

ZONING ORDINANCE

of the City of Martinsburg,
West Virginia

Part 13, Chapter 3, Articles 1 - 6
of the Martinsburg City Code

Enacted: July 21, 2021

Effective: July 22, 2021



ZONING ORDINANCE CITY OF MARTINSBURG, WEST VIRGINIA

ACKNOWLEDGEMENTS

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City Officials

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Table of Contents

ARTICLE 1 GENERAL ZONING PROVISIONS 1

Section 1.01 Short Title..... 1

Section 1.02 Purpose..... 1

Section 1.03 Authority..... 1

Section 1.04 Jurisdiction 2

Section 1.05 Applicability 2

Section 1.06 Interpretation 2

Section 1.07 Severability..... 3

Section 1.08 Administration and Enforcement..... 3

Section 1.09 Use and Occupancy Permits, Fees, and Inspections..... 6

Section 1.10 Board of Zoning Appeals and Hearing Procedures 7

Section 1.11 Special Exception Uses and Variances 11

Section 1.12 Zoning Amendments 14

ARTICLE 2 DEFINITIONS 19

ARTICLE 3 ZONING DISTRICTS 40

Section 3.01 Establishment of Zoning Districts..... 40

Section 3.02 Zoning Map 40

Section 3.03 Rules for Interpretation of District Boundaries 41

Section 3.04 Urban Residential (UR) District..... 41

Section 3.05 Suburban Residential (SR) District 44

Section 3.06 Downtown (DT) District..... 47

Section 3.07 Mixed Use Residential (MUR) District..... 50

Section 3.08 Mixed Use Commercial (MUC) District 53

Section 3.09 Medical-Institutional (MIN) District 55

Section 3.10 Annexation Reserve (AR) District 57

Section 3.11 Historic Preservation Overlay (HPO) District 57

Section 3.12 Flood Plain Overlay (FPO) District..... 59

Section 3.13 Economic Development Overlay District..... 60

ARTICLE 4 ZONING USES 62

Section 4.01 General Provisions 62

Section 4.02 Applicability 62

Section 4.03 Uses..... 62



Section 4.04 Organization63

Section 4.05 Unlisted Uses63

Section 4.06 Prohibited Uses63

Section 4.07 Principal Uses69

Section 4.08 Accessory Uses92

Section 4.09 Temporary Uses101

ARTICLE 5 SUPPLEMENTAL REGULATIONS103

Section 5.01 Accessory Uses and Structures103

Section 5.02 Density Standards103

Section 5.03 Donation Containers, Unattended104

Section 5.04 Encroachments104

Section 5.05 Fences and Walls107

Section 5.06 Heliports108

Section 5.07 Murals109

Section 5.08 Nonconforming Uses110

Section 5.09 Nonconforming Lots111

Section 5.10 Nuisances111

Section 5.11 Outdoor Display and Sale of Merchandise114

Section 5.12 Riparian Buffers115

Section 5.13 Storage of Materials118

Section 5.14 Swimming Pools119

Section 5.15 Trash Dumpsters119

Section 5.16 Vehicle Parking121

Section 5.17 Yard/Garage Sales121

ARTICLE 6 SIGNS122

Section 6.01 General Provisions122

Section 6.02 Definitions123

Section 6.03 Sign Permits133

Section 6.04 Sign Area Computations134

Section 6.05 Design, Construction, and Maintenance135

Section 6.06 Signs Requiring a Permit138

Section 6.07 Signs Not Requiring a Permit140

Section 6.08 Prohibited Signs143



ARTICLE 1 GENERAL ZONING PROVISIONS

Section 1.01 Short Title

This Ordinance and Ordinances supplemental or amendatory thereto, shall be known and may be cited as the “Zoning Ordinance of the City of Martinsburg, West Virginia” and hereinafter referred to as the “Ordinance.”

