

Sec. 7. - Definitions.

- A. Except where specifically defined herein, all words used in this ordinance shall carry their customary meanings. For the purpose of interpreting, construing, and applying the provisions of this ordinance, the following definitions shall be observed.

**Accessory building:** A supplemental or subordinate building, the use of which is incidental to that of a main or principal building and located on the same lot therewith.

**Accessory use:** A subordinate use, building, or structure customarily incidental to and located on the same lot occupied by the main use, building or structure.

**Adult use business:** Is a commercial establishment where a "substantial portion" of the business includes an adult bookstore, adult eating or drinking establishment, adult theater, or other adult commercial establishment, or any combination thereof, as defined below:

1. An adult bookstore is a bookstore which has as a "substantial portion" of its stock-in-trade any one or more of the following:
  - a. Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - b. Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."
2. An adult eating or drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:
  - a. Live performances which are characterized by an emphasis on "specified anatomical areas" or "specified sexual activities"; or
  - b. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - c. Employees who, as part of their employment, regularly expose to patrons "specified anatomical areas"; and which is not customarily open to the general public during such features because it excludes minors by reason of age.
3. An adult theater is a theater which regularly features one or more of the following:
  - a. Films, motion pictures, video cassettes, slides or similar photographic reproductions characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - b. Live performances characterized by an emphasis on "specified anatomical areas" or "specified sexual activities"; and which is not customarily open the general public during such features because it excludes minors by reason of age.
  - c. An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.
4. Another adult commercial establishment is a facility-other than an adult bookstore, adult eating and drinking establishment, adult theater, commercial studio, or business or trade school-which features employees who, as part of their employment, regularly expose to patrons "specified anatomical areas" and which is not customarily open to the general public during such features because it excludes minors by reason of age.
  - a. For the purpose of defining adult-oriented establishments, "specified sexual activities" are:
    - i. Human genitals in a state of sexual stimulation or arousal;

- ii. Actual or simulated acts of human masturbation, sexual intercourse or sodomy, or
  - 1. Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast. "Specified anatomical areas" are less than completely and opaquely concealed:
    - a. Human genitals, pubic region,
    - b. Human buttock, anus, or
    - c. Female breast below a point immediately above the top of the areola, or
    - d. Human male genitals in a discernibly turgid state, even if completely and opaquely concealed.
- b. For the purpose of determining whether a "substantial portion" of a business includes an adult bookstore, adult eating or drinking business, adult theater, or other adult commercial establishment, or combination thereof, the following factors shall be considered:
  - i. The amount of floor area and cellar space accessible to customers and allocated to such uses, and
  - ii. The amount of floor area and cellar space accessible to customers and allocated to such uses compared with the total floor area and cellar space accessible to customers in the establishment.
- c. For the purpose of determining whether a bookstore has a "substantial portion" of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered:
  - i. The amount of such stock accessible to customers compared with the total stock accessible to customers in the business, and
  - ii. The amount of floor area and cellar space accessible to customers containing such stock, and
  - iii. The amount of floor area and cellar space accessible to customers containing such stock compared with the total floor area and cellar space accessible to customers in the establishment.

**Alley:** A narrow service-way providing a secondary public access to abutting properties.

**Alterations:** As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities or an enlargement, whether by extending a side or by increasing in height, or the moving from one location or position to another.

**Apartment building:** A building arranged, intended, or designed to be occupied by three or more families living independently of each other.

**Apartment, garden:** Any apartment building of three or less stories or floors above average finished grade.

**Apartment, high rise:** Any apartment building of four or more stories or floors above average finished grade.

**Apartment, town house:** An apartment building which is so designed and erected that no family or housekeeping unit is located above, below, attached and to the rear of, or attached and to the front of any other family or housekeeping unit and not over three stories above average finished grade.

**Architectural review commission:** A commission, established by the board of trustees of the Village of Lewiston, and empowered to review and make recommendations upon the appropriateness of exterior architectural, landscape and related features of buildings and sites.

**Auto court:** A building or group of buildings, whether detached or connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "auto court" includes buildings designated as tourist courts, motor lodges, motels and by similar applications.

**Basement:** A story partly underground and having more than one-half of its height above the average level of the finished grade at the front of the building.

**Bed and breakfast:** Bed and breakfast residence means living quarters within a principal building for the temporary use of guests of the occupants of the premises, which living quarters shall not be a dwelling unit as herein defined and which are not rented or otherwise leased as separate dwelling units.

**Board of appeals:** (see Zoning board)

**Board of Trustees:** (see Village Board)

**Boat livery or marinas:** Riverside operation and premises for mooring, docking, renting, storing or servicing of boats; servicing shall include such supplies and accessories related to such operation as permitted by the board of trustees.

**Building:** Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

**Building area:** The total area measured in a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between exterior faces of walls.

