

**City of Lincoln  
Planning**

**County Board of Zoning Appeals  
Agenda**

**AGENDA**

**OCTOBER 12, 2007**

1. Review and approval of minutes of meeting held April 14, 2006.

**PUBLIC HEARING AND ACTION**

2. County Board of Zoning Appeals No. 07001, requested by the Village of Davey on behalf of Kevin Stokes for a variance to the lot size, setbacks and rear yard coverage, on property located at 3520 Maple Street, Davey, Nebraska.

**COUNTY BOARD OF ZONING APPEAL #07001**

**DATE:** October 1, 2007

**DATE SCHEDULED FOR PUBLIC HEARING:** October 12, 2007

**LOCATION:** Generally located at 3520 Maple Street in Davey, NE

**ADDRESS:** 3520 Maple Street  
Davey, NE

**LEGAL DESCRIPTION:** Lots 18 and 19, Block 3, Davey Nebraska

**APPLICANT:** Village of Davey, Lori Streeter Clerk  
P.O. Box 1  
Davey, NE 68336  
(402) 785-5351

For

Kevin Stokes  
3520 Maple Street  
P.O. Box 72  
Davey, NE 68336  
(402) 416-5905

**LOT AREA:** 6,500 square feet (50" X 130')

**ZONING:** Davey "R" Residential District.

**EXISTING LAND USE:** Existing single family house.

**SURROUNDING LAND USE AND ZONING:**

Surrounding zoning is R residential with RM multiple zoning one lot to the west. Residential uses surround the property with an apartment building one lot to the west.

**TYPE OF APPEAL:**

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO

Section, 4.9 Accessory Buildings, in the Davey Zoning Ordinance requires no more than 25% of any yard may be occupied by an accessory building. A variance from 25% to 48% coverage of the rear yard is requested.

Section, 5.6 Schedule of Lot, Yard and Bulk Regulations requires a maximum lot coverage of 30%. The proposed garage with the house will cover 36.3% of the lot and will need a variance from 30% to 36.3% of lot coverage.

**STAFF FINDINGS:**

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State Statute provides that the County Board of Zoning Appeals may serve as the Board of Adjustment of a village. (Section 19-912.01)

The Davey Zoning Ordinance provides that the Lancaster County Board of Zoning Appeals will serve as the Village Board of Adjustment.

This is final action by the Board of Zoning appeals.

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- 1) This application is for a garage to be constructed on a buildable nonconforming lot of record. The trench for the footing has already been dug. An application for a building permit was denied by the Village of Davey.
- 2) The applicant is proposing to build a 40' by 35', three bay garage in the rear yard.
- 3) Davey yard setbacks are 25' for the rear yard and 10' for the side yard. The Davey code allows an accessory building such as a garage to project into a yard and **to occupy 25% of a yard.** The Davey code allows no more the **30% lot coverage.**
- 4) The proposed garage **will cover 48%** of the required rear yard and 36.3% of the lot and thus requires a variance for each item.
- 5) A smaller building can be built or the proposed building can be reduced and moved 8' to 15' to the south which would meet the code requirements of the Village of Davey.
- 6) There is no apparent hardship to justify the waiver.

Prepared by

Mike DeKalb, 441-6370, [mdekalb@lincoln.ne.gov](mailto:mdekalb@lincoln.ne.gov)  
Planner



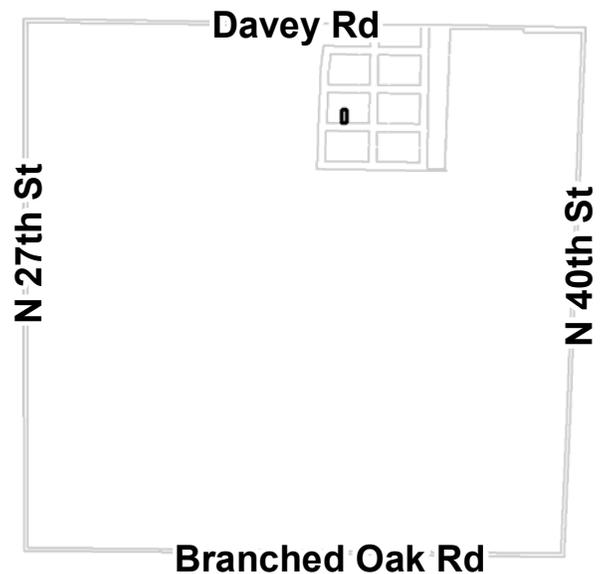
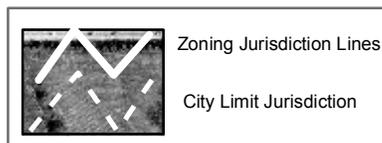
**County Board of Zoning Appeals #07001**  
**3520 Maple Street**