ENACTED: July 21, 2021
EFFECTIVE: July 22, 2021

Section 1.02 Purpose

The City of Martinsburg Zoning Ordinance is intended to guide future growth and development by regulating land uses within the jurisdiction of the City of Martinsburg for the improvement of the health, safety, comfort, and general public welfare of its citizens. This Ordinance complies with West Virginia Code Chapter 8A and has been enacted following a study of the land within the corporate limits of Martinsburg and a report and submission of the same to the Martinsburg City Council (hereinafter known as City Council or Council), and public hearings after public notice, all as required by Article 7 of said Chapter 8A. In addition, this Ordinance works in conjunction with the City of Martinsburg Subdivision and Land Development Ordinance in accordance with the City of Martinsburg Comprehensive Plan. The following items were duly considered in drafting and enacting this Ordinance:

- (A) Promoting general public welfare, health, safety, morals, and comfort;
- (B) A plan so that adequate light, air, convenience of access, and safety from fire, flood, and other danger is secured, and to prevent overcrowding of the land and undue concentration of population;
- (C) Ensuring attractiveness and convenience is promoted;
- (D) Increasing mobility, accessibility and connectivity;
- (E) Preserving Historic Landmarks, Sites, Districts, and Structures;
- (F) Promoting the orderly development of land; and
- (G) To help guide the future growth and development of the City in accordance with the Martinsburg Comprehensive Plan that provides for beneficial and convenient relationships among the various uses within the City.

Section 1.03 Authority

This Ordinance is enacted pursuant to the authority specified in West Virginia Code Chapter 8A-7-1.



Section 1.04 Jurisdiction

This Ordinance shall apply to all properties within the corporate limits of the City of Martinsburg, West Virginia, hereinafter referred to as the “City”.

Section 1.05 Applicability

- (A) The terms of this Ordinance shall be applied to support the intent set forth in the Martinsburg Comprehensive Plan.
- (B) This Ordinance shall apply to all lands, Buildings, Structures, Signs, properties, and their Uses, within the corporate limits of the City of Martinsburg, West Virginia.
- (C) The Martinsburg City Planning Commission (hereinafter referred to as the Planning Commission) shall consider the most appropriate Zoning District classification(s) for any property proposed for Annexation and provide a recommendation to City Council. Upon Annexation, City Council shall consider the Planning Commission's recommendation and designate the property within one or more appropriate Zoning Districts.
- (D) In general, the Subdivision and Land Development Ordinance shall provide design standards and other regulations pertaining to the development of land; whereas, the Zoning Ordinance provides parameters on the Use of land. Both documents correlate with each other to provide the overall regulations that are administered by the Planning Commission, City Council, and/or Board of Zoning Appeals, as specified in said Ordinances.
- (E) Except as hereinafter specified, no land shall hereafter be used or developed, and no Building or part thereof or other Structure shall be used, located, erected, constructed, reconstructed, extended, enlarged, converted, or altered, except in conformity with the regulations herein specified for the Zoning District in which it is located. Furthermore, any changes created by a subdivision of land shall also be in conformity with the regulations herein specified for the Zoning District in which it is located, as reviewed and determined by the City Engineer/Planning Director or designee.
- (F) Nothing in this Ordinance shall be deemed or construed to void, nullify, abrogate, modify, limit or otherwise adversely affect any right vested under applicable law at the time of enactment of this Ordinance, whether such right arose under a subdivision or land development plan or plat, proffer, condition of annexation, or development agreement proposed by a Person and accepted or approved by the City or any of its departments or commissions or any other source. This Ordinance is not intended to interfere with or abrogate or annul any more restrictive Easements, covenants, building restrictions, or other agreements between parties relating to use or development of land.

