

PART THIRTEEN —ZONING ORDINANCE

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ARTICLE 1301
Authority

1301.01 Authority.

1301.02 Relationship to Other Ordinances.

1301.03 Interpretation, Conflict and Severability.

CROSS REFERENCES

Zoning authority generally—see WV Code 8A-7-1 *et seq.*

1301.01 Authority.

The Zoning Ordinance is enforceable only within the corporate boundaries of the Corporation of Harpers Ferry and is established under the authority granted pursuant to WV Code 8A-7-1 *et seq.* The Zoning Ordinance is intended to comply with the provisions of 8A-7-1 *et seq.*

1301.02 Relationship to Other Ordinances.

(a) The Zoning Ordinance shall be interpreted to include any and all other provisions of the Harpers Ferry Code that are necessary for an understanding of the Zoning Ordinance and the attainment of its purposes. The Corporation of Harpers Ferry intends that all ordinances related to land Use be read as part of a uniform system of land use regulations.

(b) All departments, officials, employees or agents of the Corporation of Harpers Ferry that or who are vested with the duty or authority to issue permits, certificates or approvals shall conform to the provisions of the Zoning Ordinance and shall issue no permit, certificate or approval for any Use, Structure or activity if the same would be in conflict with the provisions of the Zoning Ordinance unless otherwise provided for by law. Any permit, certificate or approval issued in conflict with the provisions of the Zoning Ordinance shall be null and void and, in no event, shall act as a waiver of the standards and requirements of this Zoning Ordinance.

1301.03 Interpretation, Conflict and Severability.

(a) In its interpretation and application, the Zoning Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.

(b) The Zoning Ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law. Where the conditions imposed by, or pursuant to, the Zoning Ordinance are different from those imposed by any other ordinance, rule or regulation, statute or other provision of law, the provisions that are more restrictive and that impose the higher or greater standards shall control, except where federal or state law otherwise forbids it.

(c) The provisions of the Zoning Ordinance are severable. If any provision of the Zoning Ordinance is adjudged invalid by a court of competent jurisdiction, such judgment shall

1 be confined in its operation to the provision directly involved in the controversy in which
2 the judgment shall have been rendered and shall not affect or impair the validity of the
3 remainder of the provisions of the Zoning Ordinance, and the Corporation of Harpers
4 Ferry hereby declares that it would have enacted all such remaining provisions of the
5 Zoning Ordinance.

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ARTICLE 1302
Words, Terms and Phrases

CROSS REFERENCES

Words, terms and phrases—see generally WV Code 8A-1-2 *et seq.*

For purposes of this Zoning Ordinance, the words, terms and phrases used in this Zoning Ordinance shall have the definitions or meanings ascribed to them in this Article or in other provisions of this Zoning Ordinance. If not defined in this Zoning Ordinance or any other ordinances of the Corporation of Harpers Ferry, any word, phrase or term shall have the meaning or meanings ascribed to them in any standard or widely published dictionary or American Planning Association publication. The following rules shall apply:

- (1) The particular shall control the general.
- (2) In the event there is any conflict or inconsistency between the heading of an article, section, subsection, or paragraph of this Zoning Ordinance and the context thereof, the heading shall not be deemed to affect the scope, meaning, or intent of the context.
- (3) In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
- (4) In case of conflict between provisions, the more restrictive shall apply.
- (5) Words used in the present tense shall include the future.
- (6) Words used in the singular number shall include the plural, and the plural the singular, unless the context indicates the contrary.
- (7) The masculine shall include the feminine and neuter.
- (8) The word "shall" is always mandatory and not discretionary.
- (9) A defined word, term or phrase, whether capitalized or not, shall have the meaning ascribed to it.
- (10) Unless the context clearly indicates the contrary, where a provision involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either...or," the conjunction shall be interpreted as follows:
 - (A) "and" indicates that all the connected items, conditions, provisions, or events shall apply.
 - (B) "or" indicates that the connected items, conditions, provisions, or events shall apply singly or in any combination.
 - (C) "either...or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.
- (11) No word, term or phrase defined in this Article 1302 shall have operative effect unless it is used elsewhere in this Zoning Ordinance.

1 **Abandonment.** The relinquishment of property or a cessation of the use of the property
2 by the owner or lessee without any intention of transferring rights to the property to
3 another or resuming the Nonconforming Use of the property for a period of one year.

4
5 **Abutting.** See **Contiguous.**

6
7 **Access.** The way or means by which pedestrians or vehicles approach, enter or exit
8 property.

9
10 **Addition.** Any increase in the Gross Floor Area of a Structure or Use, including those in
11 which the Structure Footprint is not enlarged.

12
13 **Adjoining.** See **Contiguous.**

14
15 **Alley.** A Right-of-Way dedicated to Public Use, other than a Street, road, crosswalk, or
16 Easement, designed to provide a secondary means of access for the special
17 accommodation of the property it reaches.

18
19 **Alteration, Incidental.** A change or replacement in the parts of a Structure, such as:

- 20
21 (1) Change or replacement of interior partitions to improve a nonconforming
22 residential structure, provided no additional Dwelling Units are created
23 thereby;
24 (2) Change or replacement of interior partitions in all other types of structures;
25 (3) A minor addition on the exterior of a residential structure to provide an
26 uncovered Porch or Patio;
27 (4) Making windows or doors in Exterior Walls;
28 (5) Strengthening the load bearing capacity in not more than ten percent of the
29 total floor area to permit the accommodation of a specialized unit of
30 machinery or equipment; or
31 (6) Replacement of, or minor changes in the capacity of, utility pipes, ducts or
32 conduits.

33
34 **Alteration, Structural.** A change in the supporting members of a Structure, such as
35 bearing walls or partitions, columns, beams, or girders, or any complete restructure of the
36 roof or Exterior Walls. A Structural Alteration shall not include any alteration that could be
37 considered an Incidental Alteration.

38
39 **Apartment.** One or more rooms in a Structure designed and intended for rental
40 occupancy as an independent and separate Dwelling Unit in a Structure containing two
41 or more Dwelling Units. See Dwelling, Multi-Family.

42
43 **Architectural Decoration.** An element, design or motif, other than an architectural
44 feature, installed, attached, painted or applied to the exterior of a Structure for the purpose
45 of ornamentation or artistic expression.

1 **As-Built.** Drawing or certification of conditions as they were actually constructed.
2

3 **Assembly Hall.** A facility or part of a Structure used for the assembly of people for
4 receptions, weddings, parties and similar uses.
5

6 **Association Hall.** A facility for administrative, meeting, or social purposes for a private
7 or nonprofit organization, primarily for use by administrative personnel, members and
8 guests. Examples include, but are not limited to: Lions Club, Veterans of Foreign Wars,
9 etc.
10

11 **Awning.** Any non-rigid material, such as fabric or other approved flexible material, that
12 extends from the Exterior Wall of a Structure and is supported by or attached to a frame.
13

14 **Basement.** The portion of a Structure having at least one-half its floor-to-ceiling height
15 below the average level of the adjoining ground and with a floor-to-ceiling height of 6.5
16 feet or more.
17

18 **Bed and Breakfast Inn (B&B).** A dwelling in which, for compensation, up to four (4) guest
19 rooms are provided and, for no additional charge, breakfast is customarily provided to the
20 guests but excluding a Rooming House or a Boarding House
21

22 **Block.** Land that is intended to be used for urban purposes, which is entirely surrounded
23 by Public Streets, highways, public walks, parks, rural land or Drainage channels or a
24 combination thereof.
25

26 **Buildable Area.** The remaining area of a Lot, or Lots if a Project encompasses more
27 than one (1) Lot in accordance with the terms of this Zoning Ordinance, after the setbacks
28 are applied on all sides and any significant areas with a slope greater than one foot
29 vertical change and three feet horizontally are subtracted.
30

31 **Build-To Line.** An alignment established a certain distance from the front property line to
32 a line along which the Structure shall be built.
33

34 **Bulk Plane.** An imaginary inclined plane rising over a Lot, or Lots if a Project
35 encompasses more than one (1) Lot in accordance with the terms of this Zoning
36 Ordinance, drawn at a specified angle from the vertical and originating from some location
37 (e.g., Lot line) or height (e.g., height above a Lot line) which together with other provisions
38 of this Zoning Ordinance and Lot size requirements, delineates the maximum height or
39 bulk of any improvement which may be constructed on the Lot or Lots.
40

41 **Bulk Requirements.** Standards that control the height, density and location of structures.
42

43 **Business.** Engagement or enterprise in the purchase, sale, barter or exchange of goods,
44 wares, merchandise or services, the maintenance or operation of offices, or of
45 recreational and amusement enterprises for profit, that is or should be licensed in the

1 Town and that occupies any premises for the conduct of the enterprise, but excluding any
2 Religious Institution.

3
4 **Canopy.** A permanently roofed shelter projecting over a sidewalk, Driveway, entry,
5 window or similar area, which shelter may be wholly supported by a Structure or partially
6 supported by columns, poles or braces extending from the ground. Any roof overhang
7 extending more than three feet from the face of a Structure shall be considered a Canopy.

8
9 **Cemetery.** Property used for the permanent interment of human remains. It may be a
10 burial Park for earth internments, a mausoleum for vault or crypt internments or a
11 Columbarium for cinerary internments.

12
13 **Columbarium.** An Accessory Structure to a Religious Institution that is normally a wall,
14 containing one, or more, recesses or cavities, for the depository of the cremated remains
15 of humans.

16
17 **Common Area.** Any portion of a development designed for the common use and
18 enjoyment of the unit owners. These areas include green open spaces and may include
19 such other uses as parking lots and pedestrian walkways. Maintenance of such areas is
20 not the responsibility of the Town and shall be set forth by the development association
21 in the form of restrictive covenants, which shall guarantee the maintenance of these
22 areas.

23
24 **Community Center.** A public Structure used for activities that, through proximity to
25 residents, benefit the surrounding neighborhood. Activities permitted include any
26 combination of the following: meeting space for civic groups, clubs, or organizations;
27 spaces for the provision of daycare services; group cultural and/or recreational activities,
28 whether self-directed or organized; space for artisans, crafters, etc., including occasional
29 (not more than one day each week) sale of such merchandise produced on-premises;
30 and educational and/or instructional programs.

31
32 **Comprehensive Plan.** That certain Plan adopted by the Town Council on June 9, 2007,
33 as amended from time to time under WV Code 8A-3.

34
35 **Condominium.** A common interest community in which portions of the real estate are
36 designated for separate ownership and the remainder of the real estate is designated for
37 common ownership solely by the owners of those portions. A common interest community
38 is not a Condominium unless the undivided interest in the common elements are vested
39 in the unit owners.

40
41 **Contiguous.** Lots, municipal boundaries or County boundaries that are next to, abutting
42 and having a boundary, or portion thereof, that is coterminous. Lots, municipal
43 boundaries or County boundaries that are separated from one another only by a Street,
44 highway, road, other public Right-of-Way or a utility Easement shall be considered
45 Contiguous.

1 **Cooperative.** A Multiple-Family dwelling owned and maintained by the residents. The
2 entire Structure and real property is under common ownership as contrasted to a
3 Condominium dwelling where individual units are under separate individual occupant
4 ownership.

5
6 **Contributing Resource.** A historic site, historic structure or object that adds to the
7 historic architectural qualities, historic associations, or archeological values of the Town
8 because (1) it was present during the period of significance, and possesses historic
9 integrity reflecting its character at that time or is capable of yielding information about the
10 period, or (2) it independently meets the National Register criteria.

11
12 **County.** The County of Jefferson, West Virginia, and, in context, its geographical limits
13 or its territorial limits of jurisdiction.

14
15 **Critical Root Zone (CRZ):** A circular area centered on a Tree with a diameter of 1.5 times
16 the canopy spread, and in no case, closer than five feet from the trunk of any Tree.

17
18 **Deck.** A Structure, without a roof, accessory to but not necessarily attached to a principal
19 Structure, and which is elevated at least six inches above grade.

20
21 **Drainage.** (1) Surface water run-off; (2) the removal of surface water or groundwater from
22 land by drains, grading or other means which include runoff controls to minimize Erosion
23 and sedimentation during and after construction; or (3) the means for preserving the water
24 supply and the prevention or alleviation of flooding.

25
26 **Driveway.** A private roadway providing access for vehicles to a Parking Space, Private
27 Garage, Dwelling Unit or other Structure.

28
29 **Driveway, Common.** A Driveway shared by adjacent property owners and privately
30 owned and maintained.

31
32 **Dwelling, Duplex.** A freestanding Structure containing two Dwelling Units.

33
34 **Dwelling, Manufactured Home.** A Structure, transportable in one or more sections,
35 which in the traveling mode is eight body feet or more in width or forty body feet or more
36 in length or when erected on sight, is three hundred twenty or more square feet, and
37 which is built on a permanent chassis and designed to be used for residential,
38 commercial, Business or institutional purposes with or without a permanent foundation
39 when connected to the required utilities, and includes the plumbing, heating, air-
40 conditioning and electrical systems contained therein which meets the National
41 Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 885401
42 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six,
43 and the federal Manufactured Home Dwelling construction and safety standards and
44 regulations promulgated by the Secretary of the United States Department of Housing
45 and Urban Development. The term "Manufactured Home Dwelling or Structure" does not
46 include job site trailers.

1
2 **Dwelling, Mixed Use.** A Structure containing primarily residential uses with a subordinate
3 amount of commercial and/or office uses on the ground floor in the front of the Structure
4 facing the primary Street Frontage. Residential units can be on the ground floor, but
5 cannot be accessed from any portion of the Structure that faces the primary Street.
6

7 **Dwelling, Modular Home.** Any Structure that is wholly, or in substantial part, made,
8 fabricated, formed or assembled in manufacturing facilities for installation or assembly
9 and installed on a Lot and designed for long-term residential Use and is certified as
10 meeting the standards contained in the West Virginia State Fire Code.
11

12 **Dwelling, Multi-Family.** A freestanding Structure containing three or more Dwelling
13 Units, whether they have direct access to the outside, or access to a common Structure
14 entrance. Multifamily dwellings can consist of rental apartment Structures, rental or owner
15 occupied Townhouse Dwellings, and rental or owner occupied Condominium Structures,
16 provided that all such freestanding Structures contain three or more Dwelling Units.
17

18 **Dwelling, Single Family.** A freestanding Structure designed solely for occupancy by one
19 Family for residential purposes, as a single housekeeping unit.
20

21 **Dwelling, Townhouse.** Also known as a Rowhouse. A Single-Family Dwelling, with
22 private entrance, which is part of a Structure whose Dwelling Units are attached
23 horizontally in a linear arrangement, and having a totally exposed front and rear wall to
24 be used for Access, light, and ventilation. Setbacks are measured from the perimeter of
25 the overall Structure.
26

27 **Dwelling Unit.** A single unit providing complete, independent living facilities for a single
28 housekeeping unit or Family intended for occupancy by its owner or under a lease with
29 the owner. In no case shall a motor home, trailer, Hotel, Boarding House, automobile,
30 tent, or portable Structure be considered a Dwelling Unit. Dwelling units are contained
31 within single-Family dwellings (in which case the definition is synonymous), Private
32 Garage and accessory apartments, duplex dwellings, Mixed-Use dwellings, and Multi-
33 Family Dwellings.
34

35 **Education Facility, Elementary School.** A public, private or parochial School offering
36 educational instruction in grades kindergarten through fifth, licensed by the West Virginia
37 Department of Education.
38

39 **Education Facility, High School.** A public, private or parochial School offering
40 educational instruction in grades nine through twelve, licensed by the West Virginia
41 Department of Education.
42

43 **Education Facility, Middle School.** A public, private or parochial School offering
44 educational instruction in grades six through eight, licensed by the West Virginia
45 Department of Education.
46

1 **Education Facility, Nursery School or Preschool.** A public, private or parochial School
2 primarily for children between the ages of three and five, providing preparation for
3 elementary School; includes nursery school and kindergarten.
4

5 **Elevation.** (1) A vertical distance above or below a fixed reference level; or (2) a flat scale
6 drawing of the front, rear or side of a Structure.
7

8 **Engineer.** A person registered by the State of West Virginia through the Board of
9 Registration of Professional Engineers.
10

11 **Enlargement.** An addition to the floor area of a Structure, an increase in the size of any
12 other Structure, or an increase in that portion of property occupied by an allowed Use.
13

14 **Erosion.** The process by which the ground surface is worn away by the action of wind,
15 water, gravity, ice or a combination thereof, or the detachment and movement of soil or
16 rock fragments.
17

18 **Establishment.** An economic unit, generally at a single physical location, where Business
19 is conducted or services or industrial operations performed.
20

21 **Excavation.** Removal or recovery by any means whatsoever of soil, rock, minerals,
22 mineral substances or organic substances other than vegetation, from water or land on
23 or beneath the surface thereof, or beneath the land surface, whether exposed or
24 submerged.
25

26 **Exterior Architectural Features.** The architectural character and general composition
27 of the exterior of a Structure, including, but not limited to, the kind, texture of the Structure
28 material, and the type, design and character of all windows, doors, massing and rhythm,
29 light fixtures, signs, other appurtenant elements and natural features when they are
30 integral to the significance of the Site, all of which are subject to public view from a Public
31 Street, way or place.
32

33 **Exterior Display.** The outdoor display of products, vehicles, equipment and machinery
34 for sale or lease. Exterior display is an outdoor showroom for customers to examine and
35 compare products.
36

37 **Façade.** That portion of any exterior Elevation on the Structure extending from grade to
38 top of the Parapet, wall, or eaves and the entire width of the Structure Elevation.
39

40 **Façade, Principal.** Exterior walls of a Structure which are adjacent to or front on a Public
41 Street, Park, or Plaza. There may be more than one Principal Façade on a Structure.
42