**Building, detached:** A building surrounded by open space on the same lot.

**Building height:** The vertical distance measured from the average elevation of the proposed finished grade; to the roof for flat roofs, to the deckline of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**Building inspector:** The officer of the Village of Lewiston charged with issuance of building permits and certificates of occupancy and with ensuring compliance with all building codes.

**Building line:** A line formed by the intersection of the ground surface and a vertical plane coinciding with the furthest projection of any eave, roof or roof-like portion of the structure. Yard requirements are measured from the building line.

**Building Permit:** (see Zoning Permit)

**Building, principal:** A building in which is conducted the main or principal use of the lot on which it is situated.

**Cellar:** A story partly underground and having more than one-half of its clear height below the average level of the finished grade at the front of the building.

**Certificate of occupancy:** A certificate issued by the building inspector upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this ordinance and such adjustments thereto granted by the board of appeals.

**Church:** A building, institution or establishment defined as a church by the Internal Revenue Service.

**Club, private:** A nonprofit social organization whose premises are restricted to its members and their guests.

**Cluster development:** A development of residential lots for detached single-family dwellings, each of which may contain less area than the minimum lot area required for the zone within which such development occurs, but maintaining the density limitation imposed by said minimum lot area through the provision of open space as a part of the subdivision plan.

**Commercial or business:** Means and includes the purchase, sale or transaction involving the disposition of any article, substance, commodity or service, the maintenance or conduct of offices, professions or recreational or amusement enterprises conducted for profit and also includes business offices, sales display rooms and premises, motels and hotels.

**Court:** An unoccupied open space, other than a yard, which is bounded on at least three sides by the walls of a building situated on the same lot.

1. Court, closed: A court enclosed on all sides by exterior walls of a building, or by exterior walls and lot lines on which walls are allowable.
2. Court, open: A court extending to a street line or opening upon any front, side or rear yard.

**Drive thru:** A building which, by design of physical facilities or service, permits customers to receive or obtain a product or service while remaining in a motor vehicle, and may include fast-food establishments, banks and similar services.

**Duplex:** (See Dwelling, two-family, condominium, town house and building.)

**Dwelling:** A building designed or used as the living quarters for one or more families. The terms "dwelling," "single-family dwelling," "two-family dwelling," "duplex," or "dwelling group" shall not be deemed to include auto court, rooming house, tourist home or motel.

1. Dwelling unit: A dwelling or portion thereof providing complete living facilities for one family.
2. Dwelling, single-family: A detached building designed for or occupied exclusively by one family.
3. Dwelling, two-family: A building designed for or occupied exclusively by two families living independently of each other.
4. Dwelling, multi-family: A dwelling or group of dwellings on one plot containing separate living units for three or more families, but which may have joint services or facilities or both.
5. Dwelling, multiple: A building used or designed as a residence for three or more families living independently of each other and doing their own cooking therein, including apartment houses, apartment flats, apartment hotels and group houses.
6. Dwelling group: A group of two or more single-family, two-family or multiple-family dwellings occupying a lot in one ownership and having any yard in common.
7. Dwelling, townhouse: An attached building designed for, owned and occupied exclusively by one family, which building constitutes a group of dwellings on adjacent lots containing separate living units and having separate services or facilities.

**Family:** Two or more related persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house or hotel.

**Fence:** An artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials erected for the enclosure of yard areas.

**Flammable liquids:** Liquids having a flash point below 200 degrees Fahrenheit, closed cup tester. Class 1 flammable liquids (e.g., gasoline, ether, liquid petroleum gas) are those having a flash point below 25 degrees Fahrenheit. Class II flammable liquids are those having a flash point below 70 degrees Fahrenheit but not below 25 degrees Fahrenheit.

**Floor area of a building:** The sum of the gross horizontal areas of the several floors of a building; in residential districts only, cellar and basement floor areas not devoted to residential use are excluded. All dimensions shall be measured between exterior faces of walls.

**Funeral home:** Every place or premises devoted to or used in the care and preparation for burial of the body of a deceased person or maintained or held out to the public by advertising or otherwise as the office or place for the practice and/or the transaction of business by a funeral director or undertaker.

**Garage, private:** A garage used for storage purposes only and having a capacity of not more than four automobiles or not more than two automobiles per family housed in the building to which the garage is accessory, whichever is greater.

**Garage, public:** Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.

**Gasoline station or filling station:** Any area of land, including structures thereon, that is exclusively used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, but which may or may not include facilities for lubricating, washing, or otherwise servicing motor vehicles as the only permitted accessory uses.

**Grade, established:** The elevation of the center line of the streets as officially established by the village.

**Grade, finished:** The completed surfaces of lawns, walks, drives, and roads brought to grades as shown on official plans, plots, or designs relating thereto.