Section 1.06 Interpretation

- (A) The regulations specified within this Ordinance shall be considered minimum regulations and shall be applied uniformly to all individuals and businesses within the jurisdiction of the City.
- (B) Uses not permitted (whether expressly permitted or permitted upon interpretation and classification by the City Engineer/Planning Director or designee as follows) within a



Zoning District shall be deemed excluded. For the elimination of any doubt, industrial uses are not permitted in any Zoning District – the intent being that such uses are best situated at industrial parks and other sites in Berkeley County. The City Engineer/Planning Director or designee, as defined in Section 1.08(A), shall interpret the classification of all land Uses within the context and intent of this Zoning Ordinance and may issue a decision regarding whether a particular Use is permitted or excluded in a Zoning District, all in accordance with Article 4, Zoning Uses.

- (C) When this Ordinance places a greater restriction than is imposed or required by other provisions of law, or by other rules, regulations, Ordinances, or by private restrictions, covenants, or declarations, the provisions set forth in this Ordinance shall prevail, except where otherwise specifically stated herein. Without limitations of the foregoing, in the event of a conflict between or among the provision of this Ordinance, the City’s Subdivision and Land Development Ordinance, and/or any other Codified Ordinance of the City, the conflicting provisions shall be given precedence in the following order:
 1. the provisions of this Ordinance;
 2. the provisions of the City’s Subdivision and Land Development Ordinance; and
 3. the provisions of the City’s other Codified Ordinances with precedence among them given to the provision bearing the latest date of passage.
- (D) If there is a conflict between or among the provisions of this Ordinance, the stricter regulation shall apply.
- (E) Private covenants contained in any Deed or Declaration are not enforceable by the City, however, such covenants may, as a factor, be considered in the exercise of its sound discretion by the Board of Zoning Appeals when called upon to consider Variance requests and neighborhood compatibility factors related thereto.

Section 1.07 Severability

Should a court of competent jurisdiction declare any article, section, subsection, or provision of this Ordinance invalid or unconstitutional, this decision shall not affect the validity or constitutionality of this Ordinance as a whole, or any part thereof, other than the particular part so declared to be invalid or unconstitutional.

Section 1.08 Administration and Enforcement

- (A) The provisions of this Ordinance shall be administered by the City’s Board of Zoning Appeals, and as applicable the City Planning Commission. Within a reasonable time after the enactment of this Ordinance, and from time to time thereafter as determined appropriate, the City Engineer/Planning Director or designee shall act on the Board of Zoning Appeals behalf and, as applicable, the Planning Commission’s behalf to carry out the duties set forth in Subsection (D) below.
- (B) The City Planning Commission shall study zoning, its development, application and relation to public and private development and its relation to other phases of the Comprehensive Plan for development of Martinsburg and may, from time to time, submit amendments to these regulations or changes in the Zoning District boundaries to the



Mayor and City Council of Martinsburg. However, no such amendments or change shall become effective until approved by Council.

- (C) All departments, officials, and public employees of the City which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any Use, Building, or purpose if the same would be in conflict with the provisions of this Ordinance.
- (D) It shall be the duty and the power of the City Engineer/Planning Director or designee to:
1. Review all applications for Use and Occupancy Permits;
 2. Issue Use and Occupancy Permits only where there is compliance with the provisions of this Ordinance and with other City Ordinances;
 3. Following a refusal of a permit, to receive applications for Appeals, Special Use Permits, and Variances, and promptly forward these applications to the Board of Zoning Appeals;
 4. Conduct inspections to determine compliance or noncompliance with the terms of this Ordinance;
 5. Issue written stop, cease and desist orders and other written orders for correction of all conditions found to be in violation of provisions of this Ordinance. Such written orders shall be served upon Owners or Persons deemed by the City Engineer/Planning Director or designee to be violating the terms of this Ordinance;
 6. Record and file all applications for Use and Occupancy Permits with accompanying plans and documents. All applications, plans and documents shall be a public record except that the City Engineer/Planning Director or designee, pursuant to West Virginia Code Chapter 29B, Freedom of Information, may withhold information pertaining to a pending investigation involving unlawful activity and documents and data exempt from public disclosure;
 7. Maintain the official Zoning Map or Maps showing the current Zoning District classification of all land in the City;
 8. Bring pertinent matters to the City Planning Commission for its action or information, and provide administrative duties accordingly;
 9. Bring pertinent matters to the Board of Zoning Appeals for its action and information, and provide administrative duties accordingly;
 10. Timely revoke and require the return of a void Occupancy and Use Permit by notifying the permit holder in writing, stating the reason for the revocation. Use and Occupancy Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of applicable federal, state, or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate which violates this or any Ordinance of the City, or any applicable federal, state, or other local law is void;



