MOSCOW CITY CODE APPLIED TO NEW SAINT ANDREWS

GENERAL PROVISIONS

The Zoning Code regulates the *use* of a property, not ownership or tax status.

The Comprehensive Plan is "the policy guide for the application" of the Zoning Code. **[4-1-4]**[1]

There are seven stated purposes of the Zoning Code, including to "mitigate the effects of incompatible uses" and to "preserve the positive aspects of existing neighborhoods." **[4-1-3 E, C]**

Only uses enumerated in the law (City Code) are allowed in a zone. All others are prohibited. **[4-11-5]**

Some uses are "conditional." Owner must apply for permission—known as a "Conditional Use Permit" (CUP)—from the City to use the property as planned and stated. Other enumerated uses are a matter of right. **[4-11-5; 4-11-9 B 24]**

A Zoning Certificate is required for all uses—including a change of use by the same owner—to confirm that the proposed use of the building or land conforms to the requirements of the Zoning Code. **[4-11-2]**

It is "unlawful" to use a building without a zoning certificate. **[4-11-2]**

The Zoning Administrator must order the termination of an illegal use. **[4-11-1 B]**

No variance is permitted to expand the uses permitted in any zone. **[4-8-3 E]**

All questions of enforcement of the Zoning Code "shall first be presented to the Zoning Administrator" for interpretation. **[4-11-3 D]**

Complaints about suspected violations of the law are to be asserted in writing to the Zoning Administrator. **[4-11-7]**

Appeal of the decision by City Staff is made first to the Board of Adjustment. **[4-8-2]**

SPECIFIC APPLICATIONS

NSA is located in the "Central Business District" (Downtown). **[Zoning Map]**

NSA is defined as an "educational institution" by the law. **[4-11-9 B 47]**

NSA is not a "school"—defined as pre-K to 12th grade. **[4-11-9 B 79]**

NSA is not or a "commercial school"—defined as giving instruction "in arts, crafts, or trades and operated as commercial enterprise." **[4-11-9 B 80]**

Educational institutions are prohibited Downtown because they are not specifically enumerated—not even as a conditional use. **[4-11-5]**

If NSA is not an educational institution, then it still does not qualify under any other definition of a use that is allowed Downtown.

NSA has no zoning certificate.

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[1] All references are to Moscow City Code, Title 4, Chapter and paragraph as indicated.

Chapter 1

GENERAL PROVISIONS

Sec. 1-1: Title
Sec. 1-2: Authority
Sec. 1-3: Purpose
Sec. 1-4: Adoption of Comprehensive Plan
Sec. 1-5: Establishment of Zoning Districts
Sec. 1-6: Adoption of Moscow Zoning Map
Sec. 1-7: Scope of Zoning Code
Sec. 1-8: Nonconformities

Sec. 1-1. Title.

Title 4, Land Use Regulations, of the Code, the Chapters and subparts contained therein, and its appurtenant maps shall be known as the "Moscow Zoning Code." The words "the Zoning Code" or "this Zoning Code" shall mean all or any part of the Moscow Zoning Code.

Sec. 1-2. Authority.

This Zoning Code is adopted pursuant to the authority conferred by Chapter 65, Title 67 and Chapter 13, Title 50 of the Idaho Code and to the home rule authority of Idaho cities granted by Article 12, Section 2 of the Idaho Constitution and Section 302 of Title 50, Idaho Code.

Sec. 1-3. Purpose.

The provisions of this Zoning Code shall be applied to fulfill the following purposes:

A. Promote the health, safety and general welfare of the Moscow community.
B. Encourage the most appropriate use of land within the City's jurisdiction to protect the natural and human environment.
C. Mitigate the effects of incompatible land uses upon neighborhoods, public facilities, and the community as a whole.
D. Provide for public improvements which are serviceable and durable and which provide for effective service delivery by all public agencies.
E. Preserve the positive aspects of existing neighborhoods while improving the neighborhoods which have fallen into disrepair.
F. Provide adequate public services and community amenities in newly developing neighborhoods.
G. Further the goals of the enabling statutes which grant authority to the City to enact ordinances regulating land use and development.

Sec. 1-4. Adoption of Comprehensive Plan.

The Comprehensive Plan of the City of Moscow is hereby adopted by reference as the policy guide for the application of the provisions of this Title. The words "the Plan" or "this Plan" shall mean the Comprehensive Plan of the City of Moscow throughout this Title. Three copies of the Plan, as it now exists and may be subsequently amended, shall be retained by the Clerk, available for public inspection during regular City business hours.

