter provided.

ARTICLE I --- DEFINITIONS

Section 1.1 - Definitions. For the purpose of this ordinance, certain words and terms shall have the following meaning:

- a. Words in the present tense include the future, the singular number includes the plural and the plural the singular; the word LOT includes the word PLOT and the word BUILDING includes the word STRUCTURE; the word OCCUPIED includes the words DESIGNED OR INTENDED TO BE OCCUPIED; the word USED includes the words ARRANGED, DESIGNED OR INTENDED TO BE USED.
- b. A LOT is a parcel of land occupied or designed to be occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this Ordinance and such open spaces as are arranged and designed to be used in connection with such building.
- c. A CORNER LOT is a lot which has an interior angle of less than one hundred and thirty-five degrees at the intersection of two (2) street lot lines. A lot abutting upon a curved street or streets shall be considered a corner lot if the tangents to the curve at its points beginning within the lot or at the points of intersection of the side lot lines with the street line intersect at an interior angle less than one hundred thirty-five (135) degrees.
- d. A FRONT LOT LINE in the case of a lot abutting upon only one (1) street is the line separating such a lot from such street, each street line shall be considered to be a front lot line.

- e. A REAR LOT LINE is that lot line which is opposite and most distant from the front lot line.
- f. A SIDE LOT LINE is that lot line, not a front lot line or a rear lot line.
- g. A FAMILY is two (2) or more persons living together as a single housekeeping unit. To distinguish a family from a club, fraternity, or boarding house, not more than two (2) members of a family shall be other than blood relatives, adopted children or foster children.
- h. A DWELLING is any building used wholly for habitation.
- i. A DWELLING UNIT is any dwelling or portion thereof used or intended to be used by one (1) family and providing complete housekeeping facilities therefore.
- j. AMENDED - 10/24/95 - ADDED - MODULAR HOME and EXPANDED DESCRIPTION OF MOBILE HOME.

A MODULAR HOME is a manufactured building designed for long term residential use transported to a construction site in several pieces. Moreover, a modular home is indistinguishable in appearance from a conventional built home, while a mobile home cannot easily be mistaken for a conventional dwelling. For the purposes of this Ordinance, a modular home shall be considered a dwelling.

A MOBILE HOME is a movable living unit designed for year-round occupancy, sometimes termed a house trailer. A mobile home is a single entity which when placed on a building site is complete and needs no further installation of a heating system or other materials. For the purposes of this Ordinance a mobile home shall not be considered a dwelling.

- k. A SINGLE FAMILY DWELLING is a dwelling accommodating or designed to accommodate a single family in a single family unit. (rev. 01/03/12)
- l. A MOBILE HOME PARK is a parcel of land containing two or more mobile homes. (rev. 01/03/12)
- m. A TWO FAMILY DWELLING is a dwelling accommodating or designed to accommodate two (2) families in two (2) separate dwelling units. (rev. 01/03/12)

- n. **A MULTI-FAMILY DWELLING** is a dwelling accommodating or designed to accommodate three (3) or more families in separate dwelling units including apartment houses, apartment hotels, and flats.
- o. **TOWN HOUSE** means a single family dwelling constructed in a series or group of attached units with property lines separating such units. (rev. 01/03/12)
- p. **A ROOMING HOUSE** is a dwelling where rooms for more than two (2) but less than ten (10) people are offered for hire, with or without meals, sometimes termed a boarding house or lodging house.
- q. **A TOURIST HOUSE** is a rooming house primarily offering overnight accommodations for transients.
- r. **A HOTEL** is a dwelling where rooms for ten (10) or more persons are offered for hire, with or without meals.
- s. **A MOTEL** is a hotel intended primarily for transient motorists.
- t. **A HOSPITAL** is an establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanatoria and sanatoria, and shall be limited to the treatment or other care of humans.
- u. **A NURSING or CONVALESCENT HOME** is any dwelling with less than fifteen (15) sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.
- v. **A PRINCIPAL BUILDING** is the building in which sleeping quarters are located or where business will be conducted in commercial or industrial areas. (rev. 01/03/12)
- w. **An ACCESSORY BUILDING** is a building subordinate to the principle building on the lot and used for purposes customarily incidental to those of the main building.
- x. **A NON-CONFORMING USE** is a building, structure, or use of land existing at the time of enactment of this Ordinance, or an amendment thereto, and which does not conform to the regulations of the district in which it is situated.
- y. **A YARD** is the space on a lot not occupied by a building.

z. A **FRONT YARD** is a yard between the front lot line and the front line of a building extended to the side lot lines of the lot.

aa. A **REAR YARD** is a yard between the rear lot line and the rear line of the principle building extended to the side lot lines of the lot.

bb. A **SIDE YARD** is a yard between the principle building and a side lot line and extending through from the front yard to the rear yard.

cc. The **HEIGHT** of a building is the vertical distance measured from the average elevation of the proposed grade line of the ground about the building to the max height for pitched roofs, and to the highest part of roof for parapet roofs. Towers, steeples, cupolas, chimneys and similar structures are exempted in height computations. (rev. 01/03/12)

dd. A **HOME OCCUPATION** is an occupation or a profession which:

(1) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and

(2) Is carried on by a member of the family residing in the dwelling unit, and

(3) Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and

(4) Which conforms to the following additional conditions:

(a) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.

(b) Not more than one person outside the family shall be employed in the Home Occupation.