11. Upon the request of the City Council, the City Planning Commission, or the Board of Zoning Appeals, present to such body's facts, records, or reports which they may request to assist them in making decisions or assist them in any other way as requested;
 12. Evaluate and classify proposed land Uses within the context of this Zoning Ordinance as either permitted, permitted with a Special Use Permit, or prohibited; and
 13. Create and maintain land use application forms.
- (E) Enforcement. The City Engineer/Planning Director or designee shall enforce this Ordinance by issuing written stop, cease, and desist orders and other written orders, by withholding Use and Occupancy Permits, by seeking an injunction, mandamus, or other judicial action to prevent, correct, or abate unlawful construction, conversion, alteration, occupancy, or Use, and by seeking warrants for prosecution of violators of this Ordinance.
1. Violation; remedies.
 - a. Complaints. Any Person alleging a violation of this Ordinance may file a written complaint with the City Engineer/Planning Director or designee. Upon receipt of a written complaint, the City Engineer/Planning Director or designee shall investigate the matter within ten (10) business days and take appropriate action. A complete record shall be kept of all written complaints received and the actions taken pursuant thereto.
 - b. Remedies. When any Building or part thereof or other Structure is used, located, erected, constructed, reconstructed, extended, enlarged, converted, or altered, or any land is used or developed, in violation of this Ordinance, or any provision of this Ordinance is otherwise violated, the City Planning Commission, Board of Zoning Appeals, or City Engineer/Planning Director designee may institute action in the Circuit Court of Berkeley County for injunction to restrain the Use conducted in violation of this Ordinance or any other violation of this Ordinance, and/or to direct the Owner or other appropriate Person to remove the subject Structure or Building and take any other enforcement action consistent with Article 10, Chapter 8A of the West Virginia Code.
 2. Penalties. Consistent with Section 8A-10-2 of the West Virginia Code, any Person who violates any provision of this Ordinance, including without limitation failure to comply with any stop, cease, and desist or other order issued pursuant to this Ordinance, shall be guilty of a misdemeanor and, upon conviction, shall be punished for each offense by a fine not less than \$100.00 or more than \$500.00. Each day the violation continues shall be considered a separate offense. Work carried on in violation of the cancellation of any permit issued under this Ordinance shall also be deemed a violation punishable in the same manner.



Section 1.09 Use and Occupancy Permits, Fees, and Inspections

- (A) A Use and Occupancy Permit shall be required for any of the following:
1. Construction, reconstruction, erection, extension, enlargement, conversion, or structural alteration of any Building, including Accessory Structures;
 2. Change in Use of an existing Building or Accessory Structure to a Use of a different classification;
 3. Occupancy and Use of vacant land;
 4. Change in the Use of land to a Use of a different classification;
 5. Any change in a Legally Nonconforming Use;
 6. Any Temporary Uses as defined in Article 4, Zoning Uses; and
 7. Any change in ownership.

A Use and Occupancy Permit is issued subject to continued compliance with all requirements and conditions of this Ordinance and other regulations enacted by the City, all as in effect at the time of issuance of the Use and Occupancy Permit and may be revoked for noncompliance.