Sec. 1-5. Establishment of Zoning Districts.

Pursuant to the policies contained in this Zoning Code and the Plan, the City is divided into zoning districts as depicted upon the Moscow Zoning Map which is hereby adopted and made a part of this Title and Ordinance, as though fully set out herein. Zoning districts depicted on the Moscow Zoning Map shall correspond to the zoning districts established by this Zoning Code.

Sec. 1-6. Adoption of Moscow Zoning Map.

The original of the Moscow Zoning Map, signed by the Mayor, attested by the Clerk, and kept in the office of the City Engineer, shall serve as the true record of zoning district boundaries of the City. A copy shall be retained by the Clerk. Provisions shall be made on the Moscow

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Sec. 11-3. Interpretation.

A. It is not the intention of this Zoning Code to interfere with any more strict requirements which may be imposed by a covenant, deed restriction, city, county, state or federal health officer, that has jurisdiction in the City.

B. Where this Zoning Code imposes a greater restriction upon the use of buildings, the provisions of this Zoning Code shall govern.

C. None of the provisions of this Zoning Code is intended to provide the basis for a claim or create a cause of action against the City, or its officials or employees, for the performance or failure to perform any duty or obligation running to a specific individual. Any duty or obligation created by this Zoning Code is intended to be a general duty or obligation running in favor of the general public.

D. It is the intent of this Zoning Code that all questions of interpretation and enforcement shall first be presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, as set forth in Code Section 4-8-2.

Sec. 11-4. Provisions of Title Declared to be Minimum Requirements.

In their interpretation and application, the provisions of this Zoning Code shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals and general welfare. Whenever the requirements of this Zoning Code are at variance with the requirements of any other lawfully adopted rules, regulations, resolutions, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

Sec. 11-5. Authorized Uses.

This Zoning Code is an exclusive zoning ordinance wherein the stated uses are the only uses which are permitted in each zoning district. Those uses not listed as permitted or conditionally permitted are not authorized. The question whether a specific use is encompassed by a listed use shall be subject to the Zoning Administrator's or designee's reasonable discretion. Further, when, as a result of subsequent changes in technology, business practice, or lifestyle, a use has not been mentioned in this Zoning Code, the Zoning Administrator or designee may permit such use if it is clear that the use is comparable to listed uses for a particular zoning district. Alternatively, the Zoning Administrator or designee may refer such proposed use to the Board of Adjustment for review as a conditional use. Any other use not listed may only be permitted upon amendment of this Zoning Code to include such use in the appropriate zoning district.

Sec. 11-6. Rules for Determination of Zoning Districts.

Where uncertainty exists as to the classification or boundaries of zoning districts as shown on the Moscow Zoning Map, the following rules shall apply:

A. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;

B. Boundaries indicated as approximately following lot lines shall be construed as following such lot lines;

C. Boundaries indicated as approximately following City limits shall be construed as following such City limits;

D. Boundaries indicated as parallel to or extensions of features indicated in subsections A through C herein shall be so construed.

E. Distances not specifically indicated on the Moscow Zoning Map shall be determined by the scale of the map.

to be within a building, or where special authority granted pursuant to this Zoning Code requires that a use shall be within an entirely enclosed building, then the term "building" means one so designed and constructed that all exterior walls of the structures shall be solid from the ground to the roof line, and shall contain no openings except for windows and doors which are designed so that they may be closed.

15. *Building Height.* The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point on the roof or parapet wall.

16. *Building Line.* The line of that face or corner or part of a building nearest the property line.

17. *Building Site.* The total horizontal area within the property lines excluding external streets, public or private.

18. *Carport.* A structure to house or protect motor vehicles owned or operated by the occupants of the main building which is open to the weather for at least forty percent (40%) of the total area of its sides.

19. *Clinic.* A building designed and used for the medical, dental and surgical diagnosis and treatment of patients under the care of doctors and nurses.

20. *Club.* An incorporated or unincorporated association of persons organized for a social, educational, literary or charitable purpose. Property occupied by a club shall be deemed to be semi-private in character and shall be subject to the regulations governing public buildings and places, excluding groups organized primarily to render a service which is normally considered a business.

21. *Commercial Use.* An activity maintaining a display of goods, merchandise or services, for sale or involving a rental fee.

22. *Commercial Vehicle.* A motor vehicle used for purposes other than a family car, such as a taxi, delivery or service vehicle.