(c) There shall be no exterior display or exterior sign except one unlighted identification sign, not more than two (2) square feet in area, no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the principal building.

- (d) No offensive noise, vibration, smoke, dust, odors, heat, light or glare shall be produced.

In particular, a Home Occupation includes, but is not limited to the following: Barbering, Hairdressing, Dressmaking, Laundering, Home-cooking, Teaching, Musical Instruction limited to a single pupil at a time, and the skilled practice by an accountant, architect, artist, dentist, doctor, engineer, insurance agent, lawyer, musician, realtor, or member of any other profession within a dwelling occupied by the same.

However, a Home Occupation shall not be interpreted to include the following: Commercial stables and kennels, restaurants and tea rooms, musical instruction to groups, dancing instruction, tourists homes, convalescent homes, mortuary establishments, garages and shops for the repair of motor vehicles and other trades and businesses of a similar nature.

ARTICLE II --- ESTABLISHMENT OF DISTRICTS

Section 2.1 Establishment of Districts. For the purpose of this Zoning Ordinance, the Town of Herkimer is hereby divided into zoning districts as follows:

AMENDED - 10/24/95 - ADDED - R3 RESIDENTIAL DISTRICT

- R1 Residential District
- R2 Residential District
- R3 Residential District
- C General Commercial District
- I-1 Industrial District
- L Land Conservation District
- P Planned Development District
- A Agricultural District

AMENDED - 03/26/96 - UPDATED - TOWN OF HERKIMER ZONE MAP,
dated 03/26/96

Said districts are shown, defined and bounded on the map accompanying this Ordinance, entitled TOWN of HERKIMER ZONE MAP dated 03/26/96, as amended and filed in the office of the Town of Herkimer Clerk. Said Zone Map is hereby made a part of this Ordinance.

Section 2.2 - District Boundaries. Where uncertainty exists with respect to the boundaries of the various districts as shown on the

Town of Herkimer Zone Map, the following rules shall apply:

- a. The district boundaries are lot lines unless otherwise shown, and where the designation of the Town of Herkimer Zone Map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary.
- b. Distances shown on the Town Of Herkimer Zone Map are perpendicular distances from the street lines measured back to the zone boundary line, which lines in all cases where distances are given are parallel to the street line.
- c. In other cases the boundary line shall be determined by the use of the scale of the Town of Herkimer Zone Map.

Section 2.3 - Lots In More Than One (1) District. Where a district boundary line divides a lot in single or joint ownership of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty (30) feet into the most restricted portion, provided that the lot frontage is on a street in the less restricted portion.

ARTICLE III --- USE REGULATIONS

Section 3.1 - R-1 Residential District. In R-1 Residential Districts no building or structure shall be erected, altered, or extended and no land, building, structure, or part thereof shall be used for other than one or more of the following uses:

- a. Single Family Dwelling. (rev. 01/03/12)
- b. Church or other place of worship, convent, parish.
- c. Public library, public museum, public school, private nursery school or kindergarten, parochial school, school operated by a non-stock corporation under the education laws of the State of New York, any institution of higher learning but not dormitory accommodations.
- d. Public park, public playground, or athletic field and field houses or other accessory buildings, not conducted for profit.
- e. Golf course except a miniature golf course operated on a commercial basis.

- f. Municipal or public utility structures or facilities when necessary for the service of a neighborhoods and of a kind and character in keeping with the residential character of the neighborhood but only upon approval of the Town of Herkimer Board. The Town of Herkimer Board may require the submission of plans and specifications of the proposed structure or facility prior to taking action.
- g. Bulletin board sign or advertising devise in connection with the uses permitted by paragraphs b, c, d, and e of this Section; one sign advertising the sale, hire, or lease only of the land or building on which it is located, provided that such bulletin board or sign shall not exceed twelve square feet in area, nor shall such sign or bulletin board be permitted within any required yard.
- h. Such accessory are as customarily incidental to the above uses, including home occupations, subject to the Provisions of Article V.

Section 3.2 - R-2 Residential District. In R-2 Residential Districts no building or structure shall be erected, altered, or extended, and no land, building, structure, or part thereof shall be used for other than one (1) or more of the following uses:

- a. Any use permitted in R-1 Residential Districts.
- b. Two family and multi-family dwellings. (rev. 01/03/12)
- c. Hospital, nursing home, for the treatment of human beings other than the mentally ill. (rev. 01/03/12)
- d. Boarding house, lodging house, rooming house, tourist house, but not tourist camps or cabins.
- e. Mortuary, but only upon special approval of the Town Board according to the provisions of Article VII, Section 7.1.
- f. Bulletin board sign or advertising device in connection with the uses permitted by paragraph c. of this Section provided that such bulletin board or sign shall not exceed twelve (12) square feet in area; one (1) sign in connection with the uses permitted by paragraphs d. and e. of this Section, provided that such sign shall not exceed six (6) square feet in area, nor shall such bulletin board or sign be permitted within any required yard.

- g. Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of Article V.
- h. Agricultural operations, including gardens, greenhouses, and usual buildings or structures, provided that no building in which farm animals are kept and no greenhouse heating plant shall be less than one hundred (100) feet from any lot line. (rev. 01/03/12)

AMENDED - 10/24/95 - ADDED R3 - RESIDENTIAL DISTRICT.

Section 3.2a - R3 Residential District. R2 and R3 Districts have the same uses; the difference being the size of the required lots. Also, R2 Residential Districts are serviced by municipal water, where R3 Residential Districts are without municipal water and require larger lot sizes to comply with health requirements controlling distances between water wells and septic systems.