- (B) Applications. Use and Occupancy Permit applications shall be submitted pursuant to the requirements specified by City Codified Ordinance Section 1501.05 and provisions of the current Use and Occupancy Permit application.
- (C) The City Engineer/Planning Director or designee shall approve the issuance of a Use and Occupancy Permit only if the application complies with the requirements of this Ordinance, and provided that such Use and Occupancy Permit shall be conditioned, where necessary, on the approval of the City Engineer/Planning Director or designee, and any other department, committee, or agency concerned, and provided the application is accompanied by the required fee. It shall be the responsibility of the applicant to identify any deviations from the standards and specifications of this Ordinance.
- (D) The City Planning Department shall maintain a record of all Use and Occupancy Permits and copies shall be furnished upon request to any Person upon payment of the cost thereof. The issuance of a Use and Occupancy Permit shall not be construed so as to sanction a variance from the terms of this Ordinance and any Use and Occupancy Permit issued that would work to violate this Ordinance, the applicable Building Codes or the Subdivision and Land Use Ordinance shall be void.
- (E) If the Board of Zoning Appeals or the City Planning Commission shall determine that any provision of this Ordinance is violated, the Planning Commission may instruct the City Engineer/Planning Director or designee to take appropriate action to ensure compliance. This Section shall not be construed to require action by the Planning Commission prior to the taking of appropriate enforcement action by the City Engineer/Planning Director or designee as otherwise provided in this Ordinance.



- (F) Permits for a Principal Use shall encompass any Accessory Uses on the same property provided that such Accessory Uses are clearly reflected in the Use and Occupancy Permit application.
- (G) Fees. All applications for Use and Occupancy Permits, Special Exceptions, petitions to rezone property and variances shall be accompanied by the prevailing fees. The City publishes the various fees applicable to such applications and related matters, which provisions, as they may be amended from time to time, are incorporated into this Ordinance by reference.
- (H) There shall be no refund of any fee paid hereunder.
- (I) A Use and Occupancy Permit shall authorize only the Use, arrangement, and construction set forth in the application for same. Use arrangement or construction differing with that authorized shall be deemed a violation of this Ordinance.
- (J) Undertaking any of the activities listed in Subsection 1.09(A) without a Use and Occupancy Permit shall be deemed a violation of this Ordinance, provided that this Subsection shall not be construed to apply to a rearrangement of equipment within an existing facility.

Section 1.10 Board of Zoning Appeals and Hearing Procedures

- (A) A Board of Zoning Appeals is hereby established with membership and appointment provided in accordance with Article 8, Chapter 8A of the West Virginia Code. If a vacancy occurs by resignation or otherwise, among the members of the Board, the City Council shall appoint a member for the unexpired term. The City Mayor with the approval of City Council shall appoint a 1st and 2nd alternate, who shall act in the event any member recuses oneself.
- (B) This Subsection shall apply to the Martinsburg Zoning Ordinance and the Martinsburg Subdivision and Land Development Ordinance.
- (C) Creation; Appointment; Term of Office; Vacancies; Membership; and Removal of Members. The Board of Zoning Appeals, consisting of five (5) members, heretofore created under the prior Martinsburg Zoning Ordinance adopted February 1970 is hereby continued in existence as the Board of Zoning Appeals under this Ordinance. The appointment of members, their terms of office, succession, removal, filling of vacancies, membership, and alternate membership, shall be as provided in Article 8, Chapter 8A of the West Virginia Code.
- (D) General Powers and Duties. The Board of Zoning Appeals has the following powers and duties:
 - 1. Hear, review and determine Appeals from an order, requirement, decision or determination made by the City Engineer/Planning Director or designee under the Martinsburg Zoning Ordinance or rule or regulation adopted pursuant thereto or by the City Engineer/Planning Director or designee or rule or regulation adopted pursuant thereto;