23. *Conditional Use.* "Conditional use" means a use permitted in one or more zoning district as defined by this Zoning Code but which, because of characteristics peculiar to such use, or because of size, technological processes or equipment, or because of the exact location with reference to surroundings, streets and existing improvements or demands upon public facilities, requires a special degree of control to make uses consistent with and compatible to other existing or permissible uses in the same zoning district(s).

24. *Conditional Use Permit.* "Conditional Use Permit" means the documented evidence of authority granted by the Board of Adjustment to locate a conditional use at a particular location.

25. *Court.* An open, unoccupied space other than a yard, on the same lot with a building or buildings and which is bounded on two (2) or more sides by such buildings or building, including the open space in a house, court or apartment, providing access to the units thereof.

26. *Day Care Facility.* Any business, place of business or establishment which provides Day Care. This definition includes any Premises, location, play area, playground, organization, institution, partnership, school, home, residence, dwelling, group home, foster home, place or facility whether such business or concern calls itself a mini school, kindergarten, nursery, pre-school, club, cooperative, mother's-day-out, learning center or any other business whose activity is the same or

Chapter 11

ADMINISTRATION AND ENFORCEMENT

Sec. 11-1: Zoning Administrator Responsibilities
Sec. 11-2: Zoning Certificates
Sec. 11-3: Interpretation
Sec. 11-4: Provisions of Title Declared to be Minimum Requirements
Sec. 11-5: Authorized Uses
Sec. 11-6: Rules for Determination of Zoning Districts
Sec. 11-7: Complaints Regarding Violations
Sec. 11-8: Penalties for Violations
Sec. 11-9: Definitions

Sec. 11-1. Zoning Administrator Responsibilities.

A. A Zoning Administrator shall administer and enforce this Zoning Code. The Zoning Administrator is authorized to use any and all lawful means available to fairly administer and enforce this Zoning Code. The Zoning Administrator may be provided with the assistance of such other persons as is necessary to administer and enforce this Zoning Code.

B. If the Zoning Administrator shall find that any of the provisions of this Zoning Code are being violated, the Zoning Administrator or designee shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator or designee shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action authorized by this Zoning Code to insure compliance with or to prevent violation of its provisions.

Sec. 11-2. Zoning Certificates.

A. Zoning Certificates Required:

1. It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter located, erected, constructed, reconstructed, enlarged, or changed in its use or structure until a zoning certificate has been issued therefor by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this Zoning Code.

2. A temporary Zoning Certificate may be issued by the Zoning Administrator for a period not to exceed one (1) year during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.

B. Expiration of Zoning Certificates:

1. If the work described in any zoning certificate has not begun within one (1) year from the date of issuance thereof, said permit shall automatically expire.

2. If the work described in any zoning certificate requires a building permit, and the building permit expires, then the zoning certificate shall automatically expire. If the work described in any zoning certificate that does not require a building permit has not been substantially completed within two (2) years of the date of issuance thereof, said certificate shall automatically expire. Six (6) month extensions may be granted by the Board of Adjustment at its discretion.

(Ord. 97-33, 11/3/97)

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(Ord. 97-33, 11/3/97)

(60) days from receipt of application by the Zoning Administrator and shall provide notice to adjoining property owners and an opportunity to be heard in accordance with the Idaho Code and this Code.

3. The hearing shall be a Type 1 Administrative Hearing pursuant to Section 4-10-4 of this Code.

B. Relevant Criteria and Standards. Approval or denial of a variance application shall be based upon the following criteria:

1 The applicant has demonstrated that special conditions and/or circumstances exist which are peculiar to the property (such as size, shape, topography or location) which are not applicable to other property similarly situated in the same zoning district.

2. The applicant has demonstrated that, because of the aforementioned special conditions of the property, application of the provisions of this Zoning Code would impose undue hardship and would deprive the property owner of rights commonly enjoyed by owners of other property similarly situated in the same zoning district under the terms of this Zoning Code.

3. The special conditions and/or circumstances demonstrated by the applicant pursuant to Section 4-8-3(B)(1) of this Code are not the result of actions of the applicant or the property owner.

4. Granting of the variance will not confer a special privilege to the subject property that is denied other similarly situated property in the same zoning district.

5. Granting of the variance will not be in conflict with the public interest or injurious to property or persons in the vicinity of the subject property.