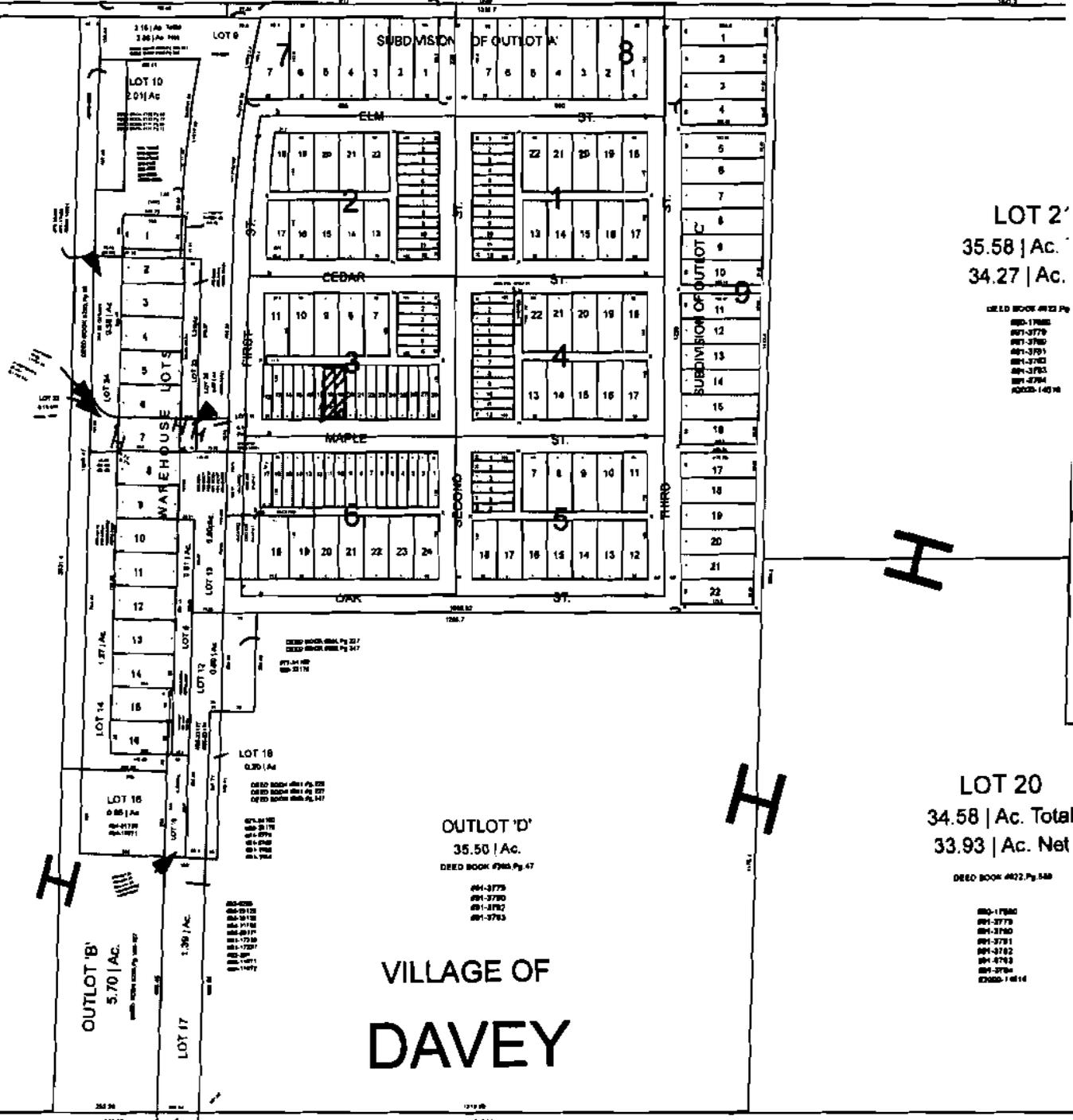
2005 aerial

**Zoning:**

One Square Mile  
 Sec. 30 T12N R7E

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District





**LOT 3**  
 1 | Ac. Total  
 0.5 | Ac. Net  
 DEED BOOK 492 Pg. 517  
 078-222.87  
 064-217.88  
 056-11871

**LOT 2'**  
 35.58 | Ac.  
 34.27 | Ac.

DEED BOOK 492 Pg. 516  
 050-17885  
 051-3779  
 051-3780  
 051-3781  
 051-3782  
 051-3783  
 051-3784  
 0505-14014

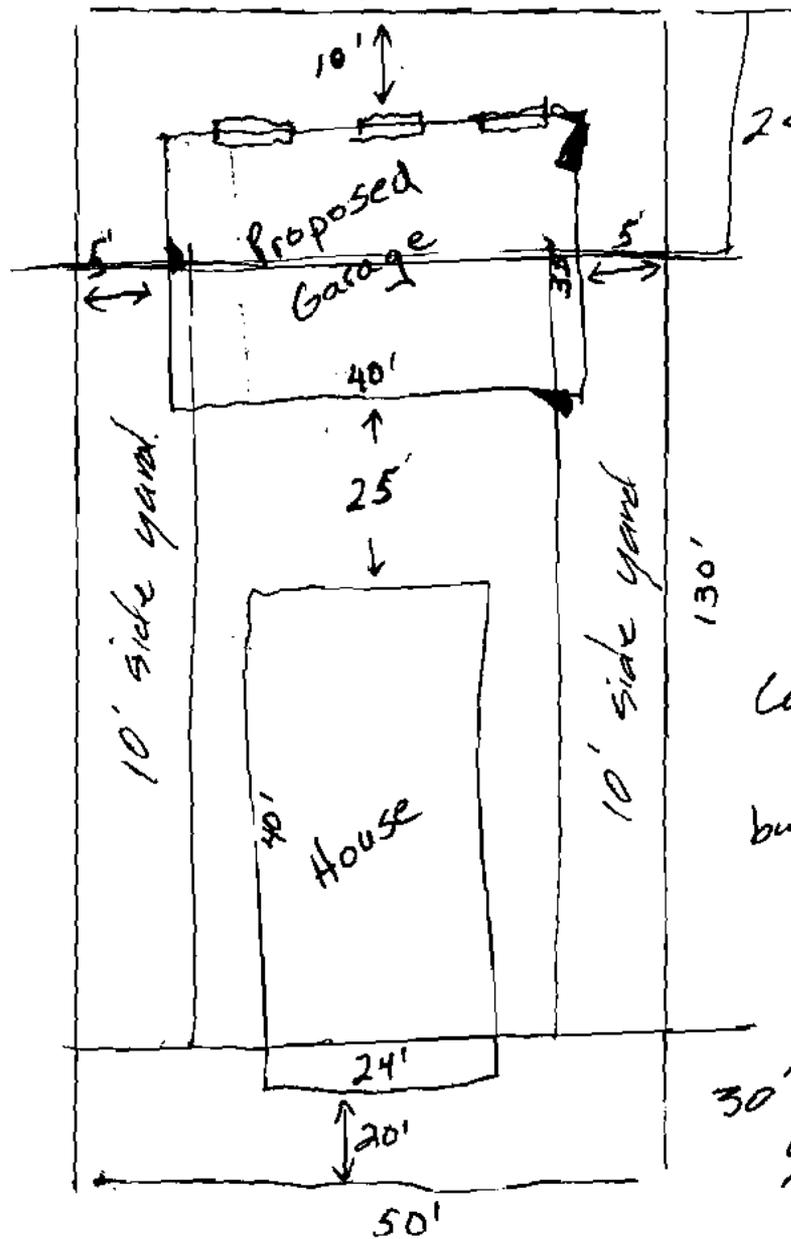
**OUTLOT 'D'**  
 35.50 | Ac.  
 DEED BOOK 4785 Pg. 47  
 051-3779  
 051-3780  
 051-3781  
 051-3782

**VILLAGE OF DAVEY**

**LOT 20**  
 34.58 | Ac. Total  
 33.93 | Ac. Net

DEED BOOK 492 Pg. 518  
 050-17885  
 051-3779  
 051-3780  
 051-3781  
 051-3782  
 051-3783  
 051-3784  
 0505-14014





25' rear yard

1240  
600 in sq.

482  
coverage  
36% allowed

Lot 130 x 50  
= 6,500 sq

buildings  
20 x 40 = 960  
35 x 40 = 1,400  

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2,360 sq

= 36.3%  
coverage

30' front  
yard.

3520 Maple Street  
Davey, NE

# VILLAGE OF DAVEY

P.O. BOX 1  
DAVEY, NE 68336  
402-785-5351

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**James E. Kaiser**  
Chairman

**Lori J. Streeter**  
Clerk

**Linda Thomsen**  
Treasurer

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September 7, 2007

Lancaster County Board of Zoning Appeals  
City-County Building  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

RE: Variance

Greetings:

The Board of Trustees of the Village of Davey, Nebraska, requests that the Lancaster County Board of Zoning Appeals hear the enclosed Application for Variance and act as the Village's Board of Adjustment.

In addition to the Application, copies of the pertinent sections of Davey's Zoning Ordinance are enclosed. If you require anything further, please contact the Davey Village Clerk, Lori Streeter, at 785-5351 or 785-3685. Also, we request that she be notified of the time and date of the hearing.

Thank you for your assistance in this matter.

Sincerely,

James E. Kaiser  
Chairman

**APPLICATION FOR VARIANCE**  
**VILLAGE OF DAREY, MISSOURI**

APPLICANT: Kevin Stokes  
ADDRESS: PO Box 72  
3520 Maple St  
PHONE: 402 416 5905

Applicant hereby requests that a variance be granted to Applicant for the following:

PROPERTY STREET ADDRESS: 3520 Maple St.  
PROPERTY LEGAL DESCRIPTION: Block 3 Lots ~~18~~ 18 & 19

TYPE OF VARIANCE REQUESTED: Hardship

APPLICABLE ZONING ORDINANCE: Village of Darey Zoning Ordinance  
4.9 R, 4.9 F.5, 5.6

REASON VARIANCE REQUESTED: Hardship because of lot size is 50x130  
and most all lots are 60x146

SUPPORTING DOCUMENTS ATTACHED: Application For building and zoning  
permit

Date: 6 Sept 07

K - [Signature]  
Applicant

**APPLICATION FOR BUILDING AND ZONING PERMIT**  
**VILLAGE OF DAVEY, NEBRASKA**

The undersigned applies for a permit to <sup>alter</sup> erect a building at <sup>enlarge</sup>  
3520 Maple, Lot \_\_\_\_\_, Block \_\_\_\_\_, Davey, Nebraska.  
(address)