2. Hear requests for and decide whether to issue Special Use Permits authorizing Special Exception Uses provided in this Zoning Ordinance for the Zoning District at issue;
3. Hear requests for, and decide whether to grant, Variances to the Zoning Ordinance as will not be contrary to the public interest, where owing to special condition, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship;
4. Reverse, affirm or modify the order, requirement, decision or determination Appealed from and have all the powers and authority of the City Engineer/Planning Director or designee. The concurring vote of four of the members of the Board of Zoning Appeals shall be necessary to reverse any order, requirement, decision, or determination of the City Engineer/Planning Director or designee, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance;
5. Adopt rules and regulations concerning:
 - a. The filing of Appeals, including the process and forms for the Appeal;
 - b. Applications and requests for Variances and Special Exception Uses;
 - c. The giving of notice; and
 - d. The conduct of hearings necessary to carry out the Board's duties under the terms of this Ordinance, the Subdivision and Land Development Ordinance, and Article 8, Chapter 8A of the West Virginia Code;
6. Keep minutes of its proceedings;
7. Keep an accurate and complete audio record of all the Board's proceedings and official actions. The audio record shall be kept in a safe manner and be accessible within a maximum of five (5) days not including Saturdays, Sundays, or legal holidays of a written request for a period of three (3) years; *provided that*, executive sessions of the Board of Zoning Appeals conducted for the purpose of deliberation incident to the quasi-judicial function of the Board and/or otherwise conducted in compliance with the Open Governmental Proceedings Act as codified in Article 9A, Chapter 6 of the West Virginia Code need not be audio recorded;
8. Record the vote on all actions taken;
9. Take responsibility for the custody and preservation of all papers and documents of the Board. All minutes and records shall be filed in the office of the Board and shall constitute public records;
10. With consent from City Council, hire employees necessary to carry out the duties and responsibilities of the Board; *provided that*, City Council shall set the salaries; and
11. Supervise the fiscal affairs and responsibilities of the Board.



- (E) Organization; Meetings; Authority to Administer Oaths and Compel Attendance of Witnesses; Technical Assistance; Open Meetings. The Board shall be organized, hold meetings and conduct business in accordance with the provisions of this Ordinance and Article 8, Chapter 8A of the West Virginia Code. Meetings of the Board shall be held at least quarterly, and more frequently as the Board may determine or at the written request of the chairperson or two or more members. The chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. For assistance, in reaching decisions relative to Appeals, Special Exception Uses, or Variances, the Board may request testimony at its hearings for purposes of securing technical aid or factual evidence from the City Mayor, City Council, or any City Department. All meetings of the Board shall be open to the public, subject to the right of the Board to adjourn into executive session for deliberation in the performance of its quasi-judicial functions and for such other purposes as may be proper under state law.
- (F) Appeals to the Board. Any order, requirement, decision, or determination made by the City Engineer/Planning Director or designee under this Ordinance or any rule or regulation adopted thereunder, may be appealed to the Board of Zoning Appeals within thirty (30) business days of the original order, requirement, decision, or determination against which the Appeal is made. An Appeal shall be filed on forms established by the Planning Department, specify the grounds of Appeal, and otherwise be in accord with the Rules of the Board of Zoning Appeals.
- (G) Hearings by the Board.
1. Hearing – Action required after receipt of application or Appeal. Following receipt by the Board of Zoning Appeals of a complete application or Appeal, the Board shall:
 - a. Within (10) business days of receipt of a complete application or Appeal, set a time for hearing of the application or Appeal, and give notice thereof to the applicant or appellant. The hearing shall be held no later than forty-five (45) business days from the date of receipt of the complete application or Appeal. Applicants and appellants may petition for postponement or change of said dates for good cause shown in accord with the Rules of the Board of Zoning Appeals;
 - b. At least fifteen (15) business days prior to the date set for the hearing on the application or Appeal, publish a notice of the date, time and place of the hearing on the application or Appeal as a Class I legal advertisement in compliance with the provisions of West Virginia Code Chapter 59-3-1 *et. seq.*, and at least fifteen (15) business days prior to the date set for the hearing on the application or Appeal provide written notice thereof to the interested parties. The publication area shall be the area covered in the application or Appeal. For purposes of this provision, “interested parties” shall mean Landowners of Adjacent Property within one hundred (100) radial feet of the proposed development or activity. The applicant or appellant shall make a good-faith effort to provide the City Engineer/Planning Director or designee as applicable, with a current list containing the accurate names and mailing addresses of all interested parties. In turn, the City Engineer/Planning Director or designee, shall