C. Reasoned Statement in Writing. Approval or denial of variance application shall be in writing and shall be accompanied by a reasoned statement that explains the criteria and standards considered by the Board of Adjustment or by the Planning and Zoning Commission to be relevant, the relevant contested facts relied upon, and explains the rationale for the decision based upon the Comprehensive Plan, the Idaho Code, this Code, the U.S. Constitution and the facts in the record. The reasoned statement herein may be in the form of minutes when such minutes are adopted by the Board of Adjustment or by the Planning and Zoning Commission or may be in the form of a separate written document formally adopted by the Board of Adjustment or by the Planning and Zoning Commission. In every case, a reasoned statement shall be adopted by the Board or by the Commission not more than twenty-one (21) days following the date of approval or denial of the variance application.

D. Conditions of Approval: In granting any variance, the Board of Adjustment or the Planning and Zoning Commission may prescribe appropriate conditions and safeguards that enable the Board or the Commission to approve the variance application and ensure the variance is consistent with the purposes, and intents of this Zoning Code.

E. Use Variances: With respect to uses of land, buildings and other structures, this Zoning Code is declared to be a definition of the public interest by the Council, and the spirit of this Zoning Code will not be observed by any variance which permits a use not permitted in the zoning district involved, or any use expressly or by implication prohibited, by the terms of

this Zoning Code in said zoning district. Therefore, under no circumstances shall the Board of Adjustment or the Planning and Zoning Commission grant a variance to permit a use not permitted in the zoning district involved, or any use expressly or by implication prohibited, by the terms of this Zoning Code, in said zoning district.

F. Final Decision: A decision of the Board of Adjustment or of the Planning and Zoning Commission, granting or denying a variance, shall become final upon the date of adoption of a written reasoned statement in the official records of the Board of Adjustment or of the Planning and Zoning Commission or when the Board or the Commission shall find that making the decision effective immediately is necessary for the preservation of property and/or personal rights and shall so certify on the record, whichever comes first in time. A decision of the Board of Adjustment or of the Planning and Zoning Commission shall be final, subject to appeal of the decision to the Council pursuant to this Code.

G. Compliance:

1. In the event of failure to comply with the plans approved by the Board of Adjustment or by the Planning and Zoning Commission, or with any conditions imposed upon the variance, such permit shall thereupon be immediately revoked and shall automatically be null and void.
2. Where plans are submitted as part of the application for a variance, modifications of the original plans may be required by the Board of Adjustment or by the Planning and Zoning Commission as a condition of approval.
3. Where plans approved by the Board of Adjustment or by the Planning and Zoning Commission are modified following such approval, such plan modifications must be determined by City staff to be in substantial conformance with the plans approved by the Board or the Commission. If plan modifications are not in substantial conformance, the plan modifications must be resubmitted to the Board or to the Commission for an additional public hearing as an amendment to the variance application.

H. Revocations: If a building permit or occupancy permit pertaining to the variance is not obtained for the subject property within one (1) year from the date of the Board of Adjustment's final decision, such variance shall be immediately revoked and shall be automatically null and void.

Sec. 8-4. Conditional Uses.

A. Procedures:

1. A written application for a Conditional Use Permit indicating the section of this Zoning Code under which the permit is sought and stating the grounds on which it is requested shall be submitted at least twenty-one (21) days before the hearing at which the request is to be considered by the Board of Adjustment.
2. The Zoning Administrator shall hold a hearing on the conditional use permit application not less than twenty-one (21) days and not more than sixty (60) days from the receipt of the application by the Zoning Administrator, giving notice in accordance with Idaho Code Section 67-6512.
3. The public hearing shall be a Type 1 Administrative Hearing pursuant to Section 4-10-4 of this Code.
4. Prior to granting a Conditional Use Permit, studies may be required of the social, economic, fiscal, and environmental affects of the proposed conditional use.

Sec. 11-3. Interpretation.

A. It is not the intention of this Zoning Code to interfere with any more strict requirements which may be imposed by a covenant, deed restriction, city, county, state or federal health officer, that has jurisdiction in the City.

B. Where this Zoning Code imposes a greater restriction upon the use of buildings, the provisions of this Zoning Code shall govern.

C. None of the provisions of this Zoning Code is intended to provide the basis for a claim or create a cause of action against the City, or its officials or employees, for the performance or failure to perform any duty or obligation running to a specific individual. Any duty or obligation created by this Zoning Code is intended to be a general duty or obligation running in favor of the general public.

D. It is the intent of this Zoning Code that all questions of interpretation and enforcement shall first be presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, as set forth in Code Section 4-8-2.

Sec. 11-4. Provisions of Title Declared to be Minimum Requirements.