**NEW BUILDING**

Size: 40'-35' Intended use: garage  
Height: 10' Estimated cost: 21655.54  
Type of construction: wood

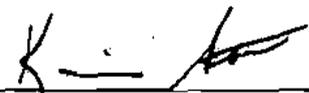
**ALTERATION OR ADDITION**

Size: _____	Present Building:
Height: _____	Size: _____
Type of construction: _____	Height: _____
_____	Type of construction: _____
Intended use: _____	_____
_____	Use: _____
Work proposed: _____	
_____	
Estimated cost: _____	

**FOR ALL APPLICATIONS, ATTACH A DIAGRAM SHOWING WHERE THE BUILDING OR ADDITION WILL BE PLACED ON LOT, DISTANCE TO LOT LINES, AND DISTANCE TO OTHER BUILDINGS, IF ANY CURRENTLY EXIST.**

I hereby certify that the above statements are correct and that if a building permit is issued all work will be done in accordance with all ordinances of the Village of Davey.

Date: 5-11-07  
Fee Paid: \$ 25.00

  
Applicant  
Kevin Stolke  
Property Owner

**ZONING ORDINANCE**  
**OF THE**  
**VILLAGE OF DAVEY,**  
**LANCASTER COUNTY, NEBRASKA**

**1977 EDITION**

RECEIVED

JAN - 7 2005

LINCOLN COUNTY LAND & WATER COMMISSION

AGX

LOT 3  
58.79 | Ac. Total  
58.06 | Ac. Net

LOT  
39.17 | Ac.  
37.68 | Ac.

AGX

SE 1/4, N  
48.00 | Ac.  
39.00 | Ac.

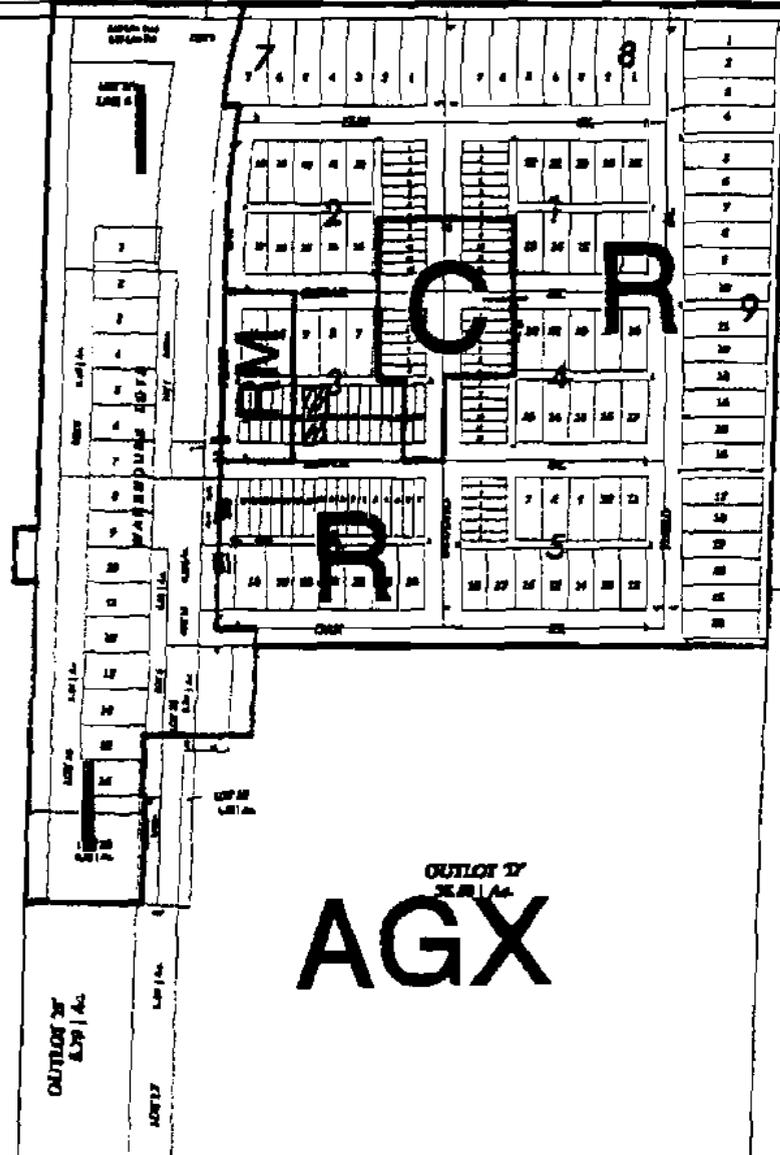
OUTLOT 17  
25.00 | Ac.

AGX

OUTLOT 18  
1.00 | Ac.

2, SW 1/4  
1 | Ac. Total

N 1/2, SE 1/4  
30.00 | Ac. Total



of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one "lodging room" for the purposes of this Ordinance.