**Hedge:** A natural barrier erected or planted for the enclosure of yard areas.

**Historic preservation:** The Village of Lewiston Historic Preservation Law or Historic Board. (Chapter 15, Article IV).

**Home occupation:** An occupation or profession which is customarily carried on in a dwelling unit by a member of the family residing therein, is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and which conforms to the following additional conditions:

1. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.
2. Not more than one person outside the family shall be employed in the home occupation.
3. No offensive noise, vibration, smoke, dust, odors, heat, glare, radiation or other objectionable substances or conditions shall be produced.
4. There shall be no exterior display, no exterior sign except as permitted for residences, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
  - a. In particular, a home occupation includes dressmaking, professional office of a physician, dentist, lawyer, engineer, architect, realtor, accountant, or the like, and teaching limited to a single pupil at a time. Day care centers, nursery schools, beauty salons or barber shops are not included as home occupations.

**Hospital:** Unless otherwise specified, the term "hospital" shall be deemed to include sanitarium, sanatorium, preventorium, clinic, rest home, nursing home, convalescent home and any other place for the diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

**Junkyard:** A lot, land or structure, or part thereof, used for the collecting, storage or sale of waste, scrap or discarded material; or for the collecting, dismantling, storing or salvaging of machinery or vehicles and for the sale of parts thereof.

**kennel, dog:** A structure or area used for the harboring of more than three dogs that are more than two months old.

**Launderette:** A business premises equipped with individual clothes washing, clothes drying and/or dry cleaning machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or apartment hotel or auto court.

**Lot:** Land occupied or capable of being occupied by a building and its accessory buildings, together with such open spaces as are required under the provisions of this ordinance, having not less than the minimum area and width required by this ordinance for a lot in the district in which land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition for the issuance of a building permit for a building on such land.

1. Depth of lot: A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.
2. Width of lot: The mean width measured at right angles to its depth.
3. Interior lot: A lot other than a corner lot.
4. Corner Lot: A parcel of land at the junction of and fronting on two or more intersecting streets.
5. Through lot: An interior lot having frontage on two parallel or near parallel streets.
6. Back-to-back lots: Lots or portions of lots which are on opposite sides of the same rear line common to both.

**Motel:** A building or group of buildings, whether detached or connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as tourist courts, motor lodges, auto courts and by similar appellations.

**Nonconforming use:** Use of a building or land that does not conform to the regulations as to use for the district in which it is situated.

**Open space:** An unoccupied space open to the sky on the same lot with the building.

**Parking space:** The area required for parking one automobile, not including passageways. (see Sec. 12)

**Permit:** (See Zoning Permit).

**Planned unit development:** A primarily residential development consisting of several types of dwelling structures, open space, and commercial area planned and developed as a single neighborhood project. This ordinance does not establish any regulations for this type of development. No development of this type shall be approved and/or constructed unless an ordinance governing the approval, planning, design, construction, use and other regulations for such development shall have been adopted by the board of trustees subsequent to required public hearings.

**Planning commission:** The Village of Lewiston Planning Commission or Planning Board. (Chapter 15, Article II)

**Property:** (see lot)

**Quasi-public use or building:** a noncommercial building or use which is open to and/or serves an identified membership, group of people (as opposed to general public) and/or partisan cause. Quasi-public use or building may include, but not limited to: private and parochial schools, churches, sororities, fraternities, and offices for partisan, social or political organizations. A Quasi-public use or building shall be determined by the nature of the use and not by ownership or management, e.g. a retail store owned or managed by a Quasi-public organization is a commercial use, not a Quasi-public use.

**Recreational vehicle or equipment:** A recreational vehicle is a vehicular-type structure, primarily designed as temporary living quarters for recreation, camping, or travel use which either has its

own motive power or is mounted on or drawn by another vehicle which is self powered. With allowances for engineering variations the basic entities are:

1. A "travel trailer" is a vehicular portable structure, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a stock passenger automobile; primarily designed and constructed to provide temporary living quarters for recreation, camping, or travel use.
2. A "camping trailer" is a vehicular portable structure mounted on wheels, constructed with collapsible partial side walls of fabric, plastic, or other pliable material for folding compactly while being drawn by another vehicle, and when unfolded at the site or location, providing temporary living quarters; and whose primary design is for recreation, camping, or travel use.
3. A "truck camper" is a portable structure, designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreation, camping, or travel use.
4. A "motor home" is a structure built on and made an integral part of a self-propelled motor vehicle chassis other than a passenger car chassis, and primarily designed to provide temporary living quarters for recreation, camping, and travel use.
5. "Boats" and "boat trailers" shall include boats, floats and rafts plus the normal equipment necessary to transport same on the highway. The size and weight of such boat and/or boat trailer shall not be such as to require special highway movement permits when drawn by a stock passenger automobile.
6. To be used to describe vehicles such as snowmobiles, all-terrain vehicles, air cushion vehicles, and other similar recreational equipment.