In their interpretation and application, the provisions of this Zoning Code shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals and general welfare. Whenever the requirements of this Zoning Code are at variance with the requirements of any other lawfully adopted rules, regulations, resolutions, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

Sec. 11-5. Authorized Uses.

This Zoning Code is an exclusive zoning ordinance wherein the stated uses are the only uses which are permitted in each zoning district. Those uses not listed as permitted or conditionally permitted are not authorized. The question whether a specific use is encompassed by a listed use shall be subject to the Zoning Administrator's or designee's reasonable discretion. Further, when, as a result of subsequent changes in technology, business practice, or lifestyle, a use has not been mentioned in this Zoning Code, the Zoning Administrator or designee may permit such use if it is clear that the use is comparable to listed uses for a particular zoning district. Alternatively, the Zoning Administrator or designee may refer such proposed use to the Board of Adjustment for review as a conditional use. Any other use not listed may only be permitted upon amendment of this Zoning Code to include such use in the appropriate zoning district.

Sec. 11-6. Rules for Determination of Zoning Districts.

Where uncertainty exists as to the classification or boundaries of zoning districts as shown on the Moscow Zoning Map, the following rules shall apply:

A. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;

B. Boundaries indicated as approximately following lot lines shall be construed as following such lot lines;

C. Boundaries indicated as approximately following City limits shall be construed as following such City limits;

D. Boundaries indicated as parallel to or extensions of features indicated in subsections A through C herein shall be so construed.

E. Distances not specifically indicated on the Moscow Zoning Map shall be determined by the scale of the map.

F. When physical or cultural features existing on the ground are at variance with those shown on the Moscow Zoning Map, or in other circumstances not covered by subsections A through E herein, the zoning district boundaries shall be determined in a manner consistent with the purposes of this Zoning Code.

G. Where a district boundary line appearing on the Moscow Zoning Map divides a platted lot which was in single ownership at the time of passage of this Chapter, the requirements of the less restrictive zoning district shall apply to the whole thereof, provided that such extension shall not include any part of such lot more than thirty (30) feet beyond a zoning district boundary line.

H. If the zoning district of any property as indicated on the Moscow Zoning Map should conflict with a textual description, the Moscow Zoning Map shall prevail.

I. If the zoning of a parcel of land is not shown on the Moscow Zoning Map, the parcel of land shall be deemed to be zoned FR, Farm, Ranch, Outdoor Recreation Zoning District.

J. All land hereafter annexed to the City shall be classified FR, Farm, Ranch, Outdoor Recreation Zoning District, pending study, public hearing and specific zoning district classification.

Sec. 11-7. Complaints Regarding Violations.

Whenever a violation of this Zoning Code occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator, who shall record properly such complaint, immediately investigate, and take action thereon as provided by this Zoning Code.

Sec. 11-8. Penalties for Violations.

A. Any person or corporation, whether owner, lessee, principal, agent, employee, or otherwise, who violates any of the provisions of this Zoning Code, or permits any such violation or fails to comply with any of the requirements thereof, or who erects, constructs, reconstructs, alters, enlarges, converts, moves or uses any building or uses any land in violation of any detailed statement or plans submitted by him or her and approved under the provisions of this Title, shall be guilty of a misdemeanor and, upon conviction thereof in a court of competent jurisdiction shall be punished pursuant to this Code and the Idaho Code. Each seven (7) consecutive day's continued violation shall constitute a separate additional violation of this Code.

(Ord. 98-16, 4/20/98)

B. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this Zoning Code, the proper legal authorities of the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent any illegal act, conduct, business or use in or about such building, structure or land; and upon the failure or refusal of the proper local officer, board or body of the City to institute any such appropriate action or proceeding, any person aggrieved by such violation may institute such appropriate action or proceeding in like manner as such local officer, board or body of the City is authorized to do.

Chapter 8

APPEALS, VARIANCES, CONDITIONAL AND SPECIAL USES

Sec. 8-1: Duties of the Board of Adjustment
Sec. 8-2: Appeals
Sec. 8-3: Variances
Sec. 8-4: Conditional Uses
Sec. 8-5: Special Uses
Sec. 8-6: Appeals to City Council
Sec. 8-7: Ability of Use Permits to Assume Variance Functions

Sec. 8-1: Duties of the Board of Adjustment.

The Board of Adjustment shall have the authority to grant, in particular cases and subject to appropriate conditions and safeguards, conditional use permits and variances as authorized by this Zoning Code. The Board of Adjustment shall also have the authority to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in enforcement of this Zoning Code.