*LOT* is a parcel of land occupied or intended for occupancy by a use permitted in this Ordinance, including one main building together with its accessory buildings, the yard areas and parking spaces required by this Ordinance, and having its principal frontage upon a street or upon an officially approved private street.

*LOT, CORNER* is a lot situated at the intersection of two (2) or more streets, the interior angle of such intersection not exceeding 135 degrees. The front of such lot shall be the shortest of the two sides fronting on streets.

*LOT, DOUBLE FRONTAGE* is a lot having a pair of opposite lot lines along two (2) more or less parallel public streets, and which is not a corner lot. On a "double frontage lot", both street lines shall be deemed front lot lines.

*LOT AREA, GROSS* is the area of a horizontal plane bounded by the front, side, and rear lot lines, but not including any area occupied by the waters of a lake or river.

*LOT DEPTH* is the average horizontal distance between the front line and the rear lot line of a lot, measured within the lot boundaries.

*LOT LINE, FRONT* shall be that boundary of a lot which is along an existing or dedicated public street or, where no public street exists, is along a public or private way as designated.

*LOT LINE, REAR* shall be any boundary of a lot which is not a front lot line or a side lot line.

*LOT LINE, SIDE* shall be any boundary of a lot which is not a front lot or a rear lot line.

*LOT OF RECORD* is a lot which is part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds for Lancaster County at the time of the adoption of this title, provided that said lot has a frontage of not less than forty feet; or, an irregular tract lot as described by a deed recorded with the Register of Deeds for Lancaster County at the time of the passage of this title, provided such lot is numbered and described by the county surveyor at the time of the passage of this title and is not greater in area than one acre at the time of the passage of this title.

*LOT WIDTH* is the average horizontal distance between the side lot lines of a lot.

*MOBILE HOME* is a year-round, transportable structure, which is a single-family dwelling unit suitable for permanent (more than 30 days) living quarters, more than eight (8) feet wide and thirty-two (32) feet in length designed and built to be towed on its own chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

*MODULAR HOME* is a prefabricated structure used for dwelling purposes moved onto a site in essentially a completed, constructed condition, in one or more parts and when completed is a single-family dwelling unit on a permanent foundation, attached to the foundation with permanent connections.

*MOBILE HOME PARK (COURT)* is any site, lot, parcel or tract of land which is improved, used or intended to provide a location for the accommodation of two or more mobile homes or trailers which are used for living purposes, regardless of whether or not a charge is made for such accommodations.

*MOBILE HOME SPACE* is a plot of ground within a mobile home park designed for the accommodation of one mobile home.

*MOTEL, MOTOR COURT, MOTOR HOTEL, LODGE, OR INN* is the same as *HOTEL* except it is designed to accommodate any number of guests, the building or buildings are designed primarily to serve tourists traveling by automobile, and ingress or egress to rooms need not be through a lobby or office.

*NONCONFORMING BUILDING OR STRUCTURE* is any building or structure which:

1. Either does not comply with all of the regulations of this Ordinance or with any amendment hereto governing bulk for the zoning district in which such building or structure is located.
2. Or is designed or intended for a nonconforming use.

*NONCONFORMING LOT* is a recorded lot, lawful at the time of the enactment of this Ordinance, which does not conform to the minimum area, yard or frontage requirements of the district in which it is located.

*NONCONFORMING USE* is an existing use of a building, structure or lot which does not conform with the regulations of the district in which it is situated as established by this Ordinance or any amendment hereto.

*OPEN SPACE* is any land developed as yards, parks, landscaped green area, and recreational areas including community centers, and is exclusive of areas developed for off-street parking.

*PARKING LOT* is an area consisting of one or more parking spaces for the storage of automobiles, together with a driveway connecting the parking area with a street or alley and permitting ingress and egress for an automobile.

#### 4.8 PERMITTED OBSTRUCTIONS IN REQUIRED YARDS

The following shall not be considered to be obstructions when located in the required yards:

- A. *ALL yards.* Open or screened porches, platforms or terraces not over three (3) feet above the average level of the adjoining ground, including a permanently roofed-over terrace or porch; awnings and canopies provided they do not extend or project into the yard more than six (6) feet; steps four (4) feet or less above grade which are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting Twenty-four (24) inches or less into the yard; recreational and laundry-drying equipment; approved freestanding signs; arbors and trellises; flag poles; window unit air conditioners projecting, not more than eighteen (18) inches into the required yard; and fences or walls subject to applicable height restrictions are permitted in all yards.
- B. *Front Yards.* One (1) story bay windows projecting three (3) feet or less into the yards; and overhanging eaves and gutters projecting three (3) feet or less into the yard are permitted.
- C. *Rear and Side Yards.* Open off-street parking spaces, balconies or outside elements of central air conditioning systems, extending not more than four (4) feet into the yard; breezeways and open porches; one-story bay windows projecting three (3) feet or less into the yard; and overhanging eaves and gutters projecting three (3) feet or less into the yard are permitted.
- D. *Double Frontage Lots.* The required front yard shall be provided on each street.
- E. *Building Groupings.* For the purpose of the side yard regulation a group of business or industrial buildings separated by a common party wall shall be considered as one (1) building occupying one (1) lot.