Section 3.3 - C General Commercial District. In C General Commercial Districts no building or structure shall be erected, altered, or extended and no land, building, or structure, or part thereof, shall be used for other than one (1) or more of the following uses:

- a. Any use permitted in R-2 Residential Districts excepting structures used for residential purposes.
- b. Retail store, banks or monetary institutions, business or professional offices.
- c. Restaurant or other place for the serving of food or beverages.
- d. Hotel or Motel.
- e. Theater, bowling alley, skating rink, or other place of amusement or assembly.
- f. Offices of Veterinarians and small animal hospitals.
- g. Place of business of a similar nature to the above, provided that any manufacture or processing of goods on the premises is clearly incidental to a retail business conducted on the premises.
- h. Gasoline sales station and/or garage for the storage,

adjustment, or repair of motor vehicles, and other similar uses, where specific attention and consideration must be given to traffic generation and the disruption of traffic flow as well as to danger to the general public due to hazards of fire and explosion, shall be permitted only upon special authorization by the Town of Herkimer Board according to the provisions of Article VII, Section 7.1.

- i. Billboard, sign, or advertising device in connection with the uses permitted in this Section and referring only to the use of the premises or activities carried on within the confines of the premises, provided that such billboard, sign or advertising device shall not be located less than one-half the required depth of the front yard from the street line.
- j. Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of Article V.

Section 3.4 - I-1 Industrial District. In I-1 Industrial Districts no building or structure shall be erected, altered or extended, and no land, building or structure, or part thereof, shall be used for other than the following permitted uses, subject to the performance standards as set forth in Article VII, Section 7.2.

- a. Any legal use except:
 - (1) Those uses which, because of danger to the general public due to hazards of fire and explosion, including those uses where explosives, combustible gases or flammable liquids are manufactured or stored, shall be permitted only upon special authorization of the Town Board, according to the provisions of Article VII, Section 7.1 and only in conformance with the State Building Construction Code and Labor Law of the State of New York.
 - (2) Uses of an extractive nature, including but not limited to the operation of sand and gravel mines, top soil removal, and mineral removal work.
 - (3) Any dwelling other than the quarters of a watchman.
- b. Adult entertainment permitted only as defined by Local law #2 1996. (rev. 01/03/12)

Section 3.5 - Land Conservation District. The purpose of the Land Conservation District is to delineate those areas where substantial development of the land in way of buildings or structures is prohibited because of:

- a. Special or unusual conditions of topography, drainage, flood plain or other natural conditions, whereby considerable damage to buildings or structures and possible loss of life may occur due to the processes of nature, and
- b. The lack of proper facilities or improvements resulting in the land not being suitable for development at the present time, and where such facilities or improvements must be undertaken on an area wide rather than individual parcel basis in order to serve adequately the area at a reasonable cost to the Town of Herkimer.

To promote this purpose, in Land Conservation Districts, no building or structure shall be erected, altered or extended and no land, building, structure or part thereof, shall be used for other than one (1) or more of the following uses:

- a. Farm and other agricultural operations, including gardens, nurseries, and usual farm accessory buildings not including dwellings.
- b. Park, playground, athletic field, golf course, riding academy, and other similar uses, including usual accessory buildings.
- c. Municipal or public utility structures or facilities.

Whenever it is shown that the special or unusual conditions causing the land to be placed in the Land Conservation Category have been corrected or otherwise taken care of, such land may then be rezoned as provided by Law for an amendment of the Town of Herkimer Zoning Ordinance.

Section 3.6 - Purpose of a Planned Development District. The purpose of the Planned Development District is to provide a means of developing those land areas within the Town considered appropriate for new residential or business use, or a satisfactory combination of these uses, in an economic and compatible manner, while encouraging the utilization of innovative planning and design concepts or techniques in these areas without departing from the spirit and intent of this Ordinance. In no case shall

the regulations of this Article be so interpreted as to circumvent the protection and benefits of this Ordinance to the residents or occupants of such development or the residents or occupants of adjoining properties. (rev. 01/03/12)

- a. Planned Development Districts shall comprise no less than ten (10) acres. (rev. 01/03/12)
- b. Application for establishment of a Planned Development District shall be made to the Town of Herkimer Board. The Town of Herkimer Board shall refer the application to the Town of Herkimer Planning Board for consideration.
- c. The Town of Herkimer Planning Board may require the applicant to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development. In reaching its decision on the proposed development, the Town of Herkimer Planning Board shall consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located, and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property.
- d. The Town of Herkimer Planning Board shall approve with modification or disapprove such application and shall report its decision to the Town of Herkimer Board.
- e. The Town of Herkimer Board shall hold a public hearing on the proposal with public notice as provided by law in the case of an amendment to the Town of Herkimer Zoning Board.
- e. The Town of Herkimer Board may then amend the Town of Herkimer Zoning Ordinance as to define the boundaries of the Planned Development District, but such action shall have the effect only of granting permission for development of the specific proposal in accordance with the Town of Herkimer Zoning Ordinance within the area so designated with the specifications, plans and elevations submitted.