43 **Façade Modulation.** Variations in the plane of a Structure wall that break up the mass
44 and bulk of a Structure.
45

1 **Family.** One or more persons occupying a single Dwelling Unit, provided that unless all
2 members are related by blood, marriage, legal adoption, or legal guardianship, no such
3 family contain more than five non-transient unrelated persons, except where disability
4 requires that more than five unrelated persons reside together; in such cases there shall
5 be no requirement for persons with disabilities to petition, apply or experience a process
6 to obtain approval to live in any zoning district in the Town.
7

8 **Fence.** An artificially constructed barrier or wall of wood, masonry, stone, brick, wire,
9 metal, or other manufactured material or combination of materials that is more than 18
10 inches in height, the purpose or effect of which is to provide enclosure, protection from
11 intrusion (both physical and visual), to prevent escape, mark a boundary, enclose, screen,
12 restrict access to, or decorate any Lot or Structure.
13

14 **Fence Height.** The vertical distance measured from the top of the Fence to the lowest
15 point of grade on the exterior side of the Fence.
16

17 **Fill.** Sand, gravel, earth or other materials of any composition whatsoever placed or
18 deposited by humans, for purposes of creating a new Elevation of the ground.
19

20 **Flag.** Any fabric or bunting containing distinctive colors, patterns or symbols, used as a
21 symbol of a government, political subdivision, corporation, lodge, fraternity or sorority,
22 political party, nonprofit organization, charity, club, association or other entity.
23

24 **Flag, Commercial.** A Flag displaying the name, insignia, emblem, or Logo of a profit-
25 making entity.
26

27 **Flag, Public.** A Flag displaying the name, insignia, emblem, or Logo of any nation, state,
28 municipality, or noncommercial organization.
29

30 **Flood.** A general and temporary inundation of normally dry land areas.
31

32 **Flood-prone area.** Any land area susceptible to repeated inundation by water from any
33 source.
34

35 **Floor Area, Gross.** The sum of the gross horizontal areas of the floors of a Structure or
36 Structures measured from the Exterior Walls of the Structure. This definition shall include
37 attic space providing structural headroom of eight feet or more and basement space,
38 unless such space is used primarily for storage.
39

40 **Floor Area, Net.** The gross area of a floor or several floors of a Structure, excluding those
41 areas not directly devoted to the principal or Accessory Use of the Structure, such as
42 storage areas or stairwells, measured from the exterior faces of Exterior Walls or interior
43 walls. Examples of areas to subtract from the Gross Floor Area include stairways, storage
44 rooms, mechanical equipment rooms and other areas generally not accessible to the
45 public.
46

1 **Footprint, Structure.** The gross horizontal area of a Structure measured from the outside
2 of Exterior Walls at Ground Level plus the projecting structures above, whichever is
3 larger. This includes Porches, but excludes roof overhang, uncovered stairs, Patios,
4 Driveways and walkways.
5

6 **Frontage.** (1) The boundary of a Lot fronting on a Public Street; (2) the front Lot line.
7

8 **Gambling Establishment.** An Establishment that offers any form of gambling or games
9 of chance that is regulated under the provisions of the Limited Video Lottery Act codified
10 in the Code of West Virginia, Chapter 29, Article 22B, Section 101.
11

12 **Garage, Private.** A detached Accessory Structure or portion of a main Structure housing
13 the automobiles of the occupants of the premises.
14

15 **Garage, Public.** A Structure or part thereof for the parking or storage of motor vehicles
16 and in which no other Use is conducted, which is available for Public Use.
17

18 **Gardens.** A planned space, set aside for the display, cultivation, and enjoyment of plants
19 including vegetables, flowers, and fruits, which may include the keeping of chickens
20 and/or bees, for private/personal use.
21

22 **Government Facility.** A Structure owned, operated or occupied by a governmental
23 agency to provide a governmental service to the public. Such facilities are generally
24 exempt from municipal zoning; except when they are sold or leased to a private firm or
25 person for purposes of conducting a nongovernmental use therein.
26

27 **Grade Level.** A reference plane representing the average ground level about a Structure.
28 Grade Level is the average of the finished ground level at the center of all walls of a
29 Structure. In case walls are parallel to and within five feet of sidewalks, the above-ground
30 level shall be measured at the sidewalks.
31

32 **Grade, Percentage of.** The rise or fall of a slope in feet and tenths of a foot for each 100
33 feet of horizontal distance.
34

35 **Ground Cover.** Any evergreen or broadleaf evergreen plant that does not attain a mature
36 height of more than one foot. Sod and seed shall also be considered as qualifying
37 groundcover.
38

39 **Harpers Ferry.** See **Town.**
40

41 **Historic Resources Plan.** A document that identifies all Contributing Resources within
42 the subject area, a description of the overall historic context of the Site.
43

44 **Historic Structure.** Any Structure that is: (1) listed individually on the National Register
45 of Historic Places or preliminarily determined by the United States Secretary of Interior as
46 meeting the requirements for individual listing on the National Register; (2) certified or

1 preliminarily determined by the United States Secretary of Interior as contributing to the
2 historical significance of a registered Historic District; (3) individually listed on the West
3 Virginia inventory of historic places; (4) individually listed on a Town, City, County, or
4 other local inventory of historic places that has been certified by an approved State
5 program as determined by the United States Secretary of Interior.
6

7 **Historic Structure Report.** A document that consists of (1) a narrative that documents
8 the evolution of a Contributing Resource, its physical description, existing condition
9 assessment and an evaluation of significance, (2) a discussion of historic preservation
10 objectives, together with recommendations for an overall treatment approach and for
11 specific work, (3) photos of existing conditions and (4) measured drawings
12

13 **Home-Based Business.** Any Business, occupation, or activity undertaken for gain where
14 the principal office or place of Business is located within a residential Structure or a
15 permitted Accessory Structure that is incidental and secondary to the use of that
16 Structure. Such a Business is not open to the public except by appointment.
17

18 **Hostel.** A Single Family Dwelling that provides inexpensive shared lodging, breakfast,
19 and sanitary accommodations for supervised short term stays, typically for hikers and
20 bikers.
21

22 **Hotel.** A Structure in which lodging is provided and offered to the public for compensation,
23 and that is open to transient guests and is not a Rooming House or Boarding House.
24

25 **House, Boarding.** A Single Family Dwelling that provides inexpensive shared lodging
26 and sanitary accommodations for extended stays, typically serving meals. The Boarder
27 is considered to be in residence at that location.
28

29 **House, Rooming.** A Single Family Dwelling that provides inexpensive shared lodging
30 and sanitary accommodations for extended stays, typically without serving meals. The
31 Roomer is considered to be in residence at that location.
32

33 **House Trailer.** Any vehicle, with or without motive power, with or without wheels at the
34 time of being placed on such premises or real property, and designed, or modified to be
35 used as a Dwelling Unit.
36

37 **Impervious Surface.** A surface composed of any material that significantly impedes or
38 prevents natural infiltration of water into soil, including but not limited to roofs, Structures,
39 streets, parking areas, and any concrete, asphalt, or compacted gravel surface.
40

41 **Improvement.** Modifications to land that increases its value or utility, including but not
42 limited to Structures, road grading, road surfacing, Fences, Retaining Walls, curbs, Street
43 gutters, below- or above-grade utility lines and facilities, storm sewers and drains,
44 sidewalks, signs, modifications to watercourses, water supply facilities, sewage disposal
45 facilities, and Park and recreation equipment (excludes residentially-sized HVAC or

1 similar equipment provided such equipment is compliant with screening and other
2 requirements in this Zoning Ordinance).

3
4 **Land Surveyor.** A person so registered or licensed by the State of West Virginia by the
5 Board of Examiners of Land Surveyors.

6
7 **Landscaped Area.** A portion of Site containing vegetation to exist after construction is
8 completed. Landscaped areas include, but are not limited to, natural areas, buffers,
9 streetscapes, lawns and plantings.

10
11 **Landscaped Buffer.** An area of Landscaping separating two distinct land uses, or a land
12 Use and a public Right-of-Way, and acts to soften or mitigate the effects of one land Use
13 on the other.

14
15 **Landscaping.** Open area devoted primarily to trees, grass, shrubs, or plants to soften
16 Structure lines, provide shade and generally produce a pleasing visual effect of the
17 premises. As complementary features, fountains, pools, screens, decorative lighting,
18 sculpture, or outdoor furnishings may be placed within the area.

19
20 **Library.** A Structure containing printed, pictorial, and digital material for Public Use for
21 purposes of study, reference and recreation.

22
23 **Loading Space.** An Off-Street space or berth on the same Site with a Structure, or
24 Contiguous to a group of Structures, for the temporary parking of a vehicle while loading
25 or unloading merchandise, materials or persons, and which has ingress and egress upon
26 a Street, Alley, other appropriate means of Access.

27
28 **Logo.** The graphic or pictorial presentation of a message, including, but not limited to, the
29 use of shapes, designs, decorations, emblems, trademarks, symbols or illustrations, or
30 the superimposition of letters or numbers or any other use of graphics or images other
31 than the sequential use of letters and numbers.

32
33 **Long-term Rental.** The Use of a Dwelling Unit offered for rent for occupancy by tenants
34 for a tenancy of greater than 30 days, excluding a Hotel, Rooming House, Boarding
35 House or Bed and Breakfast Inn.

36
37 **Lot.** See Lot of Record.

38
39 **Lot Area.** The total horizontal area contained within the Front, Rear and Side Lot lines of
40 any Lot.

41
42 **Lot, Corner.** A Lot located at the junction of two or more intersecting streets.

43
44 **Lot Coverage.** The total area covered, measured from the outside of the Exterior Walls,
45 by all principal and Accessory Structures on a Lot. Driveways, parking areas, open

1 porches, decks, balconies and similar features that are not covered by a roof shall not be
2 counted.

3
4 **Lot Depth.** The distance measured from the Front Lot line to the Rear Lot Line. Where
5 the Front and Rear Lot Lines are not parallel, the Lot depth shall be measured by drawing
6 lines from the Front to Rear Lot Lines at right angles to the Front Lot Line, every ten feet
7 and averaging the length of these lines.

8
9 **Lot, Double Frontage.** A Lot which runs through a Block from Street to Street and which
10 has Frontage on two or more Streets, but not a Corner Lot.

11
12 **Lot, Flag.** A polygonal-shaped Lot with the appearance of a frying pan or flag and staff in
13 which the handle is most often used as the point of Access. The handle, when less than
14 the minimum width for a Lot in the zoning district in which it is located, is not to be used
15 in computing the minimum required Lot area or delineating the minimum required
16 Structure envelope.

17
18 **Lot, Irregular.** A Lot of such shape or configuration that technically meets the area,
19 Frontage and width to depth requirements of the Zoning Ordinance but has unusual
20 elongations, angles, and curvilinear lines.

21
22 **Lot, Reverse Frontage.** A Corner Lot of such size and shape that a Structure erected on
23 it might logically be designed to face on either Adjoining Street, thus causing the Structure
24 to rear on the sideline of any Abutting Lot.

25
26 **Lot Line.** The property line bounding a Lot.

27
28 **Lot Line, Front.** The Lot Line that abuts an existing or dedicated Public Street. In no
29 case shall there be more than two Front Lot Lines applied to any Lot.

30
31 **Lot Line, Rear.** (1) The Lot Line that is opposite and most distant from the Front Lot Line;
32 (2) in the instance of a Rear Lot Line is less than 10 feet in length, or if the Lot forms a
33 point opposite the Front Lot Line, the Rear Lot Line shall be a line 10 feet in length within
34 the Lot, parallel to and at the maximum distance from the Front Lot Line.

35
36 **Lot Line, Side.** Any Lot line which is not a Front Lot Line or a Rear Lot Line.

37
38 **Lot of Record.** In the Town, a Lot is land within the municipal boundaries that is described
39 by metes and bounds, the description of which has been placed of record in the County,
40 or platted and numbered by S. Howell Brown as shown on maps of the Town dated 16
41 April 1869, copies of which may be seen on the wall of the office of the Clerk of the
42 Jefferson County Commission and on the wall of the offices of the Town along with
43 subsequent modification to plat boundaries as recorded in the County Deed Books and
44 on the Zoning Map.

45

1 **Lot, Through.** A Lot other than a Corner Lot with Frontage on more than one Street.
2 Through lots Abutting two streets may be referred to as Double Frontage Lots.
3

4 **Lot Width.** The distance between the Side Lot Lines of a Lot at the Structure line.
5

6 **Marquee.** A roof-like structure that cantilevers from the wall of a Structure over its
7 principal entrance, that has no vertical supports other than the wall from which it
8 cantilevers, and that provides a wall surface at least four feet high, generally constructed
9 for purposes of containing a Sign.
10

11 **Museum.** A Structure having public significance by reason of its architecture or former
12 Use or occupancy or a Structure serving as a repository for a collection of natural,
13 scientific, or literary collections, or works of art, and arranged, intended, and designed to
14 be used by members of the public for viewing, with or without an admission charge, and
15 which may include as an Accessory Use the sale of goods to the public.
16

17 **Nonprofit Organization.** Any person(s), partnership, association, corporation or other
18 group legally established under federal and state law whose activities are conducted for
19 unselfish, civic, or humanitarian motives, or for the benefit of others, and not for the gain
20 of any private individual or group and may include, but shall not be limited to, patriotic,
21 philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural,
22 charitable, scientific, historical, athletic, or medical activities.
23

24 **Off-Site Improvements.** Any utility, Structure, or modification of topography located other
25 than on the Site it is intended to serve.
26

27 **Office, Apartment Rental.** An Accessory Structure or Structure, or part thereof, used
28 primarily for the purpose of performing the administrative and clerical duties associated
29 with renting or leasing the Apartment units in an apartment complex.
30

31 **Office, Associated with Permitted Industrial Land Use.** An Accessory Structure or
32 Structure, or part thereof, used primarily for the purpose of performing the administrative
33 and clerical duties associated with the principal permitted industrial land Use.
34

35 **Office Structure.** A Structure used primarily for offices that may include ancillary services
36 for office workers, such as a Restaurant, coffee shop, newspaper, or snack stand.
37

38 **Office, Business or Professional (Unlimited).** A room or suite of rooms or portion of a
39 Structure used for the practices of a profession or for the conduct of a Business that
40 involves the accessory sale of goods from the premises. If the goods or merchandise are
41 sold for delivery on or from the premises and constitute greater than 20 percent of the
42 gross revenue from the office, then the premises shall be considered a store rather than
43 an office.
44

1 **Office Park.** A development that contains a number of separate Office Structures,
2 supporting uses and open space designed, planned, constructed, and managed on an
3 integrated and coordinated basis, and located on one or more Lots.
4

5 **Office, Professional.** A Structure, or part thereof, used for conducting the affairs of a
6 Business, profession, service industry, or government. Does not include the sale or
7 display of materials or goods.
8

9 **Open Space.** Any land or area, the preservation of which in its present use would: (1)
10 conserve or enhance natural or scenic resources; or (2) promote streams or water supply;
11 or (3) promote conservation of soils, or wetlands; or (4) enhance the value to the public
12 of Abutting or neighboring parks, forests, wildlife preserves, nature reservations, or
13 sanctuaries; or (5) enhance recreational opportunities.
14

15 **Open Space, Improved.** Parks, playgrounds, swimming pools, ball fields, plazas,
16 landscaped green spaces, and other areas that are created or modified by man. Improved
17 Open Space shall not include schools, Community centers or other similar areas in public
18 ownership.
19

20 **Open Space, Natural.** Areas of natural vegetation, water bodies, or other landforms that
21 are to be left undisturbed. Creation of a graded and surfaced walking trail through areas
22 of Natural Open Space shall constitute disturbance of the area in the amount of the length
23 of the walking trail multiplied by its approximate average width. Natural Open Space shall
24 not include schools, community centers or other similar areas in public ownership.
25

26 **Ordinance Compliance Officer.** Any person or persons duly designated, appointed or
27 employed by any commission, board or agency of the Town, or of any jurisdiction that the
28 Town Council has duly designated to exercise any power or authority under any law,
29 ordinance or rule or regulation under its or their jurisdiction.
30

31 **Parapet.** The portion of a wall which extends above the roofline.
32

33 **Park.** Any area that is predominately open space, available to the public and used
34 principally for active or passive recreation, and not used for a profit-making purpose.
35

36 **Parking, Off-Street.** Space occupied by automobiles on premises rather than streets.
37

38 **Parking, On-Street.** The storage space for an automobile that is located within the Street
39 Right-of-Way.
40

41 **Parking, Shared.** A public or private parking area used jointly by two or more users.
42

43 **Parking Lot, Commercial.** A private Parking Lot that is the stand alone Use of the
44 property, and whose stalls are leased to individuals.
45

1 **Parking Lot, Public.** A publicly owned or operated open area other than a Street or Alley,
2 designed to be used for the temporary parking of more than four motor vehicles, whether
3 free or for compensation, and available for use by the public or as an accommodation for
4 clients or customers.
5

6 **Parking Lot, Restricted Accessory.** A Parking Lot, whether free or for compensation,
7 and available for private use or as an accommodation for clients or customers, that
8 provides parking that is accessory to a Use on that Lot or a separate Contiguous Lot.
9

10 **Parking Space.** A space in a garage, parking lot, or marked parking area, not less than
11 8.5 feet wide clear dimension and 18 feet long clear dimension, reserved for the parking
12 of only one automobile.
13

14 **Parking Space, Compact.** A space in a garage, parking lot, or marked parking area, not
15 less than 7 ½ feet wide clear dimension and 15 feet long clear dimension, reserved for
16 the parking of only one compact automobile.
17