#### 4.9 ACCESSORY BUILDINGS AND USES

- A. No accessory building shall be constructed upon a lot for more than six (6) months prior to beginning construction of the principal building. No accessory building shall be used for more than six (6) months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
- ✓ B. No detached accessory building or buildings shall occupy more than twenty-five (25) percent of the area of a required yard.
- ✓ C. No detached accessory building or structure shall exceed the maximum permitted height of the principal building or structure.
- D. No accessory building shall be erected in or encroach upon the required side yard of a corner lot or the front yard of a double frontage lot.
- E. Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than ten (10) feet.
- F. Regulation of accessory uses shall be as follows:

1. Except as herein provided, no accessory building shall project beyond the required yard line along any street.
2. Service station pumps and pump islands may occupy the required yards, provided, however, that they are not less than fifteen (15) feet from street lines.
3. Accessory swimming pools, open and unenclosed, may occupy a required rear or side yard, provided they are not located closer than three (3) feet to a rear or an interior side lot line. A walk space at least three (3) feet wide shall be provided between pool walls and protective fences or barrier walls. All swimming pools shall be enclosed by an approved fence and lockable gate which shall be at least four (4) feet in height.
4. Storage of a boat, boat trailer, camp trailer, or unlicensed vehicle shall not be permitted in a front yard or side yard.
5. Accessory buildings which are not a part of the principal building, although they may be connected by an open breezeway, may be constructed in a rear yard, provided such accessory building does not occupy more than twenty-five (25) percent of the area of the required rear yard and provided it is not located closer than ten (10) feet to the rear lot line or closer than five (5) feet to a side lot line.

#### 4.10 BULK REGULATIONS

The maintenance of yards and other open space and minimum lot area legally required for a building shall be a continuing obligation of the owner of such building or of the property on which it is located, as long as the building is in existence. Furthermore, no legally required yards, other open space, or minimum lot area allocated to any building shall by virtue or change of ownership or for any other reason, be used to satisfy yard, other open space, or minimum lot area requirements for any other building.

#### 4.11 PERMITTED MODIFICATIONS OF HEIGHT REGULATIONS

A. The height limitations of this Ordinance shall not apply to:

Belfries	Public Monuments
Chimneys	Ornamental Towers and Spires
Church Spires	Commercial Radio and Television
Conveyors	Towers less than 125 feet in height
Cooling Towers	Air-Pollution Prevention Devices
Elevator Bulkheads	Silos
Fire Towers	Smoke Stacks
Water Towers and Standpipes	Stage Towers or Scenery Lots
Flag Poles	Tanks

B. When permitted in a district, public or semi-public service buildings, hospitals, institutions, or schools may be erected to a height not exceeding seventy-five (75) feet when each required yard line is increased by at least one (1) foot for each one (1) foot of additional building height above the height regulations for the district in which the building is located.

- C. In areas not subdivided into lots and blocks, wherever a district is indicated as a strip adjacent to and paralleling a street or hi-way, the depth of such strips shall be in accordance with dimensions shown on the maps measured at right angles from the center line of the street or highway, and the length of frontage shall be in accordance with dimensions shown on the map from section, quarter section, or division lines, or center lines of streets and highways, or railroad rights-of-way unless otherwise indicated dimensions may be as noted on the map or, if not, as scaled.
- D. Where a district boundary line divides a lot in single ownership on the effective date of this Ordinance, the Planning Commission, after due public hearing, may extend the regulations for either portion of such lot.
- E. All locations of district boundary lines which cannot be determined by one or a combination of the above rules shall be determined by the Board of Appeals.
- F. If because of error, omission, or modification in the Zoning District Map(s), any property in the jurisdiction of this Ordinance is not shown as being in a zoning district, the classification of such property shall be classified "AGX-Agricultural" until changed by amendment.

#### 5.4 JURISDICTION

The Village Board of Trustees shall control and enforce the zoning of all land within the Village limits of Davey and the area within one mile thereof.

#### 5.5 REGULATION OF AREAS UNDER WATER

All areas within the zoning jurisdiction of the Village which are under water are considered to be within a zoning district and controlled by applicable district regulations. District boundaries over water areas are located by noted or scaled dimensions, by relation to physical features, by coincidence with the Village limit line, or by a straight line projection of the district boundaries as indicated on the district maps. Straight line district boundaries over water areas shall be assumed to continue as straight lines until they intersect with each other or with the village limit line.

#### 5.6 SCHEDULE OF LOT, YARD, AND BULK REGULATIONS

The Schedule of Lot, Yard, and Bulk Regulations, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this Ordinance. Within each zoning district, the stated requirements shall apply unless otherwise specified.

