

CODIFIED ORDINANCES OF HARPERS FERRY
PART THIRTEEN – PLANNING AND ZONING CODE

Art. 1301. Authority and Severability.

Art. 1309. Purpose and Board of Zoning Appeals.

Art. 1315. Districts Established; Regulations.

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ARTICLE 1301
Authority

- 1301.01 Authority
- 1301.02 Severability

CROSS REFERENCES
Zoning authority generally – see W. Va. Code 8A-7-1 *et seq.*

1301.01 AUTHORITY.

This zoning ordinance regulating land use within the corporate boundaries of the Corporation of Harpers Ferry is established under the authority granted pursuant to W. Va. Code Chapter 8A, Land Use Planning.

This zoning ordinance is intended to comply with provisions 8A-7-1 *et seq.*, and is hereby adopted and incorporated into this zoning ordinance by reference.

1301.02 SEVERABILITY.

The provisions of Part 13 Planning and Zoning Code are severable, and if any of its provisions are held unlawful by any court of competent jurisdiction, the decision of such court shall not impair or affect any other provision.

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ARTICLE 1309

Purpose and Board of Zoning Appeals

1309.01	Purpose	1309.03	Procedures, Powers, and Duties
1309.02	Board of Zoning Appeals	1309.04	Appeal Process

CROSS REFERENCES

Generally W. Va. Code § 8A-7-1 *et seq.*
Board of Zoning Appeals W. Va. Code § 8A-8-1 *et seq.*
Powers and Duties W. Va. Code § 8A-8-9
Meetings W. Va. Code § 8A-8-5
Quorum W. Va. Code § 8A-8-6
Appeal Process W. Va. Code § 8A-8-10 *et seq.*

1309.01 PURPOSE.

- (a) For the purpose of promoting public health, safety, morals, comfort and general welfare; to conserve and protect property and property values; to secure the most appropriate use of land; and to preserve the historical heritage and significance of such properties, the Town Council of Harpers Ferry finds it necessary and advisable to adopt this Part Thirteen – Planning and Zoning Code.
- (b) The Town Council continues to seek the same objectives as that which motivated the passage of the Principal Ordinance in 1973, the reenactments in 1977 and 1980 known by the title Growth and Preservation Ordinance, and adoption of the Harpers Ferry Comprehensive Plan in 2007. Specifically, given the very small size of the Municipality and the desire of the residents to continue in the quiet and peaceable enjoyment of their homes, insofar as possible, despite the large number of visitors annually; the balance between commercial and residential areas of the Municipality should be continued, consistent with Part 13 of the Ordinances and the Comprehensive Plan.

1309.02 BOARD OF ZONING APPEALS.

- (a) For the purpose of hearing and determining appeals and reviewing any order, requirements, decisions or determination made by an administrative official or board charged with the enforcement of any Ordinance or Rule and Regulation regarding the use of land or premises within the incorporated areas of the Municipality, a Board of Zoning Appeals is hereby created, consisting of five members appointed by the Town

Council.

- (b) The members of the Board shall be residents of the municipality for at least three years preceding his or her appointment; cannot be a member of the municipal planning commission; and cannot hold any other elective or appointive office in the municipal government. Members of the Board and alternates shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- (c) Upon creation of the Board, its members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second and third years, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be a term of three years.
- (d) If a vacancy occurs, by resignation or otherwise among the members of the board, the Town Council shall appoint a member for the unexpired term.

1309.03 PROCEDURES, POWERS, AND DUTIES.

The procedures, powers, duties, and all other provisions related to the operation of the board of zoning appeals are governed by W. Va. Code § 8A-8-1 et seq., which provisions are expressly adopted and incorporated herein by reference.

In every aspect of its duties the board shall be governed by and act in accordance with W. Va. Code § 8A-8-1 et seq.

1309.04 APPEAL PROCESS TO BOARD OF ZONING APPEALS.

The appeal process and requirements for appeal are set forth in W.Va. Code § 8A-8-10, § 8A-8-11, and § 8A-8-12, which provisions are expressly adopted and incorporated herein by reference.