18 **Parking Space, Handicap.** A space in a garage, parking lot, or marked parking area not
19 less than 13 feet wide and 18 feet long in clear dimension, reserved exclusively for an
20 automobile registered with the State with handicapped license plates or displaying an
21 official State issued handicapped placard.
22

23 **Parking Structure.** A Structure designed to accommodate vehicular Parking Spaces that
24 are fully or partially enclosed or located on the deck surface of a Structure. This definition
25 includes Public Garages, deck parking and underground or under Structure parking
26 areas.
27

28 **Patio.** A level surfaced area directly adjacent to a principal Structure, without walls or a
29 roof. A Patio may be constructed of any material or combination of materials, and is
30 typically constructed at Grade Level or slightly higher.
31

32 **Paved Surface Area.** Ground surface covered with cobblestones, clay fired bricks,
33 concrete precast paver units, poured concrete with or without decorative surface
34 materials, blacktop, or other asphalt or rubber mixture which may include sand or gravel
35 as an ingredient and which creates a hard surface. A graded natural surface or one
36 covered with rolled stone or overlaid with loose gravel is not considered a paved surface.
37

38 **Pennant.** Any lightweight plastic, fabric or other material, whether or not containing a
39 message of any kind, which is suspended from a rope, wire, string or pole, usually in
40 series, and which is designed to move in the wind.
41

42 **Performance Bond.** Any security that may be accepted by the Town as a guarantee that
43 improvements required as part of an application for a Project Permit are satisfactorily
44 completed and that damage to public infrastructure is satisfactorily repaired.
45

1 **Permit, Project.** A document of approval for a Project issued by the Proper Authority
2 upon the application of any person seeking an approval to undertake such Project within
3 the Town for which approval is required.
4

5 **Person.** Any individual, association, company, corporation, entity, firm, organization or
6 partnership, singular or plural, of any kind.
7

8 **Personal Services Establishment.** A Business which is associated with the grooming
9 or health of persons or the maintenance or repair of personal wardrobe articles and
10 accessories, and may include a barber shop, beauty parlor, shoe repair shop, self-service
11 laundry, but not a tattoo parlor. The definition shall apply whether or not the individual
12 engaged in the offering of said service is required to be licensed by the State of West
13 Virginia.
14

15 **Plaza.** An open space that may be improved, landscaped, or paved usually surrounded
16 by Structures or streets.
17

18 **Porch.** A covered but unenclosed projection from the main wall of a Structure that may
19 or may not use columns or other ground supports for structural purposes. If a Porch is
20 uncovered it is considered to be a Deck.
21

22 **Professional Services Establishment.** An Establishment engaged in providing
23 Professional Services such as consulting, legal, engineering, accounting, architectural
24 and the like, but not including personal services.
25

26 **Project.** A Project includes: (1) construction, reconstruction, alteration or enlargement of
27 any Exterior Architectural Features of a Structure; (2) demolition or relocation of a
28 Structure; (3) construction, reconstruction, alteration, enlargement or relocation of a Sign;
29 (4) the implementation of any Use of a Structure or Lot where such Use of such Structure
30 or Lot did not begin until after the date on which this Zoning Ordinance was enacted or
31 was subsequently amended if such Use of such Structure or Lot was lawful prior to such
32 subsequent amendment; or (5) the intensification of any Nonconforming Use of a
33 Structure or Lot where the Nonconforming Use of such Structure or Lot has not been
34 abandoned and had begun prior to the enactment of this Zoning Ordinance or prior to a
35 subsequent amendment of this Zoning Ordinance if such Use was lawful prior to such
36 subsequent amendment.
37

38 **Proper Authority.** That individual, commission or committee to whom a certain authority
39 has been delegated by Town Council resolution or by the Mayor's appointment.
40

41 **Public Services (Police or Fire).** Police and fire service establishments owned, operated
42 and managed by the Town or County.
43

44 **Recreational or Sports Facility, Group.** A private athletic or sports facility designed to
45 serve a large number of people as opposed to individuals or individual families. Such
46 facilities include but shall not be limited to arenas, auditoriums, stadiums, play fields,

1 tracks, and country clubs. Such facilities may contain rooms and other provisions for
2 social functions and the serving of food or alcoholic beverages.

3
4 **Recreational Facility, Small.** A private facility designed to serve a small number of
5 people for free time activities such as exercise, music, games, reading, arts and crafts, or
6 dance. Such facilities may contain rooms for social functions and the serving of food or
7 alcoholic beverages.

8
9 **Recreational Vehicle (RV).** A vehicle built on a single chassis, and designed to be self-
10 propelled or towed by another vehicle. A Recreational Vehicle is not designed or intended
11 for use as a permanent dwelling, but as temporary living quarters for recreational
12 camping, travel, or seasonal use. This definition includes vehicles such as travel trailers,
13 motor homes, boats, house-boats, and campers.

14
15 **Religious Institution.** A Structure where persons assemble for religious worship or
16 expression of religious faith and which is maintained and controlled by a religious body
17 organized to sustain worship or expression of religious faith, together with all Accessory
18 Structures and Structures and uses associated with the primary purpose. Such Structures
19 include churches, synagogues, temples, mosques, or other Structures for worship and
20 religious activities, including schools, daycare centers.

21
22 **Religious Organization Bulletin Board.** A Sign on the premises of a Religious
23 Institution that gives information about that Religious Institution.

24
25 **Repair or Maintenance.** An activity that restores the character, scope, size, or design of
26 a serviceable area, Structure, or land Use to its previously existing, authorized, and
27 undamaged condition. Activities that change the character, size or scope of a project
28 beyond the original design and drain, dredge, Fill, Flood, or otherwise alter additional
29 regulated wetlands are not included in this definition.

30
31 **Residential Care Facility.** A residential dwelling used for longterm care of residents on
32 a commercial basis.

33
34 **Restaurant.** A commercial Establishment where food and beverages are prepared,
35 served, and consumed primarily within the principal Structure and where food sales
36 constitute more than 60 percent of the gross sales receipts. Take-out and walk-away
37 services are included.

38
39 **Retail Sales Establishment.** A Business having as its primary function the supply of
40 merchandise or wares to the end consumer. Such sales constitute the primary function
41 of the Business when such sales equal at least 80 percent of the gross sales of the
42 Business.

43
44 **Retaining Wall.** A wall or terraced combination of walls used principally to retain more
45 than 18 vertical inches of material and not used to support, provide a foundation for, or
46 provide a wall for a Structure.

1
2 **Rezoning.** An amendment to the Zoning Map to effect a change of the designated land
3 Use district.
4
5 **Right-of-Way.** A strip of land acquired by reservation, dedication, prescription, or
6 condemnation and intended to be occupied by a Street, trail, waterline, sanitary sewer or
7 other public utilities or facilities.
8
9 **Service Establishment.** See Personal Services Establishment or Professional Services
10 Establishment.
11
12 **Setback, Front.** The distance between the Street Right-of-Way line and the closest point
13 of the foundation of a Structure or projection thereof.
14
15 **Setback, Rear.** The shortest distance between the Structure line and the Rear Lot Line.
16
17 **Setback, Side.** The shortest distance between the Structure line and the Side Lot Line.
18
19 **Short-term Rental.** The Use of a Dwelling Unit offered for rent for transient occupancy
20 by tenants for a tenancy of 30 days or less, excluding a Motel, Hotel, Rooming House,
21 Boarding House or Bed and Breakfast Inn.
22
23 **Sidewalk Sale.** A seasonal or occasional sale held on the sidewalk or other Structure
24 along the front or side of the place of Business where goods are offered for sale to the
25 public, typically at a discounted price.
26
27 **Sign.** Any device including but not limited to writing, letter work, letters, words, numerals,
28 figures, emblems, illustrations, decorations, pictorial representations, pictures, emblems,
29 devices, symbols, word marks, service marks, trademarks, flags, banners, pennants,
30 device figures, device characters or any part or combination of these used for visual
31 communication intended to attract the attention of the public and be visible from the public
32 Right-of-Way or other properties.
33
34 **Sign, Abandoned.** A Sign which no longer identifies a bona fide Business conducted or
35 product sold on the premises, or the premises to which such Sign relates if such Sign is
36 an Off-Premises Sign. A Sign shall be deemed abandoned when these conditions have
37 been in existence for a period exceeding one year.
38
39 **Sign, Animated.** Any Sign that uses movement or change of lighting to depict action or
40 create a special effect or scene.
41
42 **Sign, Awning.** A Sign located on an Awning. See **Canopy Sign.**
43
44 **Sign, Back-to-Back.** Two or more integrally connected Signs facing in opposite
45 directions and separated by not more than five feet.
46

1 **Sign, Banner.** Any Sign with or without characters, letters, illustrations, or
2 ornamentalions applied to cloth, paper, flexible plastic, or fabric of any kind with only such
3 material for backing. All banners are Temporary Business Signs.
4

5 **Sign, Structure.** Any Sign attached to any part of a Structure.
6

7 **Sign, Structure Marker.** Any Sign indicating the name of a Structure and date and
8 incidental information about its construction. Such Sign typically is cut into a masonry
9 surface or made of bronze or other permanent material.
10

11 **Sign, Business Identification.** Any Sign located within and upon the premises of a
12 Business that pertains to the name, purposes and conduct of the Business.
13

14 **Sign, Business Information.** Any Sign that is not a Business Identification Sign but
15 rather pertains to operations (such as "open" or "closed") or pertains to means for access
16 (such as "entrance up stairs").
17

18 **Sign, Business Merchandise.** Any Sign that lists or describes the goods or articles for
19 sale or types of services offered by the enterprise (such as menus).
20

21 **Sign, Canopy.** Any Sign that is a part of or attached to a structural protective cover over
22 a door, entrance, window or outdoor service area. A Marquee Sign is not a Canopy Sign.
23

24 **Sign, Changeable Copy.** Any Sign designed so that letters or numbers attached to the
25 Sign can be periodically changed to indicate a different message.
26

27 **Sign, Commercial Message.** Any sign, wording, Logo or other representation, except
28 for the actual name of the Business, that, directly or indirectly, names, advertises or calls
29 attention to a Business, product, service or other commercial activity.
30

31 **Sign, Building Construction.** Any Sign bearing the names of contractors, architects,
32 engineers and the like, or advertising, promotions, price ranges and similar information.
33

34 **Sign Copy.** Any word, letter, number or emblem affixed to the Sign surface either
35 permanently or in removable form.
36

37 **Sign, Directional.** An On-Premise Sign that includes information assisting in the flow of
38 pedestrian or vehicular traffic such as enter, exit, and one-way. A Directional Sign
39 excludes commercial messages and logos but may include information, that has a
40 purpose secondary to the Use of the Site on which it is located, such as "no parking,"
41 "entrance," "loading only," "telephone," and similar information and directives. A
42 Directional Sign may also include information stating the hours of operation of a Business,
43 emergency telephone numbers, credit card usage, or other information of a similar nature.
44

45 **Sign, Directory.** A ground or Structure Sign that lists tenants or occupants of a Structure
46 or project with unit numbers, arrows or other directional information.

1
2 **Sign, Electronic Message Board.** A Sign with a fixed or changing display/message that
3 is electronically programmed and can be modified by electronic processes.
4
5 **Sign, Externally Illuminated.** A Sign illuminated primarily by light directed toward or
6 across it or by backlighting from a source not within it. Sources of illumination for such
7 signs may be in the form of gooseneck lamps, spotlights, or luminous tubing.
8
9 **Sign, Flashing.** A Sign, the illumination of which is not constant in intensity when in use,
10 and which exhibits sudden or marked changes in lighting effects.
11
12 **Sign Face.** The area of a Sign on which the copy is placed.
13
14 **Sign, Freestanding.** A Sign that is attached to, erected on, or supported by some
15 structure (such as a post, mast, frame, or other structure) that is not itself an integral part
16 of or attached to a Structure whose principal function is something other than support.
17
18 **Sign, Ground.** Any Sign attached to the ground. See Freestanding Sign.
19
20 **Sign, Internally Illuminated.** A Sign whose light source is either located in the interior of
21 the sign so that the rays go through the face of the sign, or which is attached to the face
22 of the sign and is perceived as a design element of the sign.
23
24 **Sign, Marquee.** A Sign attached to or mounted on a Marquee.
25
26 **Sign, Menu-Board.** An accessory Sign providing items and prices associated with a
27 drive-thru window.
28
29 **Sign, Monument.** A Freestanding Sign where the base of the sign structure is on the
30 ground or a maximum of 12 inches above the adjacent grade. The width of the top of the
31 sign structure can be no less than 90 and no more than 120 percent of the width of the
32 base.
33
34 **Sign, Neon.** A Sign containing glass tube lighting in which a gas and phosphors are used
35 in combination to create a colored light.
36
37 **Sign, Nonconforming.** A Sign lawfully erected and maintained before the effective date
38 of the Zoning Ordinance that does not conform with the requirements of the Zoning
39 Ordinance.
40
41 **Sign, Off-Premise.** A Sign that directs attention to a Business, commodity, service, or
42 entertainment not exclusively related to the premises where such a Sign is located or to
43 which it is affixed.
44

- 1 **Sign, On-Premise.** Any Sign identifying or advertising a Business, person, activity,
2 goods, services, or products, located on the premises where the sign is installed and
3 maintained.
4
- 5 **Sign, Permanent Business.** Any Business Identification Sign, Business Information Sign
6 or Business Merchandise Sign and not a Temporary Business Sign.
7
- 8 **Sign, Pole.** A Sign that is mounted on a freestanding pole(s) or other support so that the
9 bottom edge of the sign face is six feet or more above the grade. Also called a pylon sign.
10
- 11 **Sign, Political.** A Sign attracting attention to political candidates or issues, expressing
12 support for a candidate for public office or another position regarding a public figure or
13 issue, but bearing no commercial message.
14
- 15 **Sign, Portable.** Any Sign not permanently attached to the ground or other permanent
16 Structure or a Sign designed to be transported, including, but not limited to, signs
17 designed to be transported by means of wheels; signs made as A-frames or T-frames;
18 and balloons used as signs.
19
- 20 **Sign, Post and Panel.** A Sign consisting of one or more panels which are supported
21 between two posts and which is permanently placed in the ground.
22
- 23 **Sign, Projecting.** Any Sign attached to a Structure wall and extending laterally more than
24 18 inches from the face of such wall.
25
- 26 **Sign, Public Information.** Any Sign erected and maintained by public officials or public
27 agencies, or approved and authorized for use by state or local government authorities.
28
- 29 **Sign, Real Estate.** A Sign advertising real property for sale or for lease.
30
- 31 **Sign, Roof.** A Sign erected, constructed, and maintained above the eaves of a Structure.
32
- 33 **Sign, Sandwich Board.** A Sign not permanently attached to the ground or some type of
34 permanent Structure; a Sign connected to or located on A or T frames; a two-sided Sign
35 attached to boards.
36
- 37 **Sign, Shingle.** A Sign suspended from and located entirely under a covered Porch,
38 covered walkway or Awning.
39
- 40 **Sign, Special Purpose.** A Sign advertising or announcing a special community wide
41 event or activity conducted by, or sponsored by, or on behalf of a unit of local government,
42 a charitable organization, or a nonprofit corporation. For purposes of this term, a special
43 community wide event or activity is one that occurs not more than twice in any 12-month
44 period and seeks to attract donations, participants, or customers throughout the Town.
45

1 **Sign, Suspended.** A Sign that is suspended from the underside of a horizontal plane
2 surface and supported by such surface.
3

4 **Sign, Temporary Business.** Any Business Identification Sign, Business Information Sign
5 or Business Merchandise Sign not a Permanent Business Sign that is used only
6 temporarily and is not permanently mounted for which a Sign Permit is required.
7

8 **Sign, Traffic.** A Sign indicating federal, state, or municipal regulations for automobile,
9 truck, bicycle or pedestrian movement.
10

11 **Sign, V-Type.** For purposes of computing surface area, is two separate signs if the angle
12 between the two outer surfaces is less than 60 degrees; otherwise the wings shall be
13 considered one Sign.
14

15 **Sign, Wall.** Any Sign painted on or attached to and extending not more than six inches
16 from an Exterior Wall in a parallel manner.
17

18 **Sign, Window.** Any Sign that is visible to the public Right-of-Way through the glassed
19 areas of a Structure including numbering, lettering, or writing, pictorial representation,
20 emblem, Flag, or any other figure of similar character. The window area covered by
21 signage shall not exceed 25 percent of the total window square footage, but may be
22 increased to 50 percent of the total window square footage if there are no Wall Signs on
23 the premises.
24

25 **Signplate, Structure.** A Sign indicating the name and address of a Structure, or the name
26 of an occupant thereof, and the practice of a permitted occupation therein.
27

28 **Site.** The property, including one or more Lots, on which a Project is to take place or is
29 taking place. A Site includes property on which a Project has been completed but only if
30 the commencement of such Project occurred on or after the date on which this Zoning
31 Ordinance was enacted or was subsequently amended if such Project would not have
32 been subject to this Zoning Ordinance prior to such subsequent amendment.
33 Furthermore, any other property set forth in a Project Permit application shall be
34 considered part of the Site for the corresponding Project so long as:(1) such Project
35 Permit application states that such other property is to be part of such corresponding
36 Project and (2) the inclusion of such other property is otherwise permitted by this Zoning
37 Ordinance.
38

39 **Standards and Guidelines.** Any and all standards and guidelines for Projects that are
40 set forth in this Zoning Ordinance, which includes the standards and guidelines set forth
41 in Appendix A, Appendix B and Appendix C of this Zoning Ordinance.
42

43 **Storage, Enclosed.** Storage that is completely screened from view by walls and a roof.
44

45 **Storage Facility, Indoor Self.** A Structure containing separate, individual and private
46 storage spaces of varying sizes that are leased or rented by individual lease for varying

1 periods of time, with the Use contained within one Structure and the storage bays
2 accessed primarily from the interior of the Structure.
3

4 **Storage, Facility.** One or more structures containing separate, individual and private
5 storage spaces of varying sizes leased or rented by individual leases for varying periods
6 of time, with the Use contained in one or more Structures with the storage bays accessed
7 primarily from the exterior of the Structure or Structures.
8

9 **Story.** That portion of a Structure above ground level at the Structure line that is between
10 the floors, except that the top Story shall be that portion of a Structure included between
11 the upper surface of the top floor and the ceiling or roof above.
12

13 **Street.** A way designated or intended for general Public Use, open to vehicular and
14 pedestrian travel.
15

16 **Street, Arterial.** A Street designated for large volumes of traffic movement. Certain
17 Arterial Streets may be classed as limited access highways to which entrances and exits
18 are provided only at controlled intersections and access is denied to abutting properties.
19

20 **Street, Collector.** A Street which primarily collects traffic from Local Streets and feeds it
21 to the arterial network. Collector streets provide circulation within neighborhood areas.
22

23 **Street, Cul-de-sac.** A Street with a single common ingress and egress and with a
24 turnaround at the end.
25

26 **Street, Dead-end.** A Local Street open at one end only and without a special provision
27 for vehicles turning around.
28

29 **Street Frontage.** The distance for which a Lot Line adjoins a Public or Private Street from
30 one Lot Line intersecting said Street to the furthest Lot Line intersecting the same Street.
31

32 **Street, Frontage Road.** A minor Street, parallel to and adjacent to an Arterial Street,
33 whose primary purpose is providing access to properties that abut it.
34

35 **Street, Half.** A Street where the full cross section, curb to curb, is constructed in more
36 than one phase.
37

38 **Street, Local.** A minor Street which collects and distributes traffic between Lots and
39 Collector or Arterial Streets, with the principal purpose to provide access to abutting
40 property.
41

42 **Street, Major.** A primary or secondary arterial roadway as designated on the official
43 community plan or as designated by the Town.
44

45 **Street, Paper.** A public Right-of-Way platted as a Street on the Howell Brown map of
46 Harpers Ferry dated 26 April 1869 which has not been subsequently improved by the

1 Town for vehicular access and which has not been ceded to the US Government as part
2 of the National Park.

3
4 **Street, Public.** Any pre-existing County roadway heretofore annexed by the Town, and
5 which forms a part of the Town by reason of such annexation, or any Street or road
6 granted to and accepted by the Town Council of the Town.