SCHEDULE OF LOT YARD AND BULK REGULATIONS

ZONING DISTRICT	MINIMUM LOT AREA			MINIMUM YARD REQUIREMENTS			MAXIMUM HEIGHT		MAXIMUM
	LOT AREA	LOT WIDTH	LOT DEPTH	FRONT SETBACK	SIDE	REAR	IN STORIES	IN FEET	LOT COVERAGE PERCENT OF LOT AREA
AGX Exclusive Agricultural	39 acres	660 ft.	660 ft.	70 ft.	25 ft.	50 ft.	2-1/2	35 ft.	10%
R Single-family Residential	8,400 sf/du	60 ft.	100 ft.	30 ft.	10 ft.	25 ft.	2-1/2	35 ft.	30
→ 2-family	6,300 sf/du	60 ft.	100 ft.	30 ft.	10 ft.	25 ft.	2-1/2	35 ft.	30
RM Multiple-family 2-family	5,000 sf/du	60 ft.	100 ft.	30 ft.	10 ft.	25 ft.	2-1/2	35 ft.	30
Multiple	2,500 sf/du	60 ft.	100 ft.	30 ft.	10 ft.	25 ft.	2-1/2	35 ft.	30
	1,500 sf/du	60 ft.	100 ft.	30 ft.	10 ft.	25 ft.	4	45 ft.	30
MH Mobile Home	2 acres	150 ft.	200 ft.	50 ft.	35 ft.	35 ft.	1	13 ft.	20
	5,000 sf	50 ft.	100 ft.	25 ft.	15 ft.	15 ft.	1	13 ft.	
C Community Retail	2,500 sf	25 ft.	100 ft.	-	10 ft. <sup>1</sup>	10 ft. <sup>1</sup>	6	75 ft.	80
I General Industrial	10,000 sf	70 ft.	100 ft.	35 ft.	25 ft.	25 ft.	4	50 ft.	30
FP Floodplain <sup>2</sup>	---	---	---	---	---	---	---	---	--

Notes: <sup>1</sup> No side yard or rear yard setback required unless it abuts residential district.

<sup>2</sup> Subject to same regulations as Parent District of which it is appended.

## ARTICLE 7

### RESIDENTIAL DISTRICT REGULATIONS

#### 7.1 SCOPE

The following regulations shall apply to the Residential Districts of the Village and are in addition to the requirements set forth in Article 4, General Provisions, and other applicable requirements of this Ordinance.

#### 7.2 GENERAL REQUIREMENTS FOR RESIDENTIAL DISTRICTS

- A. *Schedule of Lot, Yard, and Bulk Regulations.* The regulations for Minimum Lot Dimensions, Minimum Yard Requirements, Maximum Height, and Maximum Coverage are contained in the Schedule of Lot, Yard, and Bulk Regulations which are part of this Ordinance and adopted by reference.
- B. *Signs.* Signs in Residential Districts shall be classified and permitted in accordance with the regulations contained in Article 4.
- C. *Off-Street Parking.* Minimum off-street parking spaces shall be required of each use in a Residential District in accordance with the regulations in Article 4.

#### 7.3 R SINGLE-FAMILY RESIDENTIAL DISTRICT

- A. *Purpose.* The R-1 Single-Family Residential District is intended to provide a low-density residential development in areas where this pattern of development has been previously established and where public water and wastewater disposal and other public facilities are available or planned for the immediate future.
- B. *Permitted Principal Uses*
  - 1. Single-family dwellings.
  - 2. Public and parochial schools.
  - 3. Churches, temples, seminaries, convents, including residences for teachers and pastors.
  - 4. Publicly owned and operated parks, playgrounds, golf courses, swimming and tennis facilities, forest preserves, fire stations, community centers, libraries, and auditoriums.
  - 5. Public overhead and underground local distribution utilities.

C. *Permitted Accessory Uses*

1. Buildings and uses customarily incidental to the permitted uses.
2. Limited home occupations.
3. Temporary buildings and uses incidental to construction work which shall be removed upon the completion or abandonment of the construction work.
4. Private swimming pools, tennis courts, and other recreational facilities in conjunction with a residence.

C. *Permitted Special Uses*

1. Nursing homes, rest homes, sanitoriums, convalescent homes, or other similar uses.
2. Hospitals, colleges, universities, eleemosynary institutions.
3. Agricultural and horticultural uses such as crop farming, nurseries, greenhouses, and the usual agricultural buildings, except that those activities or operations involving a concentration of areas and buildings for livestock or other intensive animal or poultry production shall be excluded.
4. Public utility main transmission lines including substations, distribution centers, regulator stations, pumping stations, treatment facilities, storage, equipment buildings, garages, towers, and similar public service uses.
5. Duplex.

RESERVED FOR FUTURE USE

## ARTICLE 11

### NONCONFORMING BUILDINGS, STRUCTURES, AND USES

#### 11.1 STATEMENT OF PURPOSE

This Ordinance establishes separate districts, each of which is an appropriate area for the location of the uses which are permitted in that district. It is necessary and consistent with the establishment of those districts that those nonconforming buildings, structures, and uses, which substantially and adversely affect the orderly development and taxable value of other property in the district, not be permitted to continue without restriction.

The purpose of this article is to provide for the regulation of nonconforming buildings, structures, and uses and to specify those circumstances and conditions under which those nonconforming buildings, structures, and uses shall be permitted to continue.