- verify said list of interested parties with Berkeley County-maintained property records;
- c. Provide a hearing notice to the City Engineer/Planning Director or designee for posting upon the property upon which the application or Appeal is concerned. The notice shall be posted conspicuously at least fifteen (15) business days before the date of the hearing by the Board; and
 - d. Visit the specific property in question prior to the hearing in order to make proper determination of all applicable facts.
 - e. The written decision by the Board shall be rendered within thirty (30) days after the hearing. If the Board fails to render a written decision within thirty (30) days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.
2. Hearing – Holding of Hearing; Appearance at Hearing. The Board, following such action above, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney, subject to the rules of the Board, and the prerogative of the Board to determine the standing of any Person to pursue an application or Appeal that has been filed.
3. Hearing – Postponement.
- a. Request for postponement of a scheduled hearing shall be filed in writing with the Board not less than fifteen (15) business days prior to the date of the hearing, and shall be accompanied by a sum of money sufficient to pay the cost of publishing the postponement, certified mail notice to all adjacent and confronting landowners of the subject property, and the rescheduled hearing as a Class I legal advertisement in compliance with the provisions of West Virginia Code Chapter 59-3-1 *et seq.* The granting of such requests shall be at the discretion of the City Engineer/Planning Director or designee.
 - b. Requests for postponement filed less than fifteen (15) business days prior to the date of a scheduled hearing, shall, in addition to the other requirements set forth in Subsection (a) above, including the sum of money sufficient to pay the cost of advertising the postponement and the rescheduled hearing, be supported by an affidavit or declaration of the party making the request or of some other credible person specifying that the scheduled hearing date will impose an extreme hardship or other good cause for postponement. The granting of such request shall be at the discretion of the City Engineer/Planning Director or designee.
 - c. No more than three (3) postponements shall be granted within any period of ninety (90) calendar days.
4. Hearing – Continuance. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Furthermore, the



chairperson, or in their absence, the acting chairperson may call for a continuance if a quorum is not in place for the meeting. The date and hour shall be agreed to by all parties and announced while in session.

- (H) Staying of Work on Premises When Appeal Taken; Exception. When an Appeal has been taken and filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed unless the official or board from whom or which the Appeal was taken shall certify to the Board of Zoning Appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. If such certificate be filed, proceedings or work on the premises shall not be stayed except by order of the Circuit Court of Berkeley County. Such stay shall not affect further administrative proceedings or engineering or architectural work that does not disturb the real property beyond incidental disturbances necessary to complete engineering work (such as surveying, tests, or core drilling).
- (I) Hearings – Decision by the Board; Appeal from Decision by the Board. The Board shall render a written decision containing findings of fact and conclusions of law within thirty (30) business days after completion of the hearings. The Board may announce its decision at the conclusion of the public hearing and authorize the chairperson to execute the written decision once prepared, or it may defer its decision and reconvene within thirty (30) business days to further deliberate, vote, and render its written decision. Any Person or Persons aggrieved by any decision of the Board of Zoning Appeals may seek review by certiorari of the same by the Circuit Court of Berkeley County pursuant and subject to West Virginia Code Chapter 8A-9 by petition filed within thirty (30) business days after the filing of the Board's written decision. Nothing herein shall be deemed to limit the right of any Person to seek review by certiorari by said Court pursuant to said Chapter 8A-9 without first appealing to the Board of Zoning Appeals.
- (J) Disapproval of Application. If an application or Appeal is denied by the Board of Zoning Appeals, no further action on another application for the same proposal on the same premises shall be taken until after twelve (12) months from the date of such denial. However, if circumstances change sufficiently that the necessary findings might be met in the future, the Board may rehear a similar application.
- (K) Fees. A filing fee shall accompany each application for an Appeal to the Board. See the City Fee Schedule for the amount.