Sec. 8-2. Appeals.

A. Appeals to the Board of Adjustment concerning interpretation or administration of this Zoning Code by the Zoning Administrator may be made by any applicant, City representative or person adversely affected thereby. Such appeal shall be made within thirty (30) days from the date the appellant first knew of or, with reasonable diligence, could have known of such interpretation or administration of the Zoning Code by the Zoning Administrator. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof. Upon the filing of an appeal, the Zoning Administrator shall forthwith submit to the Board of Adjustment all materials constituting the record upon which the appeal is made.

B. The Board of Adjustment shall fix a reasonable time for the hearing on the appeal within thirty (30) days of the receipt of notice of appeal by the Zoning Administrator. The hearing on the appeal shall be a Type 1 Administrative Hearing pursuant to Section 4-10-4 of this Code. At the hearing on the appeal, any party may appear in person or by agent or attorney.

C. Stay of Proceedings: The filing of an appeal shall stay all interpretations, proceedings and/or activities and furtherance of the action appealed from, unless the Zoning Administrator files a written affidavit with the City Clerk certifying that a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life and/or property. In such case, such interpretations, proceedings and/or activities shall not be stayed other than by a restraining order which may be granted by a Court of Record.

Sec. 8-3. Variances.

A. Procedures:

1. A written application for a variance indicating the section(s) of this Zoning Code for which a variance is sought and stating the grounds on which it is requested shall be submitted to the Zoning Administrator at least sixteen (16) days before the hearing at which the matter will be considered by the Board of Adjustment or the Planning and Zoning Commission.
2. The Board of Adjustment or the Planning and Zoning Commission shall hold a hearing on the application not less than sixteen (16) days and not more than sixty