7
8 **Street, Private.** Any road or Street that is not publicly owned and maintained and used
9 for access by the occupants of a development, their guests, and the general public.

10
11 **Street, Residential.** A Street used primarily for access to properties that abut it, usually
12 residential.

13
14 **Structure.** Anything constructed or erected for Use, occupancy or ornamentation whether
15 installed on, above or below the surface of land or water that requires the location on the
16 ground or that is attached to something having location on the ground, excluding vehicles
17 designed and used only for the transportation of people or goods, and excluding utility
18 poles and towers constructed by a public utility and surface treatments such as parking
19 lots, patios and driveways. A Structure does not include such things as garden ornaments
20 or other non-permanent objects.

21
22 **Structure Height.** The vertical distance to the highest point of the roof for flat roofs; to
23 the Deck line of mansard roofs; and to the average height between eaves and the ridge
24 for gable, hip and gambrel roofs measured from the curb level if the Structure is not more
25 than 10 feet in distance from the front Lot line, or from the Grade Level in all other cases.
26 This height does not include a Parapet up to 2 feet when such a Parapet is intended to
27 shield rooftop machinery from view. Note: The actual topmost height of a Structure roof
28 segment or its elements (e.g., chimney, etc.) may exceed this calculation.

29
30 **Structure, Accessory.** A subordinate Structure, such as a garage, a shed, a storage
31 Structure, a swimming pool or any other Structure detached from but located on the same
32 Lot or Site as a Principal Structure and ordinarily used only by the owner or occupant of
33 the Principal Structure and not as a residence. The Use of a subordinate Structure must
34 be accessory or complimentary to the Use of the Principal Structure. An Accessory
35 Structure having any part of a wall in common with a Dwelling Unit is considered part of
36 the main Structure.

37
38 **Structure, Detached.** A Structure with no vertical common or party wall with another
39 Structure.

40
41 **Structure, Nonconforming.** A Structure that lawfully existed prior to the enactment of
42 the Zoning Ordinance or prior to a subsequent amendment of this Zoning Ordinance if
43 such Structure would have been lawful prior to such subsequent amendment, but which
44 is not in compliance with the requirements of the Zoning Ordinance for the district in which
45 the Structure is located.

1 **Structure, Principal.** A Structure in which is conducted the Principal Use of the Lot or
2 Site on which it is located.

3
4 **Substantial Damage.** Damage of any origin sustained by a Structure whereby the cost
5 of restoring the Structure to its before-damaged condition would equal or exceed 50
6 percent of the fair market value of the Structure before the damage occurred.

7
8 **Substantial Improvement.** Any reconstruction, rehabilitation, Addition, or other
9 Improvement of a Structure, the cost of which equals or exceeds 50 percent of the market
10 value of the Structure before the start of construction of the Improvement. Includes
11 Structures that have incurred "Substantial Damage" regardless of the actual repair work
12 performed. The term does not, however, include any project for Improvement of a
13 Structure to correct existing violations of state or local health, sanitary, or safety code
14 specifications that have been identified by the Ordinance Compliance Officer and that are
15 the minimum necessary to assure safe living conditions.

16
17 **Town.** The municipal Corporation of Harpers Ferry.

18
19 **Tree.** A plant having at least one well-defined stem or trunk and normally attaining a
20 mature height of at least 15 feet, with an average mature spread of 15 feet, and having a
21 trunk that shall be kept clear of leaves and branches at least six feet above grade at
22 maturity.

23
24 **Tree, Public.** Any Tree located on Town-owned or controlled property including parks,
25 Street Right-of-Ways, parkways, etc.

26
27 **Use.** Any purpose for which a Structure is maintained or occupied; or any activity,
28 occupation, Business, or operation carried on in a Structure.

29
30 **Use, Accessory.** A Use that is (1) customary and incidental to the Principal Use located
31 on the same Lot or Site; (2) subordinate in area, extent and purpose to the Principal Use;
32 (3) contributes to the comfort, convenience, or necessity of the Principal Use; and (4) is
33 located on the same Lot or Site and in the same zoning district as the Principal Use.

34
35 **Use, Conditional.** A Use which because of special requirements or characteristics may
36 be permitted in a particular zoning district only after review by the Board of Zoning
37 Appeals and upon issuance of a Conditional Use Permit, and subject to the limitations
38 and conditions specified in this Zoning Ordinance.

39
40 **Use, Nonconforming.** Any use of a Lot or Structure that does not conform with the
41 Zoning Ordinance, but such use lawfully existed prior to the enactment of the Zoning
42 Ordinance or prior to a subsequent amendment of this Zoning Ordinance if such Use
43 would have been lawful prior to such subsequent amendment and the use has not been
44 Abandoned.

45

1 **Use, Permitted.** A Use that is not a Conditional Use and is permitted in a district by right,
2 upon satisfaction of the standards and requirements of the Zoning Ordinance.

3
4 **Use, Principal.** The primary Use of any Lot, Site or Structure under the Zoning
5 Ordinance.

6
7 **Use, Public.** A use by an agency or department of the Town, County, state, or federal
8 government. This shall also include public utilities or uses by any organization that
9 receives funding either all or in part from any agency or department of the Town, County,
10 state, or federal government. This shall also include Structures and premises used in the
11 operation of the Public Use.

12
13 **Variance.** A deviation from the minimum standards of the Zoning Ordinance.

14
15 **Viewshed.** The area within view from a defined observation point.

16
17 **Wall, Exterior.** A vertical, structural component of a Structure that encloses habitable or
18 usable space; a Parapet extending not more than 12 inches above a flat roof shall be
19 considered part of the Exterior Wall for purposes of determining signage.

20
21 **Zoning Map.** The map of the Town on which is depicted one or more classifications or
22 zones under the Zoning Ordinance, including overlays, enacted August 8, 1977, as
23 amended by the Town Council from time to time.

24
25 **Zoning Ordinance.** The zoning ordinance of the Town, enacted August 8, 1977, as
26 amended by the Town Council from time to time. Where any reference is made to this
27 Zoning Ordinance, such reference shall also include and incorporate any and all
28 provisions set forth in Appendix A, Appendix B and Appendix C, which are attached
29 hereto.

**ARTICLE 1303
Project Permits**

- 1303.01 Purpose.**
- 1303.02 Project Permit Required; Standards and Guidelines.**
- 1303.03 Types of Project Permits; Determination of Proper Authority.**
- 1303.04 Site Plan Review.**
- 1303.05 Scope of Projects.**
- 1303.06 Procedure; Project Permit Application; Fees.**
- 1303.07 Validity and Expiration of Sign Permits for Projects; Inspections.**

1303.01 Purpose.

The purpose of this Article 1303 is to establish rules and regulations for Projects, including the procedure for obtaining certain permits and approvals.

1303.02 Project Permit Required; Standards and Guidelines.

(a) Project Permit must be obtained before any Project may proceed. Any Person before proceeding with a Project shall obtain a Project Permit therefor. To be valid, each Project Permit shall be signed by the Proper Authority and the issuance thereof shall be based:

- (1) on the enforcement of the Zoning Ordinance; or
- (2) on the order, decision or decree of a decision-making body or court with specific jurisdiction over the subject matter.

(b) Project Permits. Every permit issued by a decision-making body or official of the Town under this Zoning Ordinance shall be generally known as a Project Permit. Thus, a Project Permit is a general term used to identify all specific types of permits issued by a decision-making body or official of the Town under the Zoning Ordinance. Therefore, where this Zoning Ordinance makes reference to the term "Project Permit" in its singular form, more than one of the specific types of permits referenced in Section 1303.03 of this Article may be encompassed by such reference.

Example – Assume a Project consists of activities for which a Zoning Compliance Permit and a Sign Permit must be obtained. When Section 1303.02(a) of this Article, which states that "any person before proceeding with a Project, shall obtain a Project Permit therefor", is applied to such circumstance, the term "Project Permit" shall be construed to mean that the applicant shall obtain a Zoning Compliance Permit and a Sign Permit before proceeding with such Project.

(c) Standards and Guidelines. All Projects shall adhere to and comply with the Standards and Guidelines set forth in this Zoning Ordinance.

(d) E-911 Coordination. If a Project encompasses the establishment of a new physical

1 address or the alteration of any existing physical address, no Project Permit shall be
2 issued without confirmation, in writing, that the applicant has requested an E-911 address
3 from the Jefferson County Addressing Office.

4
5 **1303.03 Types of Project Permits; Determination of Proper Authority.**

6 (a) Purpose. The purpose of this Section 1303.03 is:

- 7
8 (1) to identify which specific types of Project Permits an applicant is required to
9 obtain before proceeding with a certain Project; and
10 (2) to determine which decision-making body or official of the Town is deemed
11 the Proper Authority for issuing each specific type of Project Permit and
12 reviewing the application therefor.

13
14 (b) Sign Permit. If a Project includes erecting, constructing, reconstructing, altering or
15 relocating any Sign, a Sign Permit shall be obtained from the Proper Authority before
16 proceeding with such Project. The Ordinance Compliance Officer shall be deemed the
17 Proper Authority for issuing a Sign Permit and reviewing the application therefor except
18 in cases where a proposed Sign:

- 19
20 (1) does not satisfy the minimum standards of this Zoning Ordinance, and the
21 applicant is seeking a Variance under Article 1326 of this Zoning Ordinance;
22 (2) is not sufficiently similar to a Sign explicitly listed as a permissible Sign
23 under this Zoning Ordinance;
24 (3) is part of an application for a Conditional Use Permit, or is part of a condition
25 imposed on an applicant pursuant to a Conditional Use Permit, unless the
26 Board of Zoning Appeals expressly declares otherwise; or
27 (4) is an Off-Premises Sign requiring a Conditional Use Permit under Section
28 1316.04(a)(9) of Article 1316 of this Zoning Ordinance.

29
30 (c) Zoning Compliance Permit. If a Project includes implementing any Permitted Use or
31 changing a Nonconforming Use to a Permitted Use, or if a Project includes the
32 construction, reconstruction, alteration or enlargement of any Exterior Architectural
33 Features of a Structure as seen from the public view and such construction,
34 reconstruction, alteration or enlargement does not require the applicant to obtain a
35 Conditional Use Permit or Variance, a Zoning Compliance Permit shall be obtained from
36 the Proper Authority before proceeding with such Project. However, a Zoning Compliance
37 Permit shall not be required for a proposed Repair of any Structure that replicates existing
38 Exterior Architectural Features and uses identical materials, but if the scope of a proposed
39 Repair encompasses more than 15% of a Structure, a concept plan shall be submitted to
40 the Proper Authority for review to ensure that a Zoning Compliance Permit is not required.

- 41
42 (1) Proper Authority. The Ordinance Compliance Officer shall be deemed the
43 Proper Authority for issuing a Zoning Compliance Permit and reviewing the
44 application therefor except in cases where a proposed Project requiring a
45 Zoning Compliance Permit:
46

- 1 (A) does not satisfy the minimum standards of this Zoning Ordinance, and
2 the applicant is seeking a Variance under Article 1326;
- 3 (B) concerns a proposed Use that is not sufficiently similar to a Use
4 explicitly listed as a Permitted Use under this Zoning Ordinance;
- 5 (C) concerns a proposed Use that is listed as a Conditional Use under this
6 Zoning Ordinance; or
- 7 (D) concerns any proposed Exterior Architectural Feature that is not
8 sufficiently similar to an Exterior Architectural Feature explicitly listed
9 as permissible under this Zoning Ordinance.

10
11 (d) Conditional Use Permit. If a Project encompasses a Conditional Use that is set forth
12 in this Zoning Ordinance, a Conditional Use Permit shall be obtained from the Board of
13 Zoning Appeals in accordance with Article 1324 of this Zoning Ordinance before
14 proceeding with such Project. The Board of Zoning Appeals shall be deemed the Proper
15 Authority for issuing a Conditional Use Permit and reviewing the application therefor.

16
17 (e) In any case where the Ordinance Compliance Officer is not deemed the Proper
18 Authority for the purpose of (i) issuing a Sign Permit and reviewing the application therefor
19 or (ii) issuing a Zoning Compliance Permit and reviewing the application therefor, the
20 Board of Zoning Appeals shall be deemed the Proper Authority.

21
22 (f) Variance. If a proposed Project for which an applicant is seeking to obtain a Project
23 Permit does not satisfy the minimum standards of this Zoning Ordinance, the applicant
24 must request a Variance from the Board of Zoning Appeals in accordance with Article
25 1326 of this Zoning Ordinance, and the applicant shall not proceed with such Project
26 unless and until the Board of Zoning Appeals approves the requested Variance and
27 issues the related Project Permit.

28
29 **1303.04 Site Plan Review**

30 (a) Purpose. The purpose of Site Plan Review is to prescribe a review procedure for
31 Projects by which consistency with the 2007 Harpers Ferry Comprehensive Plan, as
32 amended by Town Council from time to time, can be achieved.

33
34 (b) Site Plan Review shall be required for all Projects in which the Board of Zoning
35 Appeals is deemed the Proper Authority under Section 1303.03 of this Article. If a Project
36 that encompasses more than one Project Permit is subject to Site Plan Review and the
37 applicant has been permitted to submit only one Project Permit application, such Project
38 shall only be subject to one (1) Site Plan Review. In all other cases, the Board of Zoning
39 Appeals shall conduct a Site Plan Review for each Project Permit in which the Board of
40 Zoning Appeals is deemed the Proper Authority under Section 1303.03 this Article.

41
42 (c) Contents of Site Plan. If a Project is subject to Site Plan Review, the applicant for
43 such Project shall submit a Site Plan to the Boarding of Zoning Appeals at the same time
44 the corresponding Project Permit application is submitted. A Site Plan shall include, at a
45 minimum, a scaled drawing of the Site or, if practical, photographs of the Site, either of
46 which shall include, if applicable, the following:

- 1
- 2 (1) Lot Lines and Easements;
- 3 (2) Roof plan of any Structures;
- 4 (3) Location of existing and proposed Structures and permanent signs;
- 5 (4) Location of existing trees six inches or greater diameter at breast height,
- 6 indicating which trees are proposed to be removed;
- 7 (5) Location of Off-Street Parking and any Loading Spaces;
- 8 (6) Location and dimensions of Street and Right-of-Way dedications;
- 9 (7) Location of points of entry and exits for vehicles and pedestrians and
- 10 internal vehicle circulation patterns upon the property;
- 11 (8) Location of any Fences and Retaining Walls, including an indication of their
- 12 height and material of construction;
- 13 (9) Location of exterior lighting devices; and
- 14 (10) Locations of all paved and Impervious Surfaces and Landscaped Areas.
- 15

16 (d) Depending on the size and scope of the Project, the Board of Zoning Appeals may
17 also require any or all of the following:

- 18
- 19 (1) A grading plan, prepared by a registered Engineer licensed to practice in
20 the State of West Virginia, for grading intended to support a Structure
21 grading that will divert a Drainage course, showing:
 - 22 (A) Existing and proposed contours on the Site in increments of two feet;
 - 23 (B) Proposed storm water Drainage and Erosion control measures; and
 - 24 (C) All trees greater than six inches in diameter at 4.5 feet above average
25 ground level at the base of the Tree.
- 26 (2) A Historic Resources Plan.
- 27 (3) A construction plan for any Project where the total value exceeds \$100,000.
- 28 (4) A preliminary Landscaping Plan showing the main features of intended
29 Landscaping.
- 30 (5) A scale model of the Project or computer generated 3D views of the Project
31 from designated viewpoints may be required of larger Projects, as
32 determined by the Board of Zoning Appeals.
- 33 (6) A Performance Bond when there is substantial apparent risk to publicly
34 owned infrastructure.
- 35 (7) A lighting plan when substantial outdoor luminaires exist or are to be added.
36 A lighting plan shall include the following elements:
 - 37 (A) A key legend to the proposed lighting that provides the following
38 information:
 - 39 (i) Type and number of luminaire equipment (fixtures), including
40 the "cut off characteristics", indicating manufacturer and
41 model number(s).
 - 42 (ii) Lamp source type (bulb type, i.e. high pressure sodium),
43 lumen output, and wattage.
 - 44 (iii) Mounting height with distance noted to the nearest property
45 line for each luminaire.