CODIFIED ORDINANCES OF HARPERS FERRY

PART THIRTEEN – PLANNING AND ZONING CODE

ARTICLE 1315

Districts Established; Regulations

1315.01	Districts	1315.04	Non-conforming Uses
1315.02	Agricultural	1315.05	Variance and Conditional
1315.03	Classification of Uses		Use Permit

CROSS REFERENCES

Zoning districts generally – see W. Va. Code 8A-7-1 *et seq.*

Variances W. Va. Code 8A-7-11

Conditional Use W. Va. Code 8A-1-2(d)

1315.01 DISTRICTS.

For the purpose of carrying out the provisions of this Part Thirteen – Planning and Zoning Code, the incorporated area of the Municipality is hereby divided into zoning districts as set forth herein as delineated on the certified zoning map consistent with the governing body's comprehensive plan. The districts are as follows:

- (a) Business and Commercial. Such districts shall be designated as "B" Districts and shall consist of:
- (1) The historic business and commercial area of the Town lying generally along Potomac Street, High Street, Washington Street, and Marmion Way designated as "B-1" and composed of the following properties only:
 - A. Those lots situated within the Wager Reservation numbered 18 through 34 lying between Swaynes Alley (Hog Alley), Potomac Street, Wager Alley and High Street;
 - B. Those lots numbered AA-1 through AA-4 situated in Block AA and lying between Potomac Street and Washington Street to the West of Wager Alley;
 - C. One-half of each of those lots situated within the Wager Reservation numbered 35 through 39, being that portion of the lots facing High Street or Marmion Way; and
 - D. That portion of the triangular parcel of land bounded by Washington Street, Wager Alley and Church Street lying immediately to the west of Wager Alley and facing on Washington Street known as the Riley House.
 - (2) Additional commercial areas of the Town comprised of structures built for and

presently used for commercial purposes and designated as follows:

- A. "B-2" consisting of lot 1 in Block CC;
- B. "B-3" consisting of that portion of the parcel of land known as Seminary Lot which comprises the building and grounds of the Hilltop Hotel, and one-half of Lot 10 in Block BB and one-half of Lot 1 in Block E, being that portion of such lots facing on Ridge Street;
- C. "B-4" consisting of Lot 2 and 3 in Block J plus that portion of land acquired from the Lutheran Church in Block J by the Morgan Lodge; and
- D. "B-5" consisting of Lots 5 and 6 and Block J.

(b) Residential.

- (1) All of the incorporated areas of the Municipality not otherwise designated are hereby declared to be included in the Residential District and designated as "R" District.
- (2) The districts as shown on the large, color-coded John Kusner map of Harpers Ferry, West Virginia dated March 1, 1976, which map is based upon the S. Howell Brown Map approved November 16, 1869, and hereby established in same manner as they have been described above: and 1976 John Kusner Map is made a part of this article replacing the prior map attached to and made part of the Principal Ordinance in 1973.
- (3) Except as hereinafter provided, no building, structure, or land within the incorporated area of the Municipality shall hereafter be used, and no building or part thereof or other structure shall be used, leased, rented, erected, constructed moved, altered or maintained except in conformity within the regulations prescribed for the district in which such building, structure, or land is located. (Ord. 77-1. Passed 8-8-77.)

1315.02 AGRICULTURAL.

Land in any district may be used for agricultural purposes. No zoning certificates shall be required for the construction of buildings incident to the use for agricultural purposes of the land on which such buildings shall be located, but such buildings shall conform to the regulations contained in the Zoning Ordinance. For the purpose of this Zoning Ordinance, "agriculture" includes agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry; provided, however, that the animals and poultry husbandry must be carried out within an enclosed area of not less than two acres.

1315.03 CLASSIFICATION OF USES.

For the purpose of this Ordinance, a lot shall be defined as a parcel of land which has been designated as a lot on the aforementioned John Kusner Map of Harpers Ferry, West Virginia dated March 1, 1976. An 'accessory structure' shall be defined as a structure of no more than one story, which is no larger than necessary to accommodate two cars, and shall not be used to lodge people. The use of this land, buildings and premises for the purpose of this Zoning Ordinance shall be regulated as follows:

- (a) "R" District (Residential). The following uses and no others shall be deemed Class "R"

uses and permitted in all "R" Districts:

(1) Permitted uses.

- A. Not more than one structure comprising one single family dwelling unit shall be developed per lot, plus one permitted accessory structure, thereto but excluding tents, cabins and 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; provided, that if an existing lot is later subdivided after the effective date of this section, this section shall continue to apply to such lot without regard to such subdivisions and for purposes of applying this section, the permitted use allowed herein shall apply to the entire existing lot as though such lot was never subdivided.
- B. Bed and Breakfasts and Tourist Homes maintained by any person in his dwelling used by him as his private residence and accepting not more than four guests at any one time; (Amended and passed 5-10-99)
- C. Any office or customary home occupation providing a service can be maintained by any person in a dwelling used by him as his private residence providing such use does not involve any extension or modification of the dwelling and providing such use does not involve any outward evidence of such use other than one sign that otherwise complies with the provisions of the Ordinance in force entitled "Signs, Billboards and Advertising."