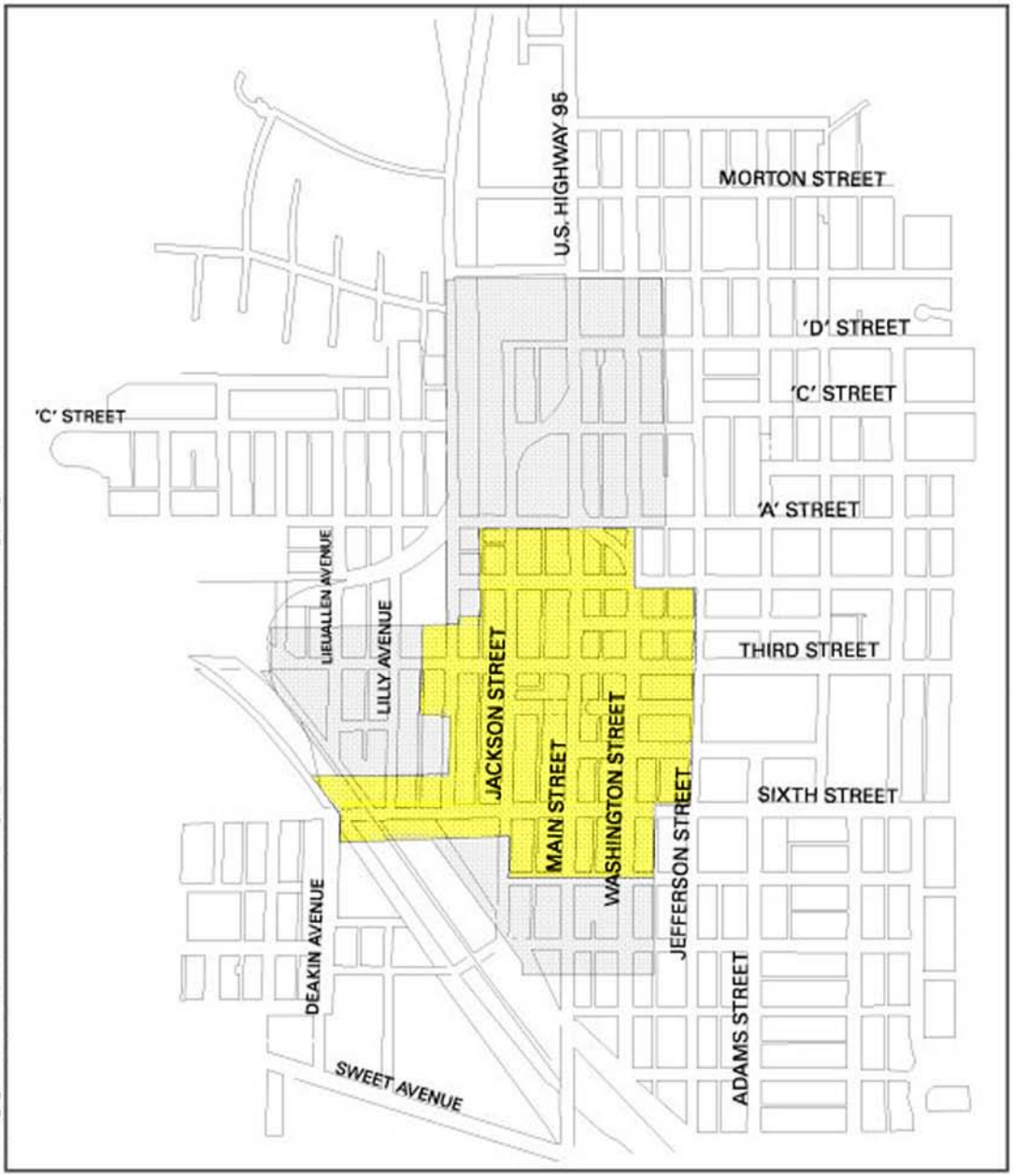

Figure 2

MOSCOW CENTRAL BUSINESS DISTRICT

Central Business District

Extended Business District

Map produced by Resource Cartographics, Moscow, Idaho. Copyright 1999

room, tourist home, animal hospital, retail sales of any type or similar use, shall not be deemed to be a home occupation.

45. *Hospital.* An establishment which provides accommodations, facilities and services over a continuous period of twenty-four (24) hours or more, for observation, diagnosis and care, of two (2) or more individuals, not related by blood or marriage to the operator, who are suffering from illness, injury, deformity or abnormality, or from any condition requiring obstetrical, medical or surgical services.

46. *Hotel.* Any building or portion thereof containing six (6) or more rooms that are rented, or hired out to be occupied or which are occupied for sleeping purposes for compensation, whether the compensation be paid directly or indirectly. A central kitchen and dining room and accessory shops and services catering to the general public can be provided. Not included are institutions housing persons under legal restraint or requiring medical attention or care.

47. *Institution, Educational.* A college or university supported by public or private funds, tuitions, contributions or endowments, giving advanced academic instructions as approved by the State Board of Education or by a recognized accrediting agency, excluding pre-school, elementary and junior or senior high schools, and trade and commercial schools; including fraternity and sorority houses.

48. *Junk Yard.* A lot, land or structure, or part thereof, used for the collecting, storage and sale of waste paper, rags, glass, plastic, scrap metal or discarded material, or for the collecting, dismantling, storage, salvaging or sale of parts of machinery or vehicles not in running condition.

49. *Kennel, Commercial.* Any lot or building in which four (4) or more dogs and/or cats are kept commercially for board or propagation or treatment.

50. *Kitchen.* Any rooms used or intended or designed to be used for cooking and/or preparation of food.

51. *Lot.* A lot, in the meaning of this Zoning Code, is a single tract of land, no matter how legally described, whether by metes and bounds and/or by lot or lots and block designation as in a recorded plat, which at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the building permit is being secured and having frontage on or access to a public street.

52. *Lot Area.* The total horizontal area within the boundary lines of a lot, excluding areas of dedicated and prescriptive public or railroad rights-of-way. The lot area shall include all utility easements and any flag pole portion of a flat lot.

53. *Lot, Corner.* A lot at the junction of and fronting on two (2) or more intersecting streets.

54. *Lot, Depth.* The mean dimension of the lot from the front street line to the rear line.

55. *Lot, Flag.* A lot with access provided to the part of the lot designated for use as a building site by a narrow corridor.

(Ord. 97-33, 11/3/97)

56. *Lot, Interior.* A lot fronting on one (1) street.

57. *Lot, Through.* A lot fronting on two (2) streets that do not intersect on the parcel's lot lines.

58. *Lot, Width.* The dimension of the lot line at the street, or in an irregular shaped lot the dimension across the lot at the building line, or in a corner lot

as a unit and the density of use may be calculated on the basis of the entire project, rather than on a lot by lot basis. Individual uses and structures in a PUD need not comply with specific building locations, height, building size, floor area, lot size and open space requirements of the underlying basic zone provided that requirements set forth herein are complied with, and the development as a whole is harmonious with the community, particularly adjacent land uses.

72. *Principal Use.* The primary or predominant use(s) to which a property is or may be devoted.