- 1 (iv) Types of timing devices used to control the hours set for
2 illumination, as well as the proposed hours when each fixture
3 will be operated.
4 (v) Total lumens for each fixture, and total square footage of
5 areas to be illuminated.
6 (vi) Lighting manufacturer-supplied specifications ("cut sheets")
7 that include photographs of the fixtures, indicating the certified
8 "cut off characteristics" of the fixture.
9 (B) Foot-candle distribution, plotting the light levels in foot-candles on the
10 ground, at the designated mounting heights for the proposed fixtures.
11 Maximum luminance levels should be expressed in foot-candle
12 measurements on a grid of the Site showing foot-candle readings in
13 every five or ten-foot square. The grid shall include light contributions
14 from all sources (i.e. pole mounted, wall mounted, Sign, and Street
15 lights.) and shall show foot-candle renderings five feet beyond the
16 property lines.
17 (C) If requested by the Board of Zoning Appeals, an environmental impact
18 statement regarding the impact of the exterior lighting proposed on
19 flora, fauna, and the night sky.
20 (8) Other information which is pertinent and which may, by general policy, be
21 required by all applicants.
22

23 (d) Site Plan Review Procedure. Notwithstanding any provision of this Zoning Ordinance
24 to the contrary and if practical and reasonable under the circumstances, Site Plan Review
25 shall be conducted concurrently with the review of any Project Permit application.
26

27 (e) Findings required. Before granting approval of a Site Plan, the Board of Zoning
28 Appeals shall find that the proposed Site Plan:
29

- 30 (1) Meets the intent and specific standards and criteria prescribed in this Zoning
31 Ordinance; and
32 (2) Is consistent with the Comprehensive Plan.
33

34 **1303.05 Scope of Projects.**

35 (a) Scope of Projects. A Project shall be limited to and only take place upon one Site.
36 However, the property on which an Off-Premise Sign is located shall be considered part
37 of the Site of the Project if the following conditions are met:
38

- 39 (1) an applicant is applying for a Project Permit to erect, alter, reconstruct or
40 relocate an Off-Premises Sign;
41 (2) such applicant is also applying for a Project Permit for any other purpose
42 except an Off-Premise Sign; and
43 (3) such applicant has been permitted to submit one Project Permit application
44 to obtain both Project Permits.
45

46 (b) Projects taking place on more than one Lot. In addition to the provisions under Section

1 1316.04(a)(9), Article 1316 of this Zoning Ordinance concerning Off-Premises Signs,
2 there are circumstances under which the Site of a Project is limited to one Lot, and there
3 are other circumstances under which the Site of a Project includes more than one Lot.

4
5 (1) Site of a Project is limited to one Lot. For a Single Family Dwelling, Duplex
6 Dwelling and any single-occupancy Structure, the Site shall be limited to the
7 subdivided Lot on which such Single Family Dwelling, Duplex or single-
8 occupancy Structure is or will be located.

9
10 (2) Site of a Project may include more than one Lot. For multi-Family Dwellings
11 and multiple-occupancy Structures, the Site shall be all land that is or will
12 be occupied by such Multi-Family Dwellings or multiple-occupancy
13 Structures as well as all adjoining property under the same ownership. For
14 vacant property, the Site shall be all of the Adjoining vacant property under
15 the same ownership. However, if explicitly stated in a Project Permit
16 application, adjoining property under the same ownership may be excluded
17 from a Site so long as any and all activities conducted on such adjoining
18 property do not and will not violate any provision of this Zoning Ordinance.

19
20 **1303.06 Procedure; Project Permit Application; Fees.**

21 (a) Submission of application and supporting documents. Each person desiring a Project
22 Permit shall submit an application therefor together with any documents, exhibits, reports,
23 studies or other items required by the Proper Authority or desired by such person. An
24 application for a Project Permit shall be submitted in writing along with four additional
25 copies and signed by the owner of record of the property or his designee. For Projects of
26 a smaller scale, some requirements for supporting documents may be waived by the
27 Proper Authority so long as any such waivers are permitted by West Virginia law and
28 acknowledged in writing.

29
30 (b) Project requiring multiple Project Permits. If a Project requires an applicant to obtain
31 more than one Project Permit, a separate Project Permit application for each such Project
32 Permit shall be filed with and submitted to the Proper Authority. However, if practical,
33 appropriate and otherwise permissible under this Zoning Ordinance, the Proper Authority
34 may permit an applicant to submit one Project Permit application for more than one
35 Project Permit.

36
37 (c) Review of application and issuance of Project Permit by Proper Authority. A Project
38 Permit shall be issued by the Proper Authority, and the application for such Project Permit
39 shall be reviewed by the Proper Authority. The specific type of Project Permit for which a
40 Project Permit application is submitted shall determine which decision-making body or
41 official of the Town has the authority to issue such specific type of Project Permit and
42 review the application therefor. When a decision-making body or official of the Town has
43 the authority to issue a Project Permit and review the application therefor, such decision-
44 making body or official shall be deemed the Proper Authority for purposes related only to
45 the issuance of such Project Permit and review of the application therefor. Where
46 reference is made to the Proper Authority in any provision of this Zoning Ordinance, the

1 meaning given to any such reference shall be determined in accordance with Section
2 1303.03 of this Article.

3
4 (d) Complete application required. No application for a Project Permit shall be approved
5 unless it is complete; including all required supporting documents or, in lieu thereof, a
6 duly executed waiver from the Proper Authority waiving the requirements for any such
7 supporting documents. If a Project requires Site Plan Review under Section 1303.04 of
8 this Article, no application for a Project Permit shall be complete until the applicant shall
9 have provided at least five copies of the documents required by Site Plan Review.

10
11 (e) Payment of application fee. At the time a Project Permit application is submitted, the
12 applicant shall pay a non-refundable application fee to the Clerk of the Town, which will
13 provide for the cost of review, administration, and management of the application process.
14 No Project Permit application shall be considered complete until the application fee
15 therefor and other required deposits are paid in full to the Clerk of the Town. The
16 applicable fee schedule shall be established by resolution of the Town Council, and no
17 part of any application fee paid pursuant to this Zoning Ordinance shall be returnable to
18 the applicant unless specifically provided for in the fee schedule approved by Town
19 Council. However, government agencies shall be exempt from the application fee
20 imposed by this Zoning Ordinance.

21
22 (f) Approval required before amending terms or conditions of Project Permit. It shall be a
23 violation of this Zoning Ordinance for any person to modify or alter any terms or conditions
24 of a Project Permit application after its submission unless such person obtains prior
25 approval from the Proper Authority for such modification or alteration. It shall also be a
26 violation of this Zoning Ordinance for any person to whom a Project Permit has been
27 issued to take any action, or fail to take any action, that is contrary to any term or condition
28 on which such Project Permit was issued.

29
30 (g) Resubmittal of Project Permit application. No Project Permit application shall be
31 accepted if the corresponding Project has been previously denied within the preceding
32 12 months.

33
34 **1303.07 Validity and Expiration of Sign Permits for Projects; Inspections.**

35 (a) Project Permit Sign Permit.

36
37 (1) Validity period. Once issued, a Sign Permit shall expire 24 months after the
38 date of issuance unless authorized implementation of the Project for which
39 the Sign Permit was issued has commenced. If authorized implementation
40 of such Project has commenced within 24 months, a Sign Permit shall
41 expire 36 months after the date of issuance. Once a Project for which a Sign
42 Permit was issued is complete, a Sign Permit shall remain valid so long as
43 the terms and conditions on which such Sign Permit was issued remain
44 satisfied.

45 (2) Extension. If authorized implementation of a Project for which a Sign Permit
46 has not commenced, within 24 months of the issuance of such Sign Permit

1 and upon written request, the Proper Authority may extend the validity
2 period for such Sign Permit for an additional 12 months. Only one extension
3 may be granted.

4 (3) Inspection. For every Project in which a Sign Permit is issued, the Proper
5 Authority shall conduct an initial inspection and upon completion of such
6 Project, a final inspection.

7 (4) Upon such final inspection, if the Proper Authority determines that the
8 subject Sign complies with all terms and conditions of such Sign Permit, the
9 applicant therefor shall keep and maintain such Sign Permit at the location
10 to which it relates and shall, upon request, make such Sign Permit available
11 for inspection by the Proper Authority or another official or decision making
12 body of the Town.

13
14 (b) Zoning Compliance Permit.

15
16 (1) Validity period. Once issued, a Zoning Compliance Permit shall expire 24
17 months after the date of issuance unless authorized implementation of the
18 Project for which the Zoning Compliance Permit was issued has
19 commenced. If authorized implementation of such Project has commenced
20 within 24 months, a Zoning Compliance Permit shall expire 36 months after
21 the date of issuance. Once a Project for which a Zoning Compliance Permit
22 was issued is complete, such Zoning Compliance Permit shall remain valid
23 so long as the terms and conditions, if any, on which such Zoning
24 Compliance Permit was issued remain satisfied.

25 (2) Extension. If authorized implementation of a Project for which a Zoning
26 Compliance Permit has not commenced, within 24 months of the issuance
27 of such Zoning Compliance Permit and upon written request, the Proper
28 Authority may extend the validity period for such Zoning Compliance Permit
29 for an additional 12 months. Only one extension may be granted.

30 (3) Inspection. For every Project in which a Zoning Compliance Permit is
31 issued, the Proper Authority shall conduct an initial inspection and upon
32 completion of such Project, a final inspection.

33 (4) Upon such final inspection, if the Proper Authority determines that the
34 subject Project complies with all terms and conditions of such Zoning
35 Compliance Permit, the applicant therefor shall keep and maintain such
36 Zoning Compliance Permit at the location to which it relates and shall, upon
37 request, make such Zoning Compliance Permit available for inspection by
38 the Proper Authority or another official or decision making body of the Town.

39
40 (c) Conditional Use Permit.

41
42 (1) Validity period. Once issued, a Conditional Use Permit shall expire 24
43 months after the date of issuance unless authorized implementation of the
44 Project for which the Conditional Use Permit was issued has commenced.
45 If authorized implementation of such Project has commenced within 24
46 months, such Conditional Use Permit shall expire 36 months after the date

1 of issuance. Once a Project for which a Conditional Use Permit was issued
2 is complete, such Conditional Use Permit shall remain valid so long as the
3 terms and conditions including all future terms and conditions as set forth
4 by the Board of Zoning Appeals, on which such Conditional Use Permit was
5 issued, are and remain satisfied.

6 (2) Extension. If authorized implementation of a Project for which a Conditional
7 Use Permit has not commenced, within 24 months of the issuance of such
8 Conditional Use Permit and upon written request, the Board of Zoning
9 Appeals may extend the validity period for such Conditional Use Permit for
10 an additional 12 months. Only one extension may be granted.

11 (3) Inspection. For every Project in which a Conditional Use Permit is issued,
12 the Board of Zoning Appeals shall conduct an initial inspection and upon
13 completion of such Project, a final inspection.

14 (4) Upon such final inspection, if the Board of Zoning Appeals determines the
15 subject Project complies with all terms and conditions of such Conditional
16 Use Permit, the applicant therefor shall keep and maintain such Conditional
17 Use Permit at the location to which it relates and shall, upon request, make
18 such Conditional Use Permit available for inspection by the Board of Zoning
19 Appeals or another official or decision making body of the Town.

20
21 (d) Authority to Conduct Inspections. The Proper Authority shall have the authority to
22 conduct the inspections referenced in this Section 1303.07 of this Article. The Proper
23 Authority, or a designee of the Proper Authority, may conduct additional inspections of
24 Projects for which a Project Permit application has been submitted or for which a Project
25 Permit has been issued. The Proper Authority shall have a reasonable basis for
26 conducting any such additional inspections and shall conduct such additional inspections
27 in a reasonable manner. In circumstances when the Board of Zoning Appeals is deemed
28 the Proper Authority, the Board of Zoning Appeals may nominate an individual member
29 of the Board of Zoning Appeals to conduct any inspections that are required or permitted
30 under this Zoning Ordinance.

ARTICLE 1304
Site Development Standards

1304.01 Purpose.

1304.02 Setbacks, Footprint, Coverage, Structure Orientation and Height Limit.

1304.03 Off-Street parking.

1304.01 Purpose.

This purpose of this Article is to establish general design and other standards for Projects.

1304.02 Setbacks, Footprint, Coverage, Structure Orientation and Height Limit.

(a) Setbacks. Structures, and other improvements shall be placed or erected as follows:

(1) The Front Setback from an abutting street, as measured from the property line abutting the street, shall be:

(A) consistent with the setbacks of a majority of other Structures on the block and across the street;

(B) on a transitional property between distinctive areas of Setback, such as between Structures that are historic structures and those which are not, the Setback should defer to that of the Historic Structures; and

(C) in all other cases, the minimum Front Setback shall be 15 feet.

(2) Rear Setback, as measured from the property line, shall be:

(A) consistent with the setbacks of a majority of other Structures on the block and across the street;

(B) on a transitional property between distinctive areas of Setback, such as between Structures that are Historic Structures and those which are not, Rear Setback should defer to that of the Historic Structures; and

(C) in all other cases, the minimum Rear Setback shall be 15 feet.

(3) Side Setback as measured from the property line, shall be:

(A) consistent with the setbacks of a majority of other Structures on the block and across the street;

(B) on a transitional property between distinctive areas of Setback, such as between Structures that are historic structures and those Structures which are not, Side Setback should defer to that of the historic structure; and

(C) in all other cases, the Side Setback shall be a minimum of ten feet.

(b) Applicability of Standards for Setbacks. The term Setback and the variations thereof (Side Setback, Rear Setback, etc.), as defined by this Zoning Ordinance, are generally used in the context of and apply to Lot Lines. However, as recognized in Section

1 1303.05(b) of Article 1303, certain Projects may encompass more than one Lot.
2 Therefore, notwithstanding any provision of this Zoning Ordinance to the contrary and if
3 practical and reasonable under the circumstances, the Proper Authority may apply the
4 standards for Setbacks, as set forth in Section 1304.02(a) of this Article, to the Site, or a
5 portion of the Site, of a Project that encompasses more than one Lot.
6

7 (c) Structure Footprint and coverage.

8 (1) Provided that the total Coverage of all Structures is within the Buildable
9 Area and does not exceed 50% of the size of such Lot or is determined to
10 be consistent with coverage of a majority of Historic Structures on the block
11 and across the street, the maximum Structure Footprint for a Single Family
12 Dwelling, shall be as follows:
13

14 (A) A main Dwelling Unit may not have a Structure Footprint exceeding
15 1,600 square feet plus up to 500 square feet for a single Story
16 attached Private Garage.

17 (B) The total Structure Footprint of all Accessory Structures may not
18 exceed 250 square feet unless these include a detached single Story
19 Private Garage where in such cases a total of 550 square feet is
20 allowed.

21 (C) The total coverage of all parking and Driveway areas on the Lot may
22 not exceed 1000 square feet.
23

24 (2) Greater coverage within the Buildable Area may be permitted for a Single
25 Family Dwelling if the Lot is determined to be consistent with coverage of a
26 majority of structures on the block and across the street so long as the total
27 coverage does not exceed 60% of the Lot coverage within the Buildable
28 Area and the following criteria are satisfied:
29

30 (A) A main Dwelling Unit does not have a Structure Footprint exceeding
31 2,300 square feet, which is in addition to the permitted 500 square feet
32 for a single Story attached Private Garage.

33 (B) The total Structure Footprint of all Accessory Structures does not
34 exceed 350 square feet unless these include a detached single Story
35 Private Garage where in such case a total of 750 square feet is
36 allowed.