(2) Permitted conditional uses. Permitted conditional uses when authorized as a special exception by the Board of Appeals and under such conditions as it may determine will not be detrimental to other uses in the "R" District.

- A. Churches, schools, public library, museum, community center, fire station, township hall, publicly-owned park, publicly-owned playground;
 - B. Hospitals, sanitarium or rest home for other than insane or mental cases.
- (b) "B" District (B-1, B-2, B-3, B-4 and B-5; Business and Commercial). The following uses and no others shall be deemed Class "B" uses and permitted in all "B" Districts:

(1) Permitted uses.

- A. Any "R" District permitted use;
- B. Retail store or shop, beauty shop, real estate sales office or other professional service office; or
- C. Rooming house, lunchroom, living quarters over business establishment.

(2) Permitted conditional uses. Permitted conditional uses when authorized as a special exception by the Board of Appeals and under such conditions as it may determine will not be detrimental to other uses in the "B" District or to uses in adjoining lots in an "R" District:

- A. Any "R" District permitted conditional use;
- B. Apartment house, hotel, office building, lodge hall, parking lot garage; (Passed 7-9-01)
- C. Restaurant, veterinary hospital, social or recreational building provided any such structure shall be at least twenty-five feet from any adjoining lot in an "R" District. (Passed 7-9-01)

- (c) The above uses or non-conforming use, as the case may be, shall be permitted only providing that such use or non-conforming use is not noxious, dangerous or offensive by reason of emission of dust, odor, smoke, gas, noise, heat, fumes, flame or vibration,

otherwise constitutes a nuisance to the occupants of nearby properties. (Ord. 77-1. Passed 8-8-77. Amended 10-9-07.)

1315.04 NON-CONFORMING USES.

- (a) A non-conforming use existing as of the date of the enactment of this Zoning Ordinance may be continued, except that if it is discontinued for twelve months or more, it shall then be deemed abandoned and any further use must be in conformity with the uses permitted in such district.
- (b) Any building or structure existing as a non-conforming use which is destroyed by fire or the elements, may be reconstructed and restored with full re-instatement of non-conforming uses as listed, providing the same is done within one year of the date of such destruction. (Passed 7-9-01)
- (c) A use of land or building or structure which does not conform to this Article shall not be changed to another non-conforming use. (Ord. 77-1, Passed 8-8-77; and Ord. 80-1, Passed 2-21-80.)
- (d) Use of the accessory structure permitted on any lot in an "R" designated district as a place of lodging or paying guests shall be considered a non-conforming use as of the date of passage of this amendment, and thereafter shall be subject to all the limitations set forth in these Ordinances. (Passed 7-9-01)
- (e) When a use of a structure is made non-conforming by reason of an amendment to this Article, said use may continue for so long as the existing property owner(s) hold(s) an interest in the property, unless otherwise provided for by law; however, when the whole interest in the property is sold or otherwise transferred, any further use must be in conformity with the permitted uses of this Article as amended. In addition, if said non-conforming use is discontinued for twelve months or more that use shall then be deemed abandoned and any further use must be in conformity with the permitted uses of this Article as amended. Further, if any structure whose use is made non-conforming by reason of an amendment to this Article is destroyed by fire or the elements while such use is permitted by this Article, the owner of record at the time of the destruction may rebuild and restore the structure and continue the non-conforming use, provided that the rebuilding and restoration is done within three years of the destruction. (Passed 7-9-01)

1315.05 VARIANCE AND CONDITIONAL USE PERMIT.

- (a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.
- (b) A conditional use means a use which because of special requirements or characteristics may be permitted in a particular zoning district but only after review and approval by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance, and, if not inconsistent with the zoning ordinance, conditions specified by the Board of Zoning Appeals.
- (c) The Board of Zoning Appeals shall grant a variance or may issue a conditional use permit to the zoning ordinance if it finds that the variance:
 - (1) Will not adversely affect the public health, safety or welfare, or the rights of the

adjacent property owners or residents;

- (2) Arises from special conditions or attributes which pertain to the property which were not created by the person seeking the variance;
- (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land;
and
- (4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.