**Residential hotel:** A dwelling occupied by permanent guests only and not by transients. It may include restaurants, newsstands and other accessory services primarily for servicing its occupants and only incidentally the public.

**Setback:** A required minimum distance that a building or structure must be from a property line, street, or other feature on a lot. Setbacks create space for utilities, emergency access, and the provision of air and light. They also provide separation between neighboring properties for privacy and aesthetic reasons, ensuring more uniform developments. (refer to setback illustrations paragraph C)

1. **Front Setback:** The distance from the property line (along the street or any street that borders the property) to the building.
2. **Rear Setback:** The open space required between the back of the building and the rear property line.
3. **Side Setback:** The open space required along the side of the building, between the structure and the side property line.

**Sign:** Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public. Further definitions related to signs are included herein, in section 13, sign regulations.

**Site plan:** A plan of a lot or subdivision on which is shown topography, location of buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and hearings, any tree over four-inch caliper or 20 feet in height, and any other information deemed necessary by the planning commission.

**Story, half:** A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite walls are not more than two feet above the floor of such story.

**Story, height of:** The vertical distance from the top surface of a floor to the top surface of the floor next above. The height of the topmost story, or in the case of a single-story building, is the distance from the top surface of the floor to the top surface of the ceiling joists or trusses.

**Street:** A public or private right-of-way which affords the principal means of access to abutting properties.

**Street line:** The dividing line between the street right-of-way and the lot.

**Structure:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

**Structural alterations:** Any change in the supporting members of a building or structure, such as bearing walls, columns, beams, rafters or joists.

**Subdivision, submittal of:** See Land Subdivision Regulations of the Village of Lewiston.

**Swimming pool or pool:** Any body of water or receptacle for water, having a depth at any point greater than Two feet and constructed, installed or maintained in or above ground on private or public property for swimming, bathing or immersion therein.

**Temporary use:** An activity conducted for a specific limited period of time which may not otherwise be permitted by the provisions of the ordinance. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

**Theater:** A building especially adapted to present drama, operas, motion pictures, lectures, etc.

**Tourist home:** A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

**Use:** The specific purposes for which land or building is designed, arranged, intended or for which it is or may be occupied or maintained.

**Valuation, full:** The value for which the building would have been expected to sell on the real estate market.

**Variance:** A modification of the regulations of this ordinance, granted by the zoning board of appeals, pursuant to the provisions of this ordinance.

- a. Use Variance: Shall mean the authorization by the ZBA for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.
- b. Area Variance: Shall mean the authorization by the ZBA for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.
- c. Variance: Shall apply to the building outline at the locations that are shown on the plans that have been submitted with approved application.

**Veterinary hospital:** Unless otherwise specified, the term "veterinary hospital" shall be deemed to include animal hospital, animal clinic and any other place for the diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment and other care of animal ailments. The term "veterinary hospital" does not include boarding kennels or similar facilities.

**Village board:** The Board of Trustees of the Village of Lewiston.

**Yard:** An unoccupied space open to the sky, on the same lot with a building or structure.

1. Front yard: An open space on the same lot with a building between the front building line of the building and the front line of the lot and extending the full width of the lot. The depth of the front yard shall be measured between the front building line closest to the street and the street line, at right angles to the street line.

2. Rear yard: An open space on the same lot with a building between the rear line of the building and the rear line of the lot and extending the full width of the lot. The depth of the rear lot shall be measured between the rear line of the lot and the rear line of the building, at right angles to the rear lot line.
3. Side yard: An open space on the same lot with a building situated between the building and the side line of the lot and extending from the front yard to the rear yard. The width of the side yard shall be measured between the side line of the lot and the side of the building, at right angles to the side lot line.

**Zoning board:** The officially established Zoning Board of Appeals of the Village of Lewiston. (Sec.2.F.)

**Zoning officer:** The officer of the Village of Lewiston charged with the issuance of zoning violations and with ensuring the conformity of the uses permitted and all other requirements under this ordinance for the zone in which a building or land is located or to be located.

**Zoning permit:** A permit issued by the building inspector stating that the purpose for which a building or land is to be used is in conformity with the uses permitted and all other requirements under this ordinance for the zone in which it is located or is to be located.

B. Scope and meaning of certain words and terms:

1. Unless the context clearly indicates the contrary, words used in the present tense include the future, the singular number includes the plural and the plural the singular.
2. The word "person" includes a profit or nonprofit corporation, company, partnership, association, cooperative, organization or individual.
3. The word "shall" is mandatory and not discretionary; the word "may" is permissive.
4. The word "use" and the word "used" refer to any purpose for which a lot or land or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for use; and to any purpose for which a building or structure or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for use or erected, reconstructed, altered, enlarged, moved or rebuilt with the intention or design of using the same. The term "permitted use" shall not be deemed to include any nonconforming use.