37 (C) The total coverage of all parking and Driveway areas on the Lot does
38 not exceed 1400 square feet.
39

40 (d) Height limit. Except as otherwise specified in this Zoning Ordinance, the maximum
41 Structure Height shall be 35 feet or within 10 percent of the average Structure
42 Height of Abutting Structures that are clearly visible from the street or public way
43 directly in front of the Structure in question.
44

45 **1304.03 Off-Street parking.**

- 1 Single Family Dwelling Units, where feasible and in accordance with historic preservation
- 2 goals, shall provide two Off-Street Parking spaces located on the Buildable Area of the
- 3 Lot.
- 4

1 **ARTICLE 1310**
2 **Establishment of Zoning Districts and Zoning Map**

3
4 **1310.01 Zoning Districts.**

5 **1310.02 Zoning Map.**
6

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9 **1310.01 Zoning Districts.**

10 (a) For the purpose of carrying out the provisions of this Zoning Ordinance, the
11 incorporated area of the Town is hereby divided into two underlying (or base) zoning
12 classifications as set forth in this Zoning Ordinance, and as marked on the official Zoning
13 Map certified by Town Council and consistent with the Comprehensive Plan. The Rights-
14 of-Way, both used and unused, are publicly owned and carry the least intensive zoning
15 of the Abutting properties along each Block.
16

17 (b) Historical significance of Town. In 1979, the Town was nominated and then
18 designated as a historic district on the National Register of Historic Places as the Harpers
19 Ferry Historic District. This designation recognizes those resources that contribute to the
20 cultural, social, economic, political and architectural history of the Town. In harmony with
21 the Comprehensive Plan, the Town recognizes that the preservation of historic character
22 and architecture is primary to the safeguarding of the cultural, social, religious and
23 economic heritage of the Town. The Town recognizes the importance of preserving
24 historic structures and land throughout the Town in order to:
25

- 26 (1) protect the heritage of the historic sites by preserving the cultural, social,
27 economic, political, architectural or archaeological history;
28 (2) foster urban and civic beauty;
29 (3) promote the preservation and the use of historic district for the education,
30 welfare, and pleasure of the residents of the Town and the region; and
31 (4) strengthen the local economy.
32

33 (c) To accomplish the foregoing, the Town has established Standards and Guidelines,
34 which are Appendix A of this Part 13 of the Codified Ordinances.
35

36 **1310.02 Zoning Map.**

37 The zoning classification for all lots is established on a map entitled "The Zoning Map of
38 the Corporation of Harpers Ferry" certified by Town Council, dated and on display at the
39 office of the Town. The Zoning Map, including all explanatory matter thereon, is made a
40 part of this Zoning Ordinance.
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ARTICLE 1311
Residential District; Uses

1311.01 Designation of Residential District.

1311.02 Uses allowed.

CROSS REFERENCES

Zoning districts generally—see WV Code 8A-7-1 *et seq.*

1311.01 Designation of Residential District.

Residential zoning classification (R) is intended to provide neighborhoods and living accommodations to residents, businesses and visitors in a manner consistent with the goals of the Comprehensive Plan. All of the incorporated areas of the Town not otherwise designated are hereby declared to be included in a Residential District.

1311.02 Uses allowed.

(a) Permitted uses.

- (1) One Single Family Dwelling Unit per Lot but excluding tents, cabins and House Trailers or mobile homes, except that not more than one trailer or mobile home may be temporarily used as a residence on a Lot while a dwelling is being constructed thereon, but such excluded use shall not be continued for more than one year.
- (2) Bed and Breakfast Inn, provided it is owner-occupied, with (a) no more than four bedrooms for use by guests of which one bedroom may be in an Accessory Structure that includes toilet and bathing facilities, (b) no more than eight guests at one time, and (c) no more than three guests to a bedroom also provided that at least one Off-Street Parking space is available for every two occupied bedrooms
- (3) Any Home-Based Business, provided it is: (a) maintained by the resident and having no more than one non-resident employee or daily worker on Site, (b) does not require any extension or external modification of the dwelling or Accessory Structure(s), and (c) does not involve any outward evidence of such Use other than one Sign that otherwise complies with Article 1316 Signs.

(b) Conditional Uses. The following Conditional Uses may be authorized upon application to the Board of Zoning Appeals for a Conditional Use Permit as long as any proposed Conditional Use will not be detrimental to other Permitted Uses in the Residential District or to Abutting Lots in the Business District:

- (1) Religious Institution, Education Facility, public Library, public Museum, Community Center, Public Services (Police or Fire) Facility, Association Hall, publicly-owned Park, or publicly-owned playground provided that such use is consistent with the residential nature of the neighborhood.

- 1 (2) Residential Care Facility, provided it is owner-occupied, with (a) no more
2 than four bedrooms for use by residents of which one bedroom may be in
3 an Accessory Structure that includes toilet and bathing facilities; (b) no more
4 than eight residents at one time; and (c) no more than two resident guests
5 to a bedroom, provided that such Use is consistent with the residential
6 nature of the neighborhood and follows the constraints of a Home-Based
7 Business and provided that at least one Off-Street Parking space is
8 available for every two occupied bedrooms.
- 9 (3) Hostel, provided it is owner-occupied, with (a) no more than four bedrooms
10 for use by guests of which one bedroom may be in an Accessory Structure
11 that includes toilet and bathing facilities; (b) no more than eight guests at
12 one time; and (c) no more than three guests to a bedroom, provided that at
13 least one Off-Street Parking space is available for every two occupied
14 bedrooms. Temporary outdoor facilities (e.g., tents, trailers, portable
15 structures, etc.) are not allowed.
- 16 (4) Short-Term Rental of an entire Single Family Dwelling Unit with (a) no more
17 than four bedrooms for use by guests, and (b) no more than eight overnight
18 guests at one time provided that one Off-Street Parking Space is available
19 for each occupied bedroom. Rentals of a Single Family Dwelling Unit shall
20 not exceed four individual tenancies per calendar month.
21

ARTICLE 1312
Business District; Uses

1312.01 Designation of Business District.

1312.02 Uses allowed.

1312.01 Designation of Business District.

Business zoning classification (B) is intended to provide goods and services to residents, businesses and visitors in a manner consistent with the goals of the Comprehensive Plan. All Lots designated as Business zoning on the official Zoning Map certified by Town Council are hereby declared to be included in a Business District.

1312.02 Uses allowed.

(a) Permitted uses.

- (1) Any Residential District Permitted Use.
- (2) Restaurant, provided any such Structure shall be at least 25 feet from any Abutting Lot in a Residential District.
- (3) Retail Sales Establishment, Personal Services Establishment, or other Professional Services Establishment.
- (4) Dwelling Unit or Units over a permitted Business Establishment.

(b) Conditional Uses. The following Conditional Uses may be authorized upon application to the Board of Zoning Appeals for a Conditional Use Permit as long as any proposed Conditional Use will not be detrimental to other Permitted Uses in the Business District or to Abutting Lots in the Residential District:

- (1) Any Residential District Conditional Use.
- (2) Apartment house, Hotel, Office Structure, Association Hall, Parking Lot (Commercial, Restricted Accessory, and Public) or Public Garage.
- (3) Small Recreational Facilities provided any such facility shall be at least 25 feet from any Abutting Lot in a Residential District.

ARTICLE 1316
Signs

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- 1316.01 Purpose and Objectives.**
- 1316.02 Exempt Signs**
- 1316.03 Prohibited Permanent and Temporary Signs**
- 1316.04 General Provisions.**
- 1316.05 Regulations of signs.**
- 1316.06 Permit procedures for Temporary Business Signs.**
- 1316.07 Permit procedures for permanent signs.**
- 1316.08 Special Purpose Signs.**
- 1316.09 Religious Organization Bulletin Boards.**
- 1316.10 Real Estate Signs.**
- 1316.11 Building Construction Signs.**
- 1316.12 Maintenance.**

1316.01 Purpose and Objectives.

(a) The purpose of this Article is to protect the public health, safety, convenience, comfort, and general welfare within the Town. This Article regulates the time, place, design, and manner in which signs are displayed to achieve the following objectives:

- (1) permit non-commercial signs on any private property within the Town, subject to the provisions of this Zoning Ordinance;
- (2) permit signs without unconstitutionally regulating the information displayed by each Sign;
- (3) permit signs where language and symbols do not violate constitutionally guaranteed freedom of speech;
- (4) permit signs that do not constitute a hazard to the public safety;
- (5) permit commercial signs appropriate to the historic character, the use and zoning classification of each property within the Town;
- (6) create a more aesthetically pleasing Town environment; and
- (7) eliminate visual clutter within the Town.

1316.02 Exempt Signs.

(a) The following signs shall be exempt on the basis that they implement a compelling government interest in protecting the health and safety of persons and property in the Town, and shall not require Sign Permits:

- (1) Temporary or permanent signs erected and maintained by the Town, County, State or Federal Government for traffic direction, official meetings or for direction to or identification of a Government Facility or event.
- (2) Directional Ground Signs not to exceed two signs per Driveway indicating vehicular entrance and exit locations with size not to exceed three square feet per Sign face and four feet in height.

- 1 (3) Flag, emblems and insignias of national, state or local political subdivisions.
- 2 (4) Name and/or address descriptions mounted to the front wall of a Structure,
- 3 Fence, Porch, lamppost, or similar post in the front yard not to exceed two
- 4 square feet in Sign area.
- 5 (5) Any window Sign located inside or behind a window shall not be subject to
- 6 the provisions of this Article provided that the window Sign is located in a
- 7 Structure where a commercial or industrial Use is permitted as a Principal
- 8 Use, and provided that it is not more than 25% of any window area in a
- 9 single window unit.
- 10 (6) Flags which are considered to be home flags that are placed to show spirit,
- 11 pride, seasonal theme or activity.
- 12 (7) Real estate signs.
- 13 (8) Religious Bulletin Board
- 14 (9) Temporary political campaign signs less than four square feet and placed
- 15 on private property provided they are not posted more than 60 days before
- 16 the political event and are removed within 14 days following the event.
- 17 (10) Building Construction Signs in accordance with Section 1316.11 of this
- 18 Article.
- 19

20 **1316.03 Prohibited Permanent and Temporary Signs**

21 (a) All signs not expressly permitted or exempt under this Article are prohibited in the
22 Town. Such prohibited signs include but are not limited to:

- 23
- 24 (1) Abandoned Signs.
- 25 (2) Beacons and searchlights, except for emergency health or safety purposes.
- 26 (3) Billboards and other Off-Premise Signs, except as may be permitted by
- 27 Section 1316.04(a)(9) of this Article.
- 28 (4) Flashing Signs or intermittent lighting of signs, including time and
- 29 temperature and message center signs.
- 30 (5) Animated Signs.
- 31 (6) Pennants, streamers and similar devices.
- 32 (7) All helium, gas and air balloons or air dancers for promotional purposes.
- 33 (8) Roof Signs.
- 34 (9) Signs attached to any tree or utility pole and signs painted directly on rocks,
- 35 trees and other natural features.
- 36 (10) Any private signs, announcements, opinions, and notices placed on public
- 37 property.
- 38 (11) Any Sign, which constitutes a traffic hazard or a detriment to public safety
- 39 or may be confused with traffic control signal or device or the light of an
- 40 emergency or road equipment vehicle.
- 41 (12) Signs, which make use of words, symbols, phrases or characters in such a
- 42 manner as to interfere with, mislead or confuse traffic.
- 43 (13) Signs or parts thereof which are erected within or above a Public Street or
- 44 Right-of-Way.
- 45 (14) Spinning devices or strings of spinning devices.
- 46 (15) Electronic Message Board Signs.

- 1 (16) Window Signs, including approved Temporary Business Signs in any
2 district, which cover more than twenty-five percent (25%) of the total window
3 area on a single window unit.
4 (17) Signs with bright reflective paint, neon lights, photoluminescence, black
5 lights, color shifting lights, and any back lit or internally lit signs.
6 (18) Vinyl banners except as Special Purpose Signs (see Section 1316.08 of this
7 Article).
8

9 **1316.04 General Provisions.**

10 (a) All signs shall be designed, erected, altered, reconstructed, moved and maintained
11 in accordance with the provisions of this Article unless specifically modified by another
12 provision of this Article. A Sign Permit shall be required for the construction, erection,
13 relocation or alteration of any Sign, unless specifically exempted by this Article.
14

- 15 (1) No Sign shall be moved, replaced or altered except that the text of an
16 approved Business or Organizational Merchandise Sign may be changed
17 at the discretion of the owner to reflect the day's changes of menu, changes
18 in approved business information, or items on sale that day.
19 (2) Maintenance. Every sign, whether requiring a Sign Permit or not, shall be
20 maintained in safe, presentable and good structural condition at all times,
21 including replacement of defective parts and painting and cleaning of said
22 sign.
23 (3) Removal of Dangerous or Defective Signs. The Ordinance Compliance
24 Officer may immediately remove or cause to be removed any sign deemed
25 to be a danger, defective or hazardous to persons or property.
26 (4) Removal of Unlawful Signs in the Public Right of Way. The Proper Authority
27 may remove, or cause to be removed any unlawful sign in a public right-of-
28 way.
29 (5) Sign Location with Respect to Frontages. Sign area permitted by virtue of
30 premises having Lot Frontage or Structure Frontage shall be located only
31 along that Frontage which generates the permitted Sign area.
32 (6) Commercial Messages. All commercial information conveyed by any Sign
33 permitted under this Article must pertain to the premises on which the Sign
34 is located, except as specifically approved under Section 1316.04(a)(9) of
35 this Article.
36 (7) Sign Spacing Requirements. No projecting, ground, pole or Freestanding
37 Sign shall be located within twenty-five (25) feet of another projecting,
38 ground, pole or Freestanding Sign.
39 (8) Duration of Temporary Signs. Temporary signs as permitted by this Article
40 may be erected for a period not to exceed sixty (60) days, except as
41 otherwise dictated in this Article. Extensions to the sixty-day limitation may
42 be permitted by the Proper Authority upon application and demonstration of
43 reasonable justification by the agent or owner of the temporary sign.
44 (9) Exception to Off-Premises Sign Prohibitions. Upon application and
45 approval of a Conditional Use Permit by the Board of Zoning Appeals in
46 accordance with Article 1324 of this Zoning Ordinance, an Off-Premise

1 Sign(s) may be permitted for a specified period of limited duration and
2 subject to renewal or removal at the discretion of the Board of Zoning
3 Appeals.

4 (10) Signs illuminated with one small spotlight per side, shining upon the sides
5 of the Sign which have lettering, are permitted, except such illumination
6 shall not exceed 820 lumens per lighted side of the Sign. The spot lights
7 shall be positioned close enough to the Sign to focus the light on the center
8 of the Sign. The light shall be focused such that negligible light bypasses
9 the Sign and any escaping light is not obtrusive, or beamed so that the direct
10 light source impinges upon the eyes of pedestrians, drivers in vehicles on
11 the Street, or adjacent properties.

12 (11) Multiple Business Occupancy. In a Structure or grouping of Structures or
13 premises with multiple Business occupants, signage should be apportioned
14 on the basis of square footage of Structure space occupied or other suitable
15 methods of apportionment.

16
17 **1316.05 Regulation of signs.**

18 (a) All Business and organizational Identification, Information and Merchandise signs are
19 to consist of flat panels, made of natural materials (such as wood, metal, or stone).
20 Medium Density Fiberboard (MDF), Medium Density Overlay (MDO), High Density
21 Overlay (HD) and High Density Urethane are acceptable alternative materials.

22
23 (b) All Business and organizational Identification signs shall not exceed six square feet in
24 size. Their frame or support can be of wood or metal brackets or chains. They may be
25 lettered or decorated on one or both sides. Identification signs shall be located within and
26 upon the premises to which they pertain. One Identification Sign is permitted for each
27 Frontage containing a public entrance.

28
29 (c) All Business and organizational Information Signs shall not exceed three (3) square
30 feet. No more than two Information Signs are permitted per Establishment.

31
32 (d) All Business and organizational Merchandise Signs shall not exceed six (6) square
33 feet. No more than two Merchandise signs are permitted per Establishment.

34
35 (e) During only the hours the Business or organization is open, not more than two banners
36 or flags may be displayed upon the premises except that State flags may be flown at any
37 hours as allowed by state laws, and the national Flag may be flown in accordance with 4
38 USC, Chapter 1, sections 1 and 2, and Executive Order 10834 issued pursuant thereto.
39 Flags and Banner Signs may not exceed six (6) square feet total for all displayed.

40
41 (f) No Sign shall be hung so that its bottom edge is less than seven (7) feet above a
42 pedestrian throughway.

43
44 (g) The owner of any Business that is no longer operating as evidenced by the fact that it
45 no longer has a valid business license shall have not more than 30 days to remove all
46 signs.

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1316.06 Permit procedures for Temporary Business Signs.

(a) A new or short term business or organization may apply for a Sign Permit for more than one temporary sign on one Project Permit application if all information required by this Zoning Ordinance is included for each Sign requested so long as the Ordinance Compliance Officer is deemed the Proper Authority under Section 1303.03, Article 1303 of this Zoning Ordinance for purposes of issuing any such requested Sign Permits and reviewing the application therefor.

(b) The Proper Authority is granted authority to issue Sign Permits for temporary signs.

1316.07 Permit procedures for Permanent signs.

(a) In addition to any other requirements set forth in this Zoning Ordinance, an application for a Sign Permit must be accompanied by plans showing all dimensions, the shape, material, character, lettering style, colors, design, full text, and exact location proposed. If the Sign is not to be located flat against an exterior Structure wall, the application must include an Elevation drawing and the details as to material, shape and location of the standard, pole or bracket or other support to which the Sign will be attached. The size and location of all existing signs must be provided.

(b) Any Person may apply for more than one Sign Permit on one Project Permit application if:

- (1) all information required by this Zoning Ordinance is included for each Sign Permit requested;
- (2) the requested Sign Permits pertain to the same Project; and

(c) The Ordinance Compliance Officer is deemed the Proper Authority under Section 1303.03, Article 1303 of this Zoning Ordinance for purposes of issuing such requested Sign Permits and reviewing the application therefor.

1316.08 Special Purpose Signs.

(a) Special Purpose Signs do not require a Sign Permit.

(b) All Special Purpose Signs shall be removed by midnight of the day following the event for which the signs are displayed. If such signs are not removed within that time period the police are authorized to remove and confiscate the signs.

(c) The Ordinance Compliance Officer may review the appropriateness of any Special Purpose Sign displayed and remove Special Purpose Signs that are inconsistent with the standards of this Zoning Ordinance.