Section 3.7 - Agriculture District. In Agriculture Districts, no building shall be erected, altered or extended, and no land or building or part thereof shall be used for other than one (1) or more of the following uses:

- a. Any use permitted by Section 3.2, paragraphs a through e.
- b. Garden, nursery, greenhouse, or farm, including farm buildings, any activity carried on as a part of the operation of a farm, and the sale of farm products at the roadside, provided however, that any products sold or publicly displayed for sale at the roadside shall be limited to agricultural products and/or any other products manufactured or assembled on the premises. Uses other than those listed above may be permitted by special authorization subject to the provisions of Article VII, Section 7.1 of this Ordinance.
- c. Uses of an extractive nature, including but not limited to, the operation of sand and gravel mines, top soil removal and mineral removal shall be permitted by Special Authorization under Section 7.1

ARTICLE IV --- AREA AND YARD REGULATIONS

Section 4.1 - Lot Area, Frontage, Yards, Coverage, and Height Regulations. The minimum requirements of lot area and frontage for residential uses and the minimum requirements for yards and the maximum permissible height and land coverage for all districts and uses are summarized on Schedule I. (rev. 01/03/12)

Section 4.2 - Variation of Requirements. Upon special authorization of the Town of Herkimer Board, according to the provisions of Article VII Section 7.1, the requirements concerning lot area, frontage, side yards, and coverage may be varied for a development of not less than two (2) acres, provided that the maximum density of the overall development is not greater than that normally allowable in the district in which it is located.

Such land as may be made available under this section shall be devoted to common purposes for all residents, including, but not limited to, a park, playground, or garden for the use of surrounding residents.

Section 4.3 - Existing Lots. Other provisions of this Ordinance notwithstanding, nothing shall prohibit a lot of less area than that required for a single family dwelling in the district in which the lot is located to be used for a single family dwelling, provided that all other provisions of this Ordinance are complied with, when such lot, at the time of the passage of this Ordinance

was held under separate Ownership or Lease ship from the adjoining lots.

Section 4.4 - Yards on Corner Lots. Any yard adjoining a street shall be considered a front yard for the purposes of this Ordinance and shall comply with all requirements for a front yard in the district in which located.

Section 4.5 - Open Porches, and Attached Carports and Garages. In determining the percentage of building coverage of a lot or the size of yards for the purpose of this Ordinance, porches or carports open at the sides but roofed, and all attached garages shall be considered as part of the principle building.
(rev. 06/20/11)

Section 4.6 - Fences, Walls and Hedges. (rev. 01/03/12)

a. **Definitions -**

1. **FENCE** - Any structure, regardless of composition, except living fences, that is erected or maintained for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions; or to direct or prohibit passage across land; or to enclose a swimming pool; or to protect against hazards of an excavation pit, well, spring hole or otherwise.
2. **HEIGHT** - The distance measured from the existing grade to the top of the fence.
3. **LIVING FENCE** - Any fence or hedge composed of live materials.
4. **GOOD SIDE** - The better, best or finished portion of fencing building material.

b. **Approval Required -**

No fence shall be erected, except living fences and temporary fences for the purposes of protecting against hazards of excavations and holes or like dangers newly created on the premises, until a permit therefore is issued by the Codes Enforcement Officer for the Town of Herkimer. Temporary fences are allowed for thirty (30) days before a permanent solution is installed.

c. **Issuance of Permit; Fees -**

1. Applications for fence erection permits shall be

made to the Code Enforcement Officer of the Town of Herkimer on forms provided by the Herkimer Town Clerk. The application shall include a plan or sketch of the proposed fence with the buildings and objects around it indicated. It shall state the purpose of the fence as proposed and shall set forth the materials of its construction and its height, and the application shall conform otherwise with building permit applications. The Codes Enforcement Officer shall have the discretion to deny any application for a fence which he deems to be contrary to the public interest, including but not limited to instances in which it appears that the fence builder's motive is malicious, where a neighbor's safety would be threatened by the fence, or where the fence would be detrimental to the Fire Department in containing or fighting a fire as determined by the Codes Enforcer.

2. A filing fee shall accompany each application. The amount of that fee shall be established by resolution of the Herkimer Town Board. Permits issued shall be valid for six (6) months after the date of issuance. The issued permit shall be available on the job for inspection during the fence erection work.

d. **Swimming Pools** - In-ground swimming pools shall be completely and effectively fenced by an artificial enclosure that shall meet state codes.

e. **Height Limitations** -

1. **Rear Yards** - No fence at the rear of the principal building or residence on a piece of land shall be more than six (6) feet in height, and such fence shall not extend forward of the rear building line as established by the definition of front yard, of the principal building or residence on the lot.
2. **Front Yards** - No fence in any front yard shall be higher than four (4) feet.
3. **Side Yards** - No fence in any side yard shall be more than six (6) feet.

f. **Location Restrictions -**

1. Any fence, other than a living fence, shall be placed at least six (6) inches back from any property line or right of way, except that fences in a front yard shall be placed at least six (6) inches back from the sidewalk or street line in existence, as proposed or required by a development plan or otherwise by law.
2. Living fences shall be placed at least two (2) feet back from a property line or right of way and from the inside line of a sidewalk or street line in existence or as proposed or required by a development or otherwise by law. Living fences shall be trimmed so as not to encroach on the sidewalk, street line or adjacent property.
3. No fence shall interfere with visibility by vehicle operators when approaching corners or when entering a street from a piece of land as determined by the Codes Enforcer.
4. Corner properties - The rear yard fence on a corner property, if more than four (4) feet high, shall not be placed closer to the sidewalk or street line than the face of the building closest to the side street. For purposes of determining the building face, additions visually identifiable from the outside of the building will not be considered. Fences closer to the sidewalk/street line of a side street shall be subject to all limitations of a front yard fence.