#### 11.2 AUTHORITY TO CONTINUE NONCONFORMING BUILDINGS, STRUCTURES, AND USES

Any nonconforming building, structure, or use which existed lawfully at the time of the adoption of this Ordinance and which remains nonconforming, and any such building, structure, or use which shall become nonconforming upon the adoption of this Ordinance, or of any subsequent amendments thereto, may be continued subject to the regulations which follow.

#### 11.3 RESTRICTIONS ON NONCONFORMING BUILDINGS, STRUCTURES, AND USES

- A. *Repairs and Alterations.* Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alteration which increases the nonconformity shall be made except those required by law, or except to make the building or structure and the use thereof conform to the regulations of the district in which it is located.
- B. *Additions and Enlargements.* A nonconforming building or structure shall not be added to or enlarged in any manner unless such additions or enlargements are made to conform to all of the regulations of the district in which it is located.

However, upon application, the Board of Zoning Appeals may approve the structural alteration of a nonconforming building or structure which does not comply with area and height requirements, provided such alteration or repairs do not exceed fifty (50) percent of the floor area existing on the effective date of this Ordinance.

- C. *Relocation of Building or Structure.* No building or structure shall be moved wholly or in part to any other location on the same or any other lot unless every portion of such building or structure is made to conform to all of the regulations of the district in which it is to be located.

- D. *Restoration of Damaged Building or Structure Designed or Intended for a Nonconforming Use.* A nonconforming building or structure which is damaged by fire, windstorm, flood, explosion, or other casualty or act of God, to the extent of more than sixty (60) percent of its fair market value, shall not be restored except in conformity with the regulations of the district in which the building is located.

Should the building be damaged to a less extent than described above, no repairs or reconstruction shall be made unless a zoning permit is obtained and such restoration is started within one (1) year from the date of partial destruction and is diligently brought to completion. If the restoration is not started within one (1) year of said calamity and diligently brought to completion, the building or structure shall be removed and the area cleared.

- E. *Discontinuance of a Nonconforming Use.* If the nonconforming use of a building, structure, or premises is discontinued for a continuous period of one (1) year, it shall not be renewed, and any subsequent use of the building, structure, or premises shall conform to the use regulations of the district in which such building, structure or premises is located. However, a nonconforming use which has been discontinued for more than one (1) year may be used for a nonconforming use if the applicant can demonstrate that there is no feasible conforming use, and such reuse is approved by the Planning Commission.

- F. *Expansion of Nonconforming Use*

1. *Change in Nonconforming Use.* The use of a nonconforming building or structure may be changed to a use of the same or more restricted classification provided no structural alterations are made. However, if a use of a nonconforming building or structure is changed to a more restricted classification, it shall not thereafter be changed to a use of a less restricted classification.
2. *Vacant Buildings.* A vacant nonconforming building or structure may be occupied by a use for which the building or structure was designed or intended, if so occupied within one (1) year from the effective date of this Ordinance.
3. *Land.* The nonconforming land use which does not involve a building or structure, shall not be expanded or extended beyond the area it occupied nor changed to any other use not permitted in the district in which the land is located.

- G. *Nonconforming Lots.* The following regulations shall apply to all lots of record which

1. A single-family residential dwelling unit may be erected on a lot of record, regardless of the minimum lot area, lot width, or lot depth, provided the minimum yard requirements, maximum height, and maximum lot coverage of the zoning district in which the lot in question is located are met, and other provisions of this Ordinance are met.
2. In the event all of the minimum yard requirements cannot be provided on a lot of record, the zoning administrator may permit the erection of a single-family residential dwelling unit provided the minimum yard requirements conform to the prevailing front yard, side yard, and rear yard setbacks of dwelling units adjacent to the lot in question. In the event there are no dwelling units adjacent to the lot in question, the minimum yard requirements shall conform to the most applicable zoning district established within this Ordinance. The zoning administrator shall use the minimum lot area, lot width and lot depth of the lot in question to determine the most applicable zoning district.
3. However, where two (2) or more contiguous substandard lots are in common ownership and are of such size as to constitute a conforming zoning lot, such adjoining lots or portions thereof shall be joined, developed, and used for the purpose of forming a conforming zoning lot.
4. Contiguous substandard lots of record which are in common ownership shall, for zoning purposes, be considered as being maintained in common ownership after the effective date of this Ordinance. When such contiguous substandard lots of record are conveyed, they shall be conveyed as a conforming lot in the zoning district in which they are located or conveyed under the provisions of Section G.(2) or G.(3) above.

#### 11.4 IDENTIFICATION AND REGISTRATION OF NONCONFORMING USES AND BUILDINGS

The zoning administrator shall be responsible for identifying and recording nonconforming uses, buildings, and structures. He shall notify in writing the owner and/or manager of such properties. The written notification shall cite the circumstances that establish nonconformance and shall include a request for the information hereunder specified.

No later than six (6) months after notification by the zoning administrator of this requirement, the owner or his agent may certify in writing on a prescribed form, to the office of the zoning administrator, that such nonconforming use did exist on the adoption date of this Ordinance. In order that the exact nature and extent of such nonconforming use may be determined, a survey plat prepared by a professional engineer or registered surveyor may accompany the prescribed form.