1316.09 Religious Organization Bulletin Boards.

(a) Permanently erected Religious Organization Bulletin Boards do not require a Sign Permit; however, any organization proposing to erect such a bulletin board should submit a simple plan or drawing of the proposed sign, with all proposed lettering, to the Ordinance Compliance Officer for approval prior to installation.

1
2 (b) There shall be no more than one bulletin board, not to exceed 16 square feet in size,
3 for each organization. The bulletin boards shall be of traditional design and constructed
4 of natural materials such as wood insofar as possible. Artificial material such as plastic or
5 plexiglass may be used in window-type cabinet structures, but glass is preferred.
6

7 **1316.10 Real Estate Signs.**

8 (a) A real estate agency or property owner may display one “for sale” or one “for rent”
9 Real Estate Sign of customary design not to exceed four square feet in size on the
10 property offered for sale or rent. All information on Real Estate signs shall be closely
11 related to the sale of the property upon which the Sign is posted. No general information
12 concerning a Real Estate firm, except for address, telephone number and website, and
13 no information advertising the sale of other, unrelated, property is permitted.
14

15 (b) No Sign Permit is required for a Real Estate Sign.
16

17 (c) In the case of an “Open House”, one Directional Sign may be displayed during daylight
18 hours of the open house. The Directional Sign may not be placed on a public Right-of-
19 Way without written permission of the Ordinance Compliance Officer.
20

21 (d) The Ordinance Compliance Officer may, with the assistance of the Police as required,
22 exercise the authority to remove any Real Estate Signs which are in violation of the
23 provisions of this Article. The confiscated Sign may be retrieved from the Town within
24 thirty days upon payment of fifty dollars (\$50.00). Confiscated signs not retrieved within
25 thirty days shall be disposed of by the Town.
26

27 **1316.11 Construction Signs.**

28 (a) Construction Signs do not require a Sign Permit.
29

30 (b) Construction Signs may list company, corporation, individual name or names,
31 communications information such as phone numbers and email addresses, and types of
32 work or expertise offered by the company or individual and may be placed only on private
33 property with permission of the property owner where and when work is taking place.
34 Construction Signs may not exceed four square feet in size, and are limited to one such
35 sign at each Site. Signs must be removed when work is completed.
36

37 (c) The Ordinance Compliance Officer may, with the assistance of the Police as required,
38 remove any Construction Signs which are in violation of the provisions of this Article. The
39 confiscated Sign may be retrieved from the Town within thirty days upon payment of fifty
40 dollars (\$50.00). Confiscated signs not retrieved within thirty days shall be disposed of by
41 the Town.
42

43 **1316.12 Maintenance.**

44 It shall be the responsibility of the owner or agent of all Signs displayed under the
45 provisions of this Article to properly maintain them. They shall be cleaned and repainted
46 at necessary intervals so that they remain legible and neat. The Ordinance Compliance

1 Officer may order maintenance as deemed appropriate. If an order to conduct
2 maintenance is not followed within thirty days of such an order coming into force it shall
3 be considered a violation of this Zoning Ordinance.
4

ARTICLE 1322
Nonconforming Provisions

1322.01 Purpose.

1322.02 Nonconformities.

1322.03 General Provisions.

1322.04 Mitigation of Nonconforming Uses, Signs and Structures.

1322.01 Purpose.

Many Nonconforming Uses, Signs and Structures that exist for a long period of time become an integral part of a neighborhood's character and function. It is possible that, with appropriate mitigation, a Nonconforming Use, Sign or Structure may be made conforming to meet an important purpose of the Zoning Ordinance to preserve the overall historical integrity of neighborhoods. The following establishes procedures for bringing a Nonconforming Use, Sign or Structure into conformance.

1322.02 Nonconformities.

(a) Types. The following are the three types of nonconformities within this Zoning Ordinance.

- (1) Nonconforming Uses. As defined.
- (2) Nonconforming Structures. As defined.
- (3) Nonconforming Signs. As defined.

1322.03 General Provisions.

(a) Change or conversion of Nonconforming Use, Structure or Sign. Except as set otherwise set forth below,

- (1) Use. A Nonconforming Use shall not be altered, enlarged or replaced with any other Nonconforming Use.
- (2) Structure. A Nonconforming Structure shall not be altered or enlarged.
- (3) Sign. A Nonconforming Sign shall not be altered, enlarged or replaced with another Nonconforming Sign.

(b) Abandonment or discontinuance of a Nonconforming Use.

- (1) Presumption of Abandonment. Abandonment will be presumed unless the owner of the property can show that a Nonconforming Use, Structure and Sign has not been Abandoned. For Nonconforming Uses that require a Business license and payment of Business and Occupation (B&O) or sales tax, the necessary proof of continued Use will be a valid license and a proper submission of an official Business income tax return for the period in question.

1 (2) Continuation. Nothing in this Zoning Ordinance shall prevent the
2 replacement of any nonconforming Structure damaged or destroyed by fire,
3 windstorm, snowstorm, rainstorm, Flood or other casualty damage beyond
4 the control of the owner, provided such replacement utilizes the original
5 Structure footprint (Gross Floor Area at ground level) or less, does not
6 increase the original Net Floor Area of the original Structure, does not
7 encroach on public property and otherwise complies with this Zoning
8 Ordinance. Such replacement shall commence within 18 months of the
9 damage or destruction.

10 (3) Except as otherwise set forth below, if a Use, Structure or Sign is
11 Abandoned, then any future Use, future alterations to such Structure or
12 future alteration of such Sign, must conform with the provisions of this
13 Zoning Ordinance.

14
15 (c) Alteration, Enlargement, or extension of a Nonconforming Use.

16
17 (1) Normal Maintenance of a Nonconforming Structure, or of a conforming
18 Structure containing a Nonconforming Use, including necessary repairs and
19 incidental alterations which do not extend the Nonconforming Use are
20 permitted.

21 (2) No structural alteration shall be made to any Structure containing a
22 Nonconforming Use, except in the following situations:

- 23 (A) The alteration is required by law;
- 24 (B) The alteration will result in eliminating the Nonconforming Use; or
- 25 (C) A Structure that is located in a Residential District and which contains
26 residential Nonconforming Uses may be altered to improve livability,
27 provided no structural alteration shall be made which would enlarge
28 the Structure or change its external appearance visible from a public
29 way.

30 (3) If a Structure is conforming but the property on which such Structure is
31 located contains a Nonconforming Use, such Structure shall not be altered
32 or enlarged in any manner that would enlarge such Nonconforming Use.

33
34 (d) Nonconforming Structure. Nonconforming Structures shall not be altered or expanded
35 in a manner that increases the degree of the nonconformity.

36
37 **1322.04 Mitigation of Nonconforming Uses, Signs and Structures.**

38 (a) Procedure. An owner of a Nonconforming Use, Sign or Structure may apply to the
39 Board of Zoning Appeals for a Conditional Use Permit for mitigation in accordance with
40 Article 1324 of this Zoning Ordinance.

41
42 (b) Criteria for removing nonconforming status of a Nonconforming Use or Structure. In
43 addition to the criteria for approval of a Conditional Use Permit in Article 1324, the Board
44 of Zoning Appeals must first find that the applicant meets the following requirements in
45 order to issue a Conditional Use Permit:
46

- 1 (1) the Nonconforming Use, Sign or Structure has minimal nonconformities and
2 is integrated into the neighborhood's function; or
3 (2) the Nonconforming Use or Structure has regular patronage by
4 neighborhood residents or employment of neighborhood residents in
5 performing the Nonconforming Use.
6

7 (c) Findings. Upon finding that a Nonconforming Use, Sign or Structure satisfies the
8 requirements of Section 1322.04(b) of this Article, the Board of Zoning Appeals may
9 attach mitigating conditions or other such conditions, as it deems necessary, to protect
10 the health, safety, and general welfare of the public and surrounding property owners,
11 including, but not limited to:

- 12
13 (1) Screening of equipment and material not normally found in a residential
14 neighborhood; or
15 (2) Elimination of nuisances such as noise, light, waste materials, congested
16 On-Street Parking, or similar conflicts through appropriate management
17 practices.
18

19 (d) Effect. Upon granting a Conditional Use Permit, in accordance with Article 1324 of
20 this Zoning Ordinance, and upon compliance with any conditions placed on it, the Board
21 of Zoning Appeals shall have a notation placed on the Zoning Map stating that the
22 property has a Conditional Use Permit and the application case number and date thereof.
23 Granting a Conditional Use Permit makes the Nonconforming Use, Sign or Structure
24 conform to the specifics of the conditional approval, thereby eliminating the
25 nonconformity.
26

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3 **ARTICLE 1324**
4 **Conditional Use Permit Approval Procedure**

- 5 **1324.01 General.**
6 **1324.02 Application.**
7 **1324.03 Required findings.**
8 **1324.04 Conditions of approval.**
9

10 **CROSS REFERENCES**

11 Conditional Use—see WV Code 8A-1-2(d)
12 Powers and duties of board of zoning appeals—see WV Code 8A-8-9
13
14
15

16 **1324.01 General.**

17 The Board of Zoning Appeals may issue Conditional Use Permits only after a public
18 hearing is conducted by the Board of Zoning Appeals. The public hearing is intended to
19 determine whether the Conditional Use complies with all applicable provisions of the
20 Zoning Ordinance and its proposed location and design are such that it meets the needs
21 of the community for such Conditional Use without creating significant adverse conditions
22 or a nuisance in the neighborhood.
23

24 **1324.02 Application.**

25 (a) To apply for a Conditional Use Permit, a Project Permit application shall be submitted
26 to the Board of Zoning Appeals. Notice and timelines regarding a Conditional Use Permit
27 shall conform to the following:
28

- 29 (1) Within ten days of receipt of an application for a Conditional Use Permit, the
30 Board of Zoning Appeals shall set a time for a public hearing of the
31 application and give notice. A public hearing must be held within 45 days of
32 receipt of the application unless the Board of Zoning Appeals requires
33 expert advice in which case the limit is 75 days.
- 34 (2) At least 15 days before the date set for a public hearing on an application,
35 the Board of Zoning Appeals shall publish a notice of the date, time and
36 place of the public hearing on the application as a Class I legal
37 advertisement in compliance with the provisions of Article Three, Chapter
38 59 of West Virginia State Code and written notice shall be given to the
39 interested parties as determined by the Board of Zoning Appeals.
- 40 (3) The applicant shall be required to pay for the cost of public notice and
41 written notice to interested parties in accordance with a fee schedule
42 approved by the Town Council. The costs of expert studies shall be borne
43 by the applicant.
- 44 (4) At a public hearing, any interested party may appear in person, by agent or
45 by an attorney licensed to practice in this state.

- 1 (5) Every decision by the Board of Zoning Appeals must be in writing and state
2 findings of fact and conclusions of law on which the Board of Zoning
3 Appeals based its decision.
- 4 (6) The written decision by the Board of Zoning Appeals shall be rendered
5 within 30 days after the date of the last public hearing pertaining to such
6 decision. If the Board of Zoning Appeals fails to render a written decision
7 within 30 days, then any party may pursue additional legal remedies to
8 obtain a decision, including, but not limited to, seeking a *writ of mandamus*.
9

10 **1324.03 Required findings.**

11 (a) The Board of Zoning Appeals shall grant a Conditional Use Permit only if, from the
12 facts established within the application, at the public hearing and by investigation, the
13 following conditions have been found:
14

- 15 (1) That the location, size, design and operating characteristics of the proposed
16 Conditional Use will be compatible with the Abutting uses and Abutting
17 Structures, with consideration given to harmony in scale, bulk, lot coverage,
18 and Structure density; to the availability of civic facilities and utilities, to the
19 harmful effect, if any, upon desirable neighborhood character; to the
20 generation of traffic and the capacity and physical character of surrounding
21 streets; and to any other relevant impact of the proposed Conditional Use;
22 and
- 23 (2) The impact and location of the proposed Conditional Use are consistent
24 with the Comprehensive Plan.
25

26 **1324.04 Conditions of approval.**

27 The Board of Zoning Appeals may establish any reasonable conditions of approval as
28 determined appropriate or necessary to remain consistent with the Comprehensive Plan
29 and with this Zoning Ordinance.
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ARTICLE 1326
Variance Approval Procedure

- 4 **1326.01 Purpose.**
5 **1326.02 Variance.**
6 **1326.03 Application.**
7 **1326.04 Required findings.**

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CROSS REFERENCES
Variances—see WV Code 8A-7-11

14 **1326.01 Purpose.**

15 The purpose of this Article is to provide relief from the strict and literal requirements of
16 this Zoning Ordinance under certain circumstances when a property owner is facing a
17 unique or unusual hardship created by the physical characteristics of the property owner's
18 land.

19
20 **1326.02 Variance.**

21 (a) If a proposed Project for which an applicant is seeking to obtain a Project Permit does
22 not satisfy the minimum standards of this Zoning Ordinance, the applicant must request
23 a Variance from the Board of Zoning Appeals in accordance with this Article, and the
24 applicant shall not proceed with such Project unless and until the Board of Zoning Appeals
25 approves the requested Variance and issues the related Project Permit. No Variance shall
26 be approved if the approval of such Variance would:

- 27
28 (1) permit a Use that is otherwise prohibited in the applicable Zoning District;
29 or
30 (2) change the zoning classification of any property.

31
32 **1326.03 Application.**

33 (a) To request a Variance, a Project Permit application shall be filed with the Board of
34 Zoning Appeals, which shall state the grounds on which the Variance is requested and
35 include a statement describing the specific provision or provisions of this Zoning
36 Ordinance from which the Variance is sought.

- 37
38 (1) If a request for a Variance directly relates to and is being sought solely in
39 conjunction with a Sign Permit or Zoning Compliance Permit, the applicant
40 may file one Project Permit application with the Board of Zoning Appeals.
41 (2) If a request for a Variance directly relates to and is being sought in
42 conjunction with a Conditional Use Permit, a separate Project Permit
43 application for each shall be filed with and submitted to the Board of Zoning
44 Appeals, but if practical, appropriate and otherwise permissible under this
45 Zoning Ordinance, the Board of Zoning Appeals may permit the applicant
46 to submit one Project Permit application for both.
47

1 (b) Notice and hearing timelines for a Variance determination shall conform to the
2 following.

- 3
- 4 (1) Within ten days of receipt of an application for a Variance, the Board of
5 Zoning Appeals shall set a time for a public hearing of the application and
6 give notice. A public hearing must be held within 45 days of receipt of the
7 application unless the Board of Zoning Appeals requires expert advice in
8 which case the limit is 75 days.
- 9 (2) At least 15 days before the date set for a public hearing on an application,
10 the Board of Zoning Appeals shall publish a notice of the date, time and
11 place of the public hearing on the application as a Class I legal
12 advertisement in compliance with the provisions of Article Three, Chapter
13 59 of West Virginia State Code and written notice shall be given to the
14 interested parties as determined by the Board of Zoning Appeals.
- 15 (3) The applicant shall be required to pay for the cost of public notice and
16 written notice to interested parties in accordance with a fee schedule
17 approved by the Town Council. The costs of expert studies may be borne
18 by the applicant.
- 19 (4) At a public hearing, any interested party may appear in person, by agent or
20 by an attorney licensed to practice in this state.
- 21 (5) Every decision by the Board of Zoning Appeals must be in writing and state
22 findings of fact and conclusions of law on which the Board of Zoning
23 Appeals based its decision.
- 24 (6) The written decision by the Board of Zoning Appeals shall be rendered
25 within 30 days after the date of the last public hearing pertaining to such
26 decision. If the Board of Zoning Appeals fails to render a written decision
27 within 30 days, then any party may pursue additional legal remedies to
28 obtain a decision, including, but not limited to, seeking a writ of mandamus.

29
30 **1326.04 Required findings.**

31 (a) The Board of Zoning Appeals may approve a request for a Variance, in whole or in
32 part, conditionally or unconditionally, and may only consider the facts presented with the
33 Project Permit application or at the public hearing. The Board of Zoning Appeals shall
34 have the authority to impose specific conditions as part of its approval in order to protect
35 the public health, and for reasons of safety, comfort and convenience (e.g., to ensure
36 compatibility with surrounding properties). A request for a Variance may be denied and
37 an approved Variance may be revoked by the Board of Zoning Appeals:

- 38
- 39 (1) if the applicant fails to comply with a reasonable request of the Board of
40 Zoning Appeals for furnishing specific information related to the requested
41 Variance; or
- 42 (2) for failing to satisfy any conditions that are or were contingent upon the
43 Board of Zoning Appeals approving the requested Variance.

44
45 (b)The Board of Zoning Appeals shall approve a requested Variance if the following
46 criteria are satisfied:

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- (1) the approval of the Variance will not adversely affect the public health, safety or welfare, or the rights of the abutting property owners or residents;
- (2) the request for the Variance arises from special conditions or attributes which pertain to the property and were not created by the person requesting the Variance;
- (3) the approval of the Variance will eliminate an unnecessary hardship and permit a reasonable Use of the land; and
- (4) the approval of the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

ARTICLE 1328
Appeals

1328.01 Appeal to Board of Zoning Appeals.

1328.02 Notice and hearing of appeal.

1328.03 Stays; exception.

1328.04 Appeal to the Circuit Court of Jefferson County

1328.01 Appeal to Board of Zoning Appeals.

(a) An appeal from any order, requirement, decision or determination made by a decision-making body or official of the Town, under this Zoning Ordinance, shall be filed with the Board of Zoning Appeals.

(b) The appeal shall:

- (1) Specify the grounds of the appeal;
- (2) Be filed within 30 days of the written order, requirement, decision or determination made by a decision-making body or official of the Town; and
- (3) Be on a form prescribed by the Board of Zoning Appeals.