g. **Materials -** Materials proposed for the construction of fences shall be subject to the approval of the Code Enforcement Officer. Fences must be made using generally available commercial fencing material. Specifically prohibited is the use of barbed wire, plywood, PVC pipe, cinder blocks and electrically charged fences. Temporary fences may use plywood, (see 4.6-b). The good side of the fencing material must face your neighbor's property, (see 4.6-a) and both sides must be well maintained.

h. **Powers and Duties of the Codes Enforcement Officer -**
The Code Enforcement Officer of the Town of Herkimer or an

official duly authorized by the Herkimer Town Board shall have the authority to direct the removal, trimming or modification of any shrubs, bushes, plants, trees, flowers or other vegetation, fence, wall, hedge or other structure on private or public property wherever the same shall be found to be in violation of this chapter. Any person who shall refuse or neglect to comply with a written directive under this authority shall be guilty of violation of this chapter and shall be subject to its penalties.

- i. **Penalties for Offenses** - Violations of any of the provisions of this chapter shall be punishable by a fine of not more than two hundred fifty dollars (\$250) or by imprisonment for not more than fifteen (15) days, or both. Each days' continuance of a violation after notice shall be deemed a separate and distinct violation and shall be punishable accordingly.
- j. **Appeals** - The Code Enforcement Officer's decisions concerning the applicability of this chapter shall be appealable to the Board of Appeals.
- k. **Exceptions** - Agricultural fencing is exempt from the provisions of this section.
- l. **Fences** - are not to be used for the posting of signs.
(rev. 01/03/12)

Section 4.7 - Corner Visibility. No structure, fence or shrubbery over three (3) feet in height shall be maintained on any corner lot within a triangular area formed by the lot lines along the streets to the points on such lines a distance of forty five (45) feet from their intersection, and a line connecting such points.
(rev. 01/03/12)

Section 4.8 - Projection in Yards. Every part of a required yard shall be open from its lowest part to the sky unobstructed, except for the ordinary projections of sills, belt cornices, pilasters, leaders, chimneys, eaves and ornamental features, provided that no such projections may extend more than three (3) feet into any required yard.

Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a required yard not more than four and one-half (4 1/2) feet may be permitted by the Zoning Enforcement Officer where such projections are so placed as not to obstruct

light and ventilation.

Section 4.9 - Reduction of Lot Area. Whenever a lot upon which stands a building or structure is changed in size or shape so that the area and yard requirements of this Ordinance are no longer complied with, such building shall not thereafter be used until it is altered, reconstructed or relocated so as to comply with this requirements. The provisions of this Section shall not apply when a portion of a lot is taken for a public purpose.

ARTICLE V --- ACCESSORY USES

Section 5.1 - Accessory Uses in Residential Districts. Accessory uses permitted in Residential Districts shall be such only as do not alter the character of the premises on which they are located or impair the neighborhood and shall be located on the same lot with the use to which it is accessory.

Permitted Accessory Uses shall include the following:

- a. The sale of produce raised on the premises.
- b. Customary home occupation provided that no goods or products are displayed on the premises.
- c. Garage space or parking space for not more than two (2) motor vehicles, provided that for each two (2) thousand square feet that the area of the lot exceeds five (5) thousand square feet, one (1) additional motor vehicle may be garaged or parked, provided, however, that except on a farm not more than one (1) commercial vehicle shall be garaged or parked on any lot in a Residential District.

Space for one (1) motor vehicle, which must be non commercial, may be rented to persons not residents on the same lot. The above provisions shall apply to private stables, one (1) horse shall be considered the equivalent of one (1) motor vehicle. Notwithstanding the above, in the case of multi-family dwellings, the provisions of Article VII Section 7.3 shall apply.

- d. A temporary building for commerce or industry in a Residential District where such building is necessary or incidental to the development of a residential area. Such building may not be continued for more than one (1) year.

Section 5.2 - Accessory Uses in C General Commercial Districts. Accessory uses in C General Commercial Districts shall be such only as do not alter the character of the premises on which it is located, shall be clearly incidental to a permitted primary use, and shall be located on the same or adjacent parcel of land, except for parking facilities, which shall be governed by Article VII Section 7.3.

Section 5.3 - Accessory Buildings. Accessory buildings may not occupy any required open space other than a rear yard, and any such accessory building may occupy not more than forty (40) percent of any required rear yard and shall be not less than three (3) feet from any rear lot line. Accessory buildings shall in no case exceed twenty (20) feet in height. Garages built into or attached to dwellings shall not be considered accessory buildings, but part of the principal building. (rev. 01/03/12)

ARTICLE VI --- NON-CONFORMING USES

Section 6.1 - Continuation of Non-Conforming Uses. Except as provided in Sections 6.2 and 6.3 of this Article, any use of land, or a building or structure or part thereof, existing at the time that this Ordinance, or any amendment hereto, becomes effective, may be continued, subject to the provisions of Sections 6.4, 6.5, and 6.6 of this Article, although such building or structure or use does not conform to the provisions of the district in which it is situated.

Section 6.2 - Abandonment of Use. When a non-conforming use has been discontinued or abandoned for a period of not less than one year, it shall not thereafter be reestablished, and the future use shall be in conformity with the provisions of this Ordinance.