73. *Professional Offices.* Offices maintained and used as a place of business conducted by persons engaged in the healing arts for human beings, such as doctors and dentists (but wherein no overnight care for patients is given), and by engineers, attorneys, architects, accountants and other persons providing services utilizing training in and knowledge of the mental discipline as distinguished from training in occupations requiring mere skill or manual dexterity or the handling of commodities.

74. *Public Utility.* A public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas and transportation for persons and freight.

75. *Recreation Facilities, Community and/or Noncommercial.* Facilities such as rod and gun clubs and shooting ranges, swimming pools, athletic clubs, golf and country clubs, for the use of the general public or provided for and by members of semi-private corporations.

76. *Riding Academy.* Any establishment where horses are kept for riding, driving or stabling for compensation or as an accessory use in the operation of a club, association, ranch or similar establishment.

77. *Roomer.* Lodger or boarder occupying a rented room in private home or rooming house.

78. *Rooming House.* Same as "Boarding House."

79. *School.* An institution of learning which offers instruction in several branches of learning and study required to be taught in the public schools by the Idaho State Board of Education including elementary, junior or senior high, including public, private and parochial and also including preschool and kindergarten.
(Ord. 99-38, 12/20/99)

80. *School, Commercial.* A program whereby instruction is given to pupils in arts, crafts or trades and operated as a commercial enterprise.
(Ord. 99-38, 12/20/99)

81. *Self-Service Storage Facility.* A building or buildings consisting of individual, small, self-contained units, and the majority of the units being less than five hundred (500) square feet in area, that are leased or owned for the storage of business or household goods.

82. *Setback, Yard Requirements.* The distance that buildings or uses must be removed from their lot lines. Setbacks shall be measured, where applicable, from proposed or actual public or private street right-of-way lines.

83. *Sign,* A presentation, display, or representation of words or letters, or of a figure, design, picture, painting, color pattern, logo, emblem, symbol, trademark or other representation so as to give notice, advertise, call attention to, or identify an entity.
(Ord. 99-33, 10/18/99; 99-37, 12/6/99)

84. *Service Building.* A building housing communal toilet, laundry and

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(Ord. 99-33, 10/18/99; 99-37, 12/6/99)

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Sec. 11-3. Interpretation.

A. It is not the intention of this Zoning Code to interfere with any more strict requirements which may be imposed by a covenant, deed restriction, city, county, state or federal health officer, that has jurisdiction in the City.

B. Where this Zoning Code imposes a greater restriction upon the use of buildings, the provisions of this Zoning Code shall govern.

C. None of the provisions of this Zoning Code is intended to provide the basis for a claim or create a cause of action against the City, or its officials or employees, for the performance or failure to perform any duty or obligation running to a specific individual. Any duty or obligation created by this Zoning Code is intended to be a general duty or obligation running in favor of the general public.

D. It is the intent of this Zoning Code that all questions of interpretation and enforcement shall first be presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, as set forth in Code Section 4-8-2.

Sec. 11-4. Provisions of Title Declared to be Minimum Requirements.

In their interpretation and application, the provisions of this Zoning Code shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals and general welfare. Whenever the requirements of this Zoning Code are at variance with the requirements of any other lawfully adopted rules, regulations, resolutions, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

Sec. 11-5. Authorized Uses.

This Zoning Code is an exclusive zoning ordinance wherein the stated uses are the only uses which are permitted in each zoning district. Those uses not listed as permitted or conditionally permitted are not authorized. The question whether a specific use is encompassed by a listed use shall be subject to the Zoning Administrator's or designee's reasonable discretion. Further, when, as a result of subsequent changes in technology, business practice, or lifestyle, a use has not been mentioned in this Zoning Code, the Zoning Administrator or designee may permit such use if it is clear that the use is comparable to listed uses for a particular zoning district. Alternatively, the Zoning Administrator or designee may refer such proposed use to the Board of Adjustment for review as a conditional use. Any other use not listed may only be permitted upon amendment of this Zoning Code to include such use in the appropriate zoning district.

Sec. 11-6. Rules for Determination of Zoning Districts.

Where uncertainty exists as to the classification or boundaries of zoning districts as shown on the Moscow Zoning Map, the following rules shall apply:

A. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;

B. Boundaries indicated as approximately following lot lines shall be construed as following such lot lines;

C. Boundaries indicated as approximately following City limits shall be construed as following such City limits;

D. Boundaries indicated as parallel to or extensions of features indicated in subsections A through C herein shall be so construed.

E. Distances not specifically indicated on the Moscow Zoning Map shall be determined by the scale of the map.