(c) Upon request of the Board of Zoning Appeals, the decision-making body or official shall transmit all documents, plans and papers constituting the record of the action from which the appeal originated.

1328.02 Notice and hearing of appeal.

(a) Notice and hearing timelines for an appeal shall conform to the following:

- (1) Within ten days of receipt of the appeal, the Board of Zoning Appeals shall set a time for a hearing of the appeal and give notice. A hearing must be held within 45 days of receipt of the appeal.
- (2) At least 15 days before the date set for the hearing on the appeal, the Board of Zoning Appeals shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of Article Three, Chapter 59 of West Virginia Code and written notice shall be given to the interested parties.
- (3) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.
- (4) At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.
- (5) Every decision by the Board of Zoning Appeals must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the Board of Zoning Appeals fails to provide findings of fact and conclusions of law adequate for its decision by the circuit court and, as a result of the failure, the Circuit Court of Jefferson County returns an

1 appealed matter to the Board of Zoning Appeals and dismisses jurisdiction
2 over an applicant's appeal without deciding the matter, whether the Circuit
3 Court of Jefferson County returns the matter with or without restrictions, the
4 Board of Zoning Appeals shall pay any additional costs for court filing fees,
5 service of process and reasonable attorneys' fees required to permit the
6 person appealing the Board of Zoning Appeals' decision to return the matter
7 to the Circuit Court of Jefferson County for completion of the appeal.

- 8 (6) The written decision by the Board of Zoning Appeals shall be rendered
9 within 30 days after the hearing. If the Board of Zoning Appeals fails to
10 render a written decision within 30 days after the hearing, then any party
11 may pursue additional legal remedies to obtain a decision, including, but not
12 limited to, seeking a *writ of mandamus*.

13
14 **1328.03 Stays; exception.**

15 (a) When an appeal has been filed with the Board of Zoning Appeals, all proceedings and
16 work on the premises in question shall be stayed, except as provided below.

17
18 (b) A stay may not be had:

- 19
20 (1) If the decision-making body or official from where the appeal was taken
21 certifies in writing to the Board of Zoning Appeals that a stay would cause
22 imminent peril to life or property;
- 23 (2) Upon further proceedings, including, but not limited to, submissions to and
24 reviews by any official or any decision-making body; or
- 25 (3) Upon engineering or architectural work that does not disturb the real estate
26 beyond what is necessary to complete engineering, survey work or other
27 tests.

28
29 (c) If the written certification is filed pursuant to the above, then proceedings or work on
30 the Site shall not be stayed.

31
32 (d) Nothing in this Article prevents a party from obtaining a restraining order.

33
34 **1328.04 Appeal to Circuit Court of Jefferson County.**

35
36 (a) Every decision or order of the Planning Commission or Board of Zoning Appeals is
37 subject to review by certiorari.

38
39 (b) Within thirty days after a decision or order by the Planning Commission or Board of
40 Zoning Appeals, any aggrieved person may present to the Circuit Court of Jefferson
41 County, a duly verified petition for a writ of certiorari setting forth:

- 42
43 (1) That the decision or order by the Planning Commission or Board of Zoning
44 Appeals is illegal in whole or in part; and
- 45 (2) Specify the grounds of the alleged illegality.

1 (c) Upon filing a petition for a writ of certiorari with the Clerk of the Circuit Court of
2 Jefferson County, the petitioner shall cause a notice to be issued and served by the sheriff
3 of Jefferson County upon:
4

- 5 (1) The adverse party, as shown by the record of the appeal in the office of the
6 Planning Commission or Board of Zoning Appeals; and
- 7 (2) The chairperson or secretary of the Planning Commission or Board of
8 Zoning Appeals, as applicable.
9

10 (d) The adverse party is any property owner appearing at the hearing before the Planning
11 Commission or Board of Zoning Appeals in opposition to the petitioner.
12

13 (e) If the record shows a written document containing the names of more than three
14 property owners opposing the request of the petitioner, then the petitioner is required to
15 cause notice to be issued and served upon the three property owners whose names first
16 appear upon the written document. Notice to the other parties named in the written
17 document is not required.
18

19 (f) The notice shall:
20

- 21 (1) State that a petition for a writ of certiorari has been filed in the Circuit Court
22 of Jefferson County asking for a review of the decision or order of the
23 Planning Commission or Board of Zoning Appeals;
- 24 (2) Designate the affected premises; and
- 25 (3) Specify the date of the decision or order that is the subject of the petition for
26 a writ of certiorari.
27

28 (g) Service of the notice by the sheriff on the chairperson or secretary of the Planning
29 Commission or Board of Zoning Appeals shall constitute notice there to the Planning
30 Commission or Board of Zoning Appeals. Service of the notice by the sheriff to the Town
31 and to any official or board of the Town charged with the enforcement of this Zoning
32 Ordinance shall constitute notice to the Town. No further summons or notice with
33 reference to the filing of such petition shall be necessary.
34

35 (h) As an alternative to the requirements for notice prescribed in the preceding
36 subsections of Section 1328.04 of this Article, notice is sufficient upon a showing that the
37 chairperson or secretary of the Planning Commission or Board of Zoning Appeals and all
38 adjacent landowners to the affected premises have received personal service of process
39 of the notice containing information as required by this Article. As to all other interested
40 parties, notice shall be sufficient if notice containing information as required in Section
41 1328.04(f) of this Article is published as a Class III-0 legal advertisement in Jefferson
42 County.
43

44 (i) Within 20 days after a petition for a writ of certiorari is presented, the Planning
45 Commission, or Board of Zoning Appeals must show the Circuit Court of Jefferson County
46 cause why a writ of certiorari should not be issued.

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2 (j) If the Planning Commission or Board of Zoning Appeals fails to show the court or judge
3 that a writ should not be issued, then the Circuit Court of Jefferson County may allow a
4 writ of certiorari directed to the Planning Commission or Board of Zoning Appeals.
5
6 (k) The writ shall prescribe the time in which a return shall be made to it. This time shall
7 be not less than ten days from the date of issuance of the writ and may be extended by
8 the Circuit Court of Jefferson County.
9
10 (l) The allowance of the writ of certiorari shall not stay proceedings or work on the
11 premises affected by the decision or order to be brought up for review.
12
13 (m) The Circuit Court of Jefferson County may, upon application and on notice to all
14 parties to the decision or order and on due cause shown, grant such relief as the
15 circumstances of the case may require, including an order staying the proceedings or
16 work until final determination of the case by the Circuit Court of Jefferson County.
17
18 (n) The staying order may be issued by the Circuit Court of Jefferson County without
19 requiring the petitioner to enter into a written undertaking with the adverse party or parties
20 affected thereby for the payment of damages by reason of such staying order.
21
22 (o) The return to the writ of certiorari by the Planning Commission or Board of Zoning
23 Appeals must concisely set forth the pertinent facts and data and present material to show
24 the grounds of the decision or order appealed. The return must be verified by the
25 secretary of the Planning Commission or Board of Zoning Appeals.
26
27 (p) The Planning Commission or Board of Zoning Appeals does not have to return the
28 original papers acted upon by it. It shall be sufficient to return certified copies of all or
29 such portion of the papers as may be called for by the writ.
30
31 (q) The Circuit Court of Jefferson County may consider and determine the sufficiency of
32 the allegations of illegality contained in the petition without further pleadings and may
33 make a determination and render a judgment with reference to the legality of the decision
34 or order of the Planning Commission or Board of Zoning Appeals on the facts set out in
35 the petition and return to the writ of certiorari.
36
37 (r) If it appears to the Circuit Court of Jefferson County that testimony is necessary for the
38 proper disposition of the matter, the Circuit Court of Jefferson County may take evidence
39 to supplement the evidence and facts disclosed by the petition and return to the writ of
40 certiorari, but no such review shall be by trial de novo.
41
42 (s) In passing upon the legality of the decision or order of the Planning Commission or
43 Board of Zoning Appeals, the Circuit Court of Jefferson County may reverse, affirm or
44 modify, in whole or in part, the decision or order.

**ARTICLE 1329
Amendments**

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- 1329.01 Purpose.**
- 1329.02 Initiation.**
- 1329.03 Application; fee.**
- 1329.04 Amendment without hearing.**
- 1329.05 Zoning Map Amendments.**
- 1329.06 Hearing and report.**
- 1329.07 Enactment.**

1329.01 Purpose.

The purpose of this Article 1329 is to prescribe the procedure by which amendments to the text of the Zoning Ordinance and to the Zoning Map may be made.

1329.02 Initiation.

- (a) Any amendment to the Zoning Ordinance may be initiated by the Town Council.
- (b) The Planning Commission or the owners of 50% or more of the real property in the area to which the petition relates, may petition to amend the Zoning Ordinance. The petition must be signed and presented to the Planning Commission if the petition is by 50% or more of owners of real property in the area to which the petition relates. The petition must be signed and presented to the Clerk of the Town if the petition is by the Planning Commission. Petitions by land owners shall be submitted on an approved application form.
- (c) An amendment to the Zoning Map may be sought by an owner of property within the Town by submitting the proposed amendment on an approved application form to the Planning Commission.

1329.03 Application; fee.

The Town Council must adopt by resolution an approved application form and set the fee schedule for Zoning Map amendments by the owner of a property within the Town.

1329.04 Amendment without hearing.

- (a) The Town Council may amend the Zoning Ordinance without satisfying the requirements of Section 1329.06 of this Article as long as the proposed amendment is not a Zoning Map amendment or an amendment that changes the allowed dwelling unit density of any Lot.
- (b) Before the Town Council may adopt such an amendment, the Planning Commission shall make a recommendation to the Town Council on:
 - (1) Whether the proposed text Amendment is consistent with the Comprehensive Plan; and

1 (2) Whether the proposed text Amendment is consistent with the intent and
2 purpose of the Zoning Ordinance.
3

4 (c) If such proposed amendment is not consistent with the preceding, the Town Council,
5 before adopting such proposed amendment, must find, with the advice of the Planning
6 Commission, that there have been major changes of an economic, physical or social
7 nature within the area involved which were not anticipated when the Comprehensive Plan
8 was adopted and that those changes have substantially altered the basic characteristics
9 of the area.
10

11 **1329.05 Zoning Map Amendments.**

12 (a) If an application submitted by a land owner is for a reclassification of property to a
13 different zoning district classification on the Zoning Map, the applicant shall address all
14 the following in its application unless the Planning Commission determines otherwise.
15 The Planning Commission shall give reasonable consideration and make a
16 recommendation to Town Council on the following matters, as appropriate:
17

- 18 (1) Whether the proposed zoning district classification is consistent with the
19 Comprehensive Plan.
- 20 (2) Whether there are any changed or changing conditions in the area affected
21 that make the proposed rezoning appropriate.
- 22 (3) Whether the range and intensity of uses in the proposed zoning district
23 classification are compatible with the uses permitted on other property in
24 the immediate vicinity.
- 25 (4) Whether adequate utility, sewer and water, transportation, and other
26 facilities exist or can be provided to serve the uses that would be permitted
27 on the property if it were rezoned.
- 28 (5) The impact of the proposed rezoning on storm water Runoff.
- 29 (6) The effect of uses allowed by the proposed rezoning on the structural
30 capacity of the soil.
- 31 (7) The effect of uses allowed by the proposed rezoning on the volume of
32 vehicular (including construction) traffic and on traffic and pedestrian safety.
- 33 (8) Whether a reasonably viable economic use of the subject property exists
34 under the current zoning.
- 35 (9) The effect of the proposed rezoning on the environment or natural features,
36 wildlife habitat, vegetation, water quality and air quality.
- 37 (10) Whether the proposed rezoning encourages economic development
38 activities in areas designated by the Comprehensive Plan and provides
39 desirable employment and enlarges the tax base.
- 40 (11) Whether the proposed rezoning considers the current and future
41 requirements of the community as to the use of the land.
- 42 (12) Whether the proposed rezoning encourages the conservation of existing
43 properties, particularly Contributing Resources, and their values.
- 44 (13) Whether the proposed rezoning considers trends of growth or changes,
45 employment, and economic factors, the need for housing, probable future
46 economic and population growth of the Town.

1 (14) The effect of the rezoning on natural, scenic, archaeological, or historic
2 features of significant importance.
3

4 **1329.06 Hearing and report.**

5 (a) Public hearing. If the Planning Commission does not initiate a proposed amendment,
6 no later than 60 days after an application for a Zoning Map amendment or an amendment
7 that changes the allowed dwelling unit density of any Lot, has been accepted as complete,
8 the Planning Commission shall hold a duly noticed public hearing on the proposed
9 amendment. At least 30 days prior to the public hearing, the Planning Commission shall
10 publish notice of the date, time and place of the public hearing in a local newspaper of
11 general circulation in the area affected by the proposed amendment, as a Class I legal
12 advertisement, in accordance with the provisions of article three, chapter fifty-nine of the
13 West Virginia Code.
14

15 (b) Report to Council. If the Planning Commission did not initiate the proposed
16 amendment, no later than 60 days after its last public hearing meeting on the amendment,
17 the Planning Commission shall report to the Town Council its recommendation with
18 respect to the proposed amendment, which shall be based on the criteria set forth in
19 Section 1329.04(b) and Section 1329.04(c) of this Article. Failure to meet this deadline,
20 or such shorter period as the Town Council may direct, shall be deemed a
21 recommendation of approval by the Planning Commission. Upon receipt of such
22 recommendation, the Town Council, within 195 days of when the application was
23 submitted to the Planning Commission, shall decide whether to adopt or deny the
24 proposed amendment.
25

26 (c) Amendment initiated by Planning Commission. If the Planning Commission does
27 initiate a proposed amendment, no later than 60 days after an application for a Zoning
28 Map amendment or an amendment that changes the allowed dwelling unit density of any
29 Lot has been accepted as complete, the Town Council shall hold a duly noticed public
30 hearing on the proposed amendment. At least 30 days prior to the public hearing, the
31 Town Council shall publish notice of the date, time and place of the public hearing in a
32 local newspaper of general circulation in the area affected by the proposed amendment,
33 as a Class I legal advertisement, in accordance with the provisions of article three, chapter
34 fifty-nine of the West Virginia Code. Within 195 days of when the application was
35 submitted, the Town Council shall decide whether to adopt or deny the proposed
36 amendment.
37

38 **1329.07 Enactment.**

39 (a) Enactment. An enacted amendment to the Zoning Map shall be dated and certified
40 by the Town Council and filed with the Town Recorder, the Planning Commission and
41 Clerk of the Jefferson County Commission. An enacted amendment to the text of the
42 Zoning Ordinance shall be filed with the Clerk of the Jefferson County Commission.

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ARTICLE 1330
Enforcement

1330.01 General Provisions.

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1330.01 General Provisions.

(a) No commission, board, agency, officer, or employee of the Town shall issue, grant, or approve any permit, license, certificate, or other authorization for any Project that would not be in compliance with the provisions of this Zoning Ordinance.

(b) In administering the provisions of this Zoning Ordinance, the standard rule of rounding numbers to the nearest whole shall apply. When the unit of measurement results in a fraction less than one-half, the fraction shall be disregarded; fractions of one-half or more shall require the addition of one unit of measure.

1330.02 Responsibility for Administration and Enforcement.

(a) It shall be the duty of the Board of Zoning Appeals to:

- (1) Perform reviews of Project Permit applications as necessary to determine compliance with the provisions of this Zoning Ordinance.
- (2) Maintain permanent and current records of all Project Permit applications and related records required by this Zoning Ordinance and of the hearings and actions thereon.
- (3) Conduct investigations as necessary to determine compliance with this Zoning Ordinance.
- (4) Participate in the abatement of violations of this Zoning Ordinance and aid in the prosecution of such violations.

(b) It shall be the duty of the Ordinance Compliance Officer to:

- (1) Maintain in current status the official Zoning Map.
- (2) Provide information regarding this Zoning Ordinance upon request by citizens and public agencies.

1330.03 Enforcement agent.

The Ordinance Compliance Officer shall be delegated the responsibility to enforce this Zoning Ordinance. The Ordinance Compliance Officer shall cause to have promptly investigated every written complaint reasonably alleging any violation thereof to determine if a violation has occurred.

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1330.04 Public nuisance declared.

Any Structure erected, raised or converted, or land or premises used in violation of any provision this Zoning Ordinance is a public nuisance and the owner of the Structure, land or premises shall be liable for maintaining a public nuisance.

1330.05 Injunction; costs.

(a) The Planning Commission, the Board of Zoning Appeals or the Ordinance Compliance Officer may seek an injunction in the Circuit Court of the Jefferson County where the affected property is located to (i) restrain a person or unit of government from violating the provisions of this Zoning Ordinance; or (ii) direct a person or unit of government to remove a Structure erected in violation of the provisions of this Zoning Ordinance.

(b) If the Planning Commission, the Board of Zoning Appeals or the Ordinance Compliance Officer is successful in any such suit, the respondent shall bear the costs of the action.

1330.06 Penalty; fines.

Any person who violates any provision of this Zoning Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$50.00 or more than \$500.00 per day. Each day during which any violation continues shall constitute a separate offense.

1330.07 Notice.

When it appears that a violation of this Zoning Ordinance has occurred, the Town shall notify the responsible person by means of a written Violation Notice. The Violation Notice shall specify the nature of the violation and shall request that the violation be terminated within 30 days from the date appearing on the Notice. Failure to terminate the violation within the requested time shall be cause for the Ordinance Compliance Officer to:

- (a) Seek an injunction in the Circuit Court of Jefferson County to restrain the responsible person from continuing the violation cited or seek an injunction requiring the removal of structures or land uses from the property involved, or
- (b) Pursue a warrant for the arrest of the person responsible for the violation and seek a conviction in the Circuit Court of Jefferson County.