Section 6.3 - Junk Yards and Billboards. Notwithstanding any other provision of this Ordinance, any automobile or other junk yard, or any billboard or non-conforming sign or advertising device in existence in a Residence District at the time of the adoption of this Ordinance or an amendment hereto shall be discontinued within three (3) years from the date of the adoption or amendment, State Law #136.

Section 6.4 - Changes in Non-Conforming Use. No non-conforming use shall be changed to other than a conforming use for the district in which it is situated.

Section 6.5 - Maintenance of a Non-Conforming Use. A non-

conforming use is hereby required to be maintained in such condition as will not constitute a danger to the safety, health or general welfare of the public. Alterations of the non-conforming use, in order to comply with the provisions of this Section, are permitted, provided that such alteration shall not tend to increase the inherent nuisance, nor shall such alteration violate any provisions of this Ordinance regarding yards, lot area or lot coverage for the district in which it is situated, or to increase any existing violation of such provisions. (rev. 01/03/12)

Section 6.6 - Restoration. Nothing herein shall prevent the restoration within one (1) year, and continued use of a non-conforming building or structure damaged by fire, flood, earthquake, act of God, or act of the public enemy. In any case where a building or structure is destroyed, such building or structure shall not be restored as a non-conforming use.

ARTICLE VII --- GENERAL PROVISIONS

Section 7.1 - Special Authorization. In every case where special authorization by the Town of Herkimer Board is required by the provisions of this Ordinance before a use may be permitted in any particular district, such special authorization shall be given only after:

- a. Referral to the Town of Herkimer Planning Board for their recommendation and the receipt of their report, and
- b. A public hearing, conducted by the Town of Herkimer Board, in the manner set forth for an amendment to the Town of Herkimer Zoning Ordinance.

The applicant for such special authorization may be required to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development, and such authorization may be made conditional upon the provision of adequate to protect the health, safety and general welfare of the public and to minimize possible detrimental effects of the proposed use on adjacent property.

Section 7.2 - Industrial Performance Standards. The following performance standards shall be applied to all industrial uses of land, buildings or structures within the Town of Herkimer.
(rev. 01/03/12)

- a. **Noise.** All State and federal standards shall apply.

- b. **Smoke.** It shall be unlawful for any person, firm or corporation to permit the emission any smoke from any source whatsoever, as measured at the individual property line, of a density equal to or greater than that density described as No. 2 on the Ringlemann Chart, as published by the United States Bureau of Mines. Smoke of a density greater than that described as No. 2 on the Ringlemann chart shall be permitted for a period not to exceed four (4) minutes in any single period of sixty (60) minutes.
- c. **Odor.** It shall be unlawful for any person, firm or corporation to permit the emission of any odor that is unreasonably offensive, as measured at the individual property lines.
- d. **Dust and Dirt.** It shall be unlawful for any person, firm or corporation to permit or cause the escape of such quantities of soot, cinders or fly ash that exceeds 0.3 grains per cubic feet of flue gas at stack temperature of five hundred (500) degrees Fahrenheit. Other kinds of dust, dirt, or other particular matter, as measured at the individual property lines, shall not be in excess of 0.3 grains per cubic foot of air as corrected to standard conditions of temperature and pressure, or be of such a size as to be retained on a United States Standard No. 325 mash sieve.
- e. **Noxious Gases.** It shall be unlawful for any person, firm, or corporation to permit or cause the escape of such quantities of noxious acids, fumes, or gases in such a manner and concentration as to endanger the health, comfort and safety of any person, or to cause or have a tendency to cause injury or damage to property, business or vegetation.
- e. **Glare and Heat.** It shall be unlawful for any person, firm or corporation to carry on a process such that a direct or sky-reflected glare whether from flood lights or from high temperature processes such as combustion or welding or other such process that is unreasonably offensive when visible at the individual property lines. No lighting of signs or buildings shall be allowed unless it is of such low intensity or brilliance as not to cause glare or impair the vision of the driver of any motor vehicle.

- g. **Fire and Safety Hazards.** Operations and processes that are commonly held to be unusually dangerous or hazardous, including the manufacturing or storage of explosives, combustible gases and flammable liquids, shall comply with the provisions of the State Building Construction Code and Labor Law of the State of New York, as well as special authorization of the Town of Herkimer Board according to the provisions of Article VII Section 7.1.

The storage of rags, paper, wastes, or similar materials, other than those normally used for janitorial services, shall be allowed only in an enclosed masonry building of four (4) hour construction, and such building shall be located at least one hundred (100) feet from any property line or any building. Open storage for other combustible material and scrap metal shall be enclosed with a fence, not less than eight (8) feet in height so as to screen the stock piles from public view.

- h. **Industrial Sewage Wastes.** It shall be unlawful for any person, firm or corporation to permit the discharge of industrial wastes, or wastes of any nature, into an open stream, until it is treated according to the regulations set by the New York State Department of Health and the New York State Department of Environmental Conservation. (rev. 01/03/12)
- i. **Radio-Active Materials.** It shall be unlawful for any person, firm or corporation to permit the emission of such quantities of radio-active materials, in any nature whatever, such as to be unsafe as established by the United States Bureau of Standards.
- j. **Non-compliance.** If it has been adequately demonstrated to the Town of Herkimer Zoning Board of Appeals that compliance with the terms of this Ordinance cannot be effectively and immediately made, the Zoning Enforcement Officer shall have the authority to grant a temporary permit for the continued operation of such non-complying equipment, but only in the event that the party has taken all necessary steps to secure compliance with the Ordinance. Such temporary permit shall be issued for no longer a period than three (3) months, at the expiration of which period of time, the party holding such permit shall be deemed to be in violation of the provisions of this

Ordinance. Any violation or offense on separate days shall be deemed to be separate offenses for the purposes of this Ordinance, and thus subject to separate penalties & fines.
(rev. 01/03/12)

Section 7.3 - Parking Requirements. For every building or structure hereafter erected, altered, or extended, there shall be provided parking facilities or vehicle storage as set forth below. Parking requirements should meet the building code of New York State. (rev. 01/03/12)

- a. Residential Requirements. Every structure used for dwelling purposes, shall have provided, on the same lot as the principal structure, or on a lot adjacent thereto and in the same ownership, off-street parking facilities for automobiles to the number not less than one (1) and one-half (1 1/2) the number of dwelling units in such principal structure in excess of the first dwelling unit.
- b. Places of Public Assembly. For every structure used as a theater, auditorium, including school auditorium, stadium, church, lodge halls, or other places of public or private assembly which provides facilities for seating people, there shall be provided, and maintained accessible off-street parking facilities on the same lot therewith, or within one thousand (1000) feet thereof, to the number at least equal to space for one (1) automobile for every four (4) seats, or fraction thereof, provided in such place of assembly.
- c. Commercial Requirements. For every business or commercial use, there shall be provided in connection therewith on the same lot as the principal use or a lot adjacent thereto under the same ownership, parking facilities to the number at least equal to one (1) parking space for each one hundred-fifty (150) square feet or fraction thereof of floor area devoted to such use.
- d. Industrial Requirements. For every industrial use there shall be provided in connection therewith, on the same lot or a lot adjacent thereto under the same ownership, off-street parking facilities to the number or at least equal to the total number of employees employed on the premises in such industrial use on the maximum shift.

Section 7.4 - Loading Space. In connection with every use

involving vehicles for receipt or distribution of goods, merchandise or materials, adequate off-street vehicle standing or storage space shall be provided so as to avoid undue interference with the public use of streets, alleys, walks or other public ways.

Section 7.5 - Rear Dwellings. No building in the rear of a principal building on the same lot shall be used for residential purposes. (rev. 01/03/12)

Section 7.6 - Location of Auto Repair and Animal Care. (rev. 01/03/12) Other provisions of this Ordinance notwithstanding, the following uses or activities shall not be permitted within two hundred (200) feet of any Residence District.

- a. Garage or shop for painting of automobiles or for the repairing of automobile bodies or fenders involving hammering or other work causing loud or unusual noise or fumes or odors.
- b. Animal hospital, kennel or place for the boarding of animals.

Section 7.7 - Access of Commercial or Industrial Use. No driveway or other means of access for vehicles, other than a public street, shall be maintained or used in any Residence District for the servicing of a commercial, or industrial use located in a Commercial or Industrial District.

Section 7.8 - More Than One Building on a Lot. Where there is more than one (1) principal building on a lot in any district, the space between such buildings shall be no less than the sum of the side yards required, or the sum of the rear and front yards as the case may be and minimum lot area requirements shall apply to each structure.

AMENDED - 10/24/95 - ADDED - MOBILE HOMES

Section 7.9 - Mobile Homes. Mobile homes may not be located in any district classified as R-1 Residential District in said Town of Herkimer. Further, mobile homes may be located in any other district, where dwellings are permitted, other than R-1 Residential, provided it have a permanent foundation and that said foundation be enclosed. Minimum lot size will be the same as the lot size required for a dwelling in the District where the mobile home will be located. All requirements of the Board of Health must

be complied with. (rev. 01/03/12)

- a. Mobile Home parks are allowed with special authorization from the Herkimer Town Board. (rev. 01/03/12)

Section 7.10 - Location of Certain Activities. In addition to any other provision of this ordinance, the following uses or activities shall not be permitted within one-half (1/2) mile of any public school, private nursery school or kindergarten, parochial school or school operated by a non-stock corporation, under the laws of the State of New York, Church or other place of worship. (rev. 06/06/06)

- a. Penal or correctional facility;
- b. Adult Entertainment establishment, as defined by the Town of Herkimer Local Law #2 of 1996.

ARTICLE VIII --- ADMINISTRATION

Section 8.1 - Administration. This Ordinance shall be enforced by the Town of Herkimer Zoning Enforcement Officer. The Zoning Enforcement Officer shall not approve an application, or issue a building permit, or issue a certificate of occupancy for any purpose, except when in compliance with the provisions of this Ordinance or any such other ordinances, rules and regulations of the Town of Herkimer, together with any applicable laws, rules and regulations of the State of New York.

Section 8.2 - Building Permit. No building or structure shall be begun except pursuant to a building permit issued by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall in no case, except under a written order of the Town of Herkimer Board of Appeals, grant any building permit for any building or structure where the proposed construction, alteration or use thereof would be in violation of any provision of this Ordinance. The fee to be charged for the issuance of a building permit shall be based upon the floor area of the building or structure to be constructed and shall be determined as follows:

- a. Residential Construction. Fees are determined by the Town of Herkimer fee schedule, Schedule II (rev. 01/03/12)
- b. Commercial Construction. Fees are determined by the Town of Herkimer fee schedule, Schedule II. (rev. 01/03/12)

A building permit shall become void after a period of six (6) months from the date of issuance unless actual construction has been started pursuant to such building permit, in which case the building permit shall become void after a period of twelve months from the actual date of the start of construction. When the time of starting construction or the time of completion of construction exceeds the above periods, application may be made for a renewal permit and the minimum charge shall apply.

Section 8.3 - Certificate of Occupancy. No building hereafter erected, altered or extended and no land, the use of which is hereafter changed, shall be used until a certificate of occupancy has been issued by the Zoning Enforcement Office. The Zoning Enforcement Officer shall in no case except under a written order of the Town of Herkimer Board of Appeals, grant any certificate of occupancy where the use of any building, structure, or land would be in violation of the terms and provisions of this Ordinance.

Section 8.4 - Board of Appeals. A Town of Herkimer Board of Appeals of five (5) members is hereby established in accordance with the provisions of Section 267 of the Town Law. The Town of Herkimer Board of Appeals shall, consistent with the Town Law, determine its own rules and procedures and shall have the power and duties granted to it in the Town Law and as specified in this Ordinance. The Town of Herkimer Board of Appeals shall, in accordance with the provisions hereinafter set forth in this Section, hear and determine appeals from any refusal of a building permit or certificate of occupancy by the Zoning Enforcement Officer, or review any order of decision of the Zoning Enforcement Officer where such order or decision is based upon the requirements of this Ordinance. The Town of Herkimer Board of Appeals shall have the power, in passing upon appeals to vary or modify the application of any of the regulations or provisions of this Ordinance so that the spirit of this Ordinance shall be observed, public safety and welfare secured and substantial justice done. The Town of Herkimer Board of Appeals shall also hear and decide all matters referred to it or upon which it is required to pass by the terms of this Ordinance.

In deciding such matters referred to it by the terms of this Ordinance, the Town of Herkimer Zoning Board of Appeals shall give consideration to the health, safety, morals and general welfare of the community. In harmony with the general welfare of the community and with the general purpose and intent of this Ordinance, the Town of Herkimer Zoning Board of Appeals shall determine that a need for the use in question exists, and that the

convenience and prosperity of the community will be served and that neighboring persons and property will not be adversely affected. Specifically, no variance shall be granted by the Town of Herkimer Board Of Appeals unless it finds:

- a. That the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of the land or building for which such variance is sought, that the granting of the variance is necessary for the reasonable use of such property, and that the variance granted by the Town of Herkimer Board of Appeals is the minimum variance that will accomplish this purpose, and
- b. That there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the vicinity or neighborhood, and have not resulted from any act of the applicant subsequent to the adoption of this Ordinance, and
- c. That the granting of the variance will be in harmony with the general purpose of this Ordinance, will not be injurious to the neighborhood, and will not alter the essential character of the locality. In granting a variance, the Town of Herkimer Board of Appeals may prescribe appropriate conditions or safe guards that are necessary or desirable to carry out the requirements of this sub-section.

Section 8.5 - Penalties. Any person, firm, or corporation who violates, disobeys, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a penalty to be determined by the Town Board.

(rev. 01/03/12)

In addition to other remedies, the Town of Herkimer Board may institute any appropriate action or proceeding to prevent any unlawful erection, alteration, conversion, maintenance or use, to correct or abate such violation, to prevent the occupancy of a building, a structure or land, or to prevent any illegal act, conduct, business or use.

Section 8.6 - Amendments and Variances. This Ordinance may be

amended from time to time as provided by Section 265 of the Town Law and after a report concerning such proposed amendment by the Town of Herkimer Planning Board. A petition requesting a change in regulations, provisions or district boundaries, as set forth in this Ordinance, shall be filed by the person presenting it, in the same manner as required for the recording of a deed to real property, and shall be filed with the Town of Herkimer Clerk in triplicate. Each petition for a change of zone or variance shall be accompanied by a fee see Schedule II, payable to the Town of Herkimer and presented to the Town of Herkimer Clerk. The Town of Herkimer Planning Board or Town of Herkimer Zoning Board may require a plan of the proposed development and use of any area for which a change of zone or variance is sought in order to assist them in their understanding of any proposed change.

(rev. 01/03/12)

Section 8.7 - Performance Bond. In the case of a change in zone petition filed in accordance with the provisions of Section 3.7 with respect to a Planned Development District, or Section 8.6 where a plan of the proposed development or use may be required, and where the Town of Herkimer Board approves such change, the Town of Herkimer Board may provide that such change shall not become effective until the petitioner has filed a performance bond in such amount and under such conditions as the Town of Herkimer Board may deem to be in the best interests of the public, and so as to insure the Town of Herkimer that the proposed development of the area will be in compliance with the provisions of the accepted development and use plan.

Section 8.8 - Interpretation. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of public health, safety, morals or general welfare.

Section 8.9 - Validity. The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

Section 8.10 - When Effective. This Ordinance shall be in full force and effect immediately upon adoption as provided by Law.

ARTICLE IX --- SEPTIC SYSTEMS: All state rules and regulations

will be followed

Section 9.1 - SCHEDULE II (rev. 01/03/12)

ARTICLE X --- SWIMMING POOL ORDINANCE: All state rules and regulations will be followed.

Section 10.1 - SCHEDULE II (rev. 01/03/12)

SCHEDULE I --- LOT SIZES (rev. 01/03/12) See attached

SCHEDULE II --- FEE SCHEDULE (rev. 01/03/12) See attached

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