Section 1.11 Special Exception Uses and Variances

- (A) Special Exception Uses. Special Exception Uses are Uses that are conditionally permitted in a particular Zoning District.
 1. An application for a Special Exception may be made only by a person or persons with a financial, contractual basis, or proprietary interest in the property for which a Special Exception is requested.
 2. A Special Exception Use may be commenced and carried on only after review by the Board of Zoning Appeals and its issuance of a Special Use Permit.
 3. The Board of Zoning Appeals shall consider a request for a Special Exception if the requested Use is expressly designated as a Special Exception Use in this



Ordinance or interpreted and classified as such by the City Engineer/Planning Director or designee, for the Zoning District in which the subject property is located.

4. The Board of Zoning Appeals shall grant a Special Exception if the required findings specified in Subsection 1.11(D)(3) are made or shall deny granting a Special Exception if all required findings cannot be made.
- (B) If the Board cannot make all required findings, no Special Exception shall be granted. However, if circumstances change sufficiently that the necessary findings might be met in the future, the Board may rehear a similar application.
- (C) A Special Exception shall be valid for two (2) years if the use is not acted upon, or a Subdivision and/or Land Development Plan has not received.
- (D) Special Exception Procedures.
1. A written application for a Special Exception shall be submitted to the City Planning Department, which application shall specify the Special Exception Use sought and include all materials required for a Use and Occupancy Permit. The administrative staff shall review the application and file a written report with the Board Chairperson before the Board reviews the application.
 2. The Board shall set and hold a public hearing in accordance with Subsection 1.10(G).
 3. In order to issue a Special Exception, the Board must make the following written findings regarding the Special Exception Use sought:
 - a. The proposed use is in harmony with the purpose and intent of the City Comprehensive Plan and of this Ordinance;
 - b. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to Streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the Zoning District in which it is located;
 - c. The location, nature and height of buildings, walls, and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and Buildings;
 - d. Operations in connection with any special Use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics, than would be the operations of any permitted use not requiring a special permit;
 - e. Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety; and



- f. Public utility service (electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any onsite water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use.

If the Board makes the above required findings, a Special Exception shall be issued to permit the requested Use, subject however, to any condition stipulated by this Ordinance or determined by the Board to be necessary to ensure that the Use remains compatible with other Uses permitted in the Zoning District and with Adjacent Properties. No Special Exception may grant Variances from the requirements of this Ordinance.

- 4. Conditions. The Board of Zoning Appeals, in issuing Special Exceptions, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other Uses in the same Zoning District. These conditions shall be enforceable by the City Engineer/Planning Director or designee and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in Subsection 1.08(E)2.
- 5. A Special Exception shall not be issued by the Board of Zoning Appeals for any development within the Regulatory Floodway if any increase in the elevation of the 100-Year Flood would result.

(E) Variance Procedures.

- 1. A written application for a Variance to the Zoning Ordinance shall be submitted to the Board of Zoning Appeals and City Engineer/Planning Director or designee, which application shall specify the standard or requirement from which a Variance is sought. The City Engineer/Planning Director or designee shall review the application and file a written report with the Board.
- 2. An application for a Variance may be made only by a person or persons with a financial, contractual basis, or proprietary interest in the property for which a Variance is requested.
- 3. The Board shall set and hold a public hearing in accordance with Subsection 1.10(G).
- 4. If the Board cannot make all required findings, no Variance shall be granted. However, if circumstances change sufficiently that the necessary findings might be met in the future, the Board may rehear a similar application.
- 5. The Board of Zoning Appeals shall grant the Variance sought if it finds that the Variance:
 - a. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;



- b. Arises from special conditions or attributes which pertain to the property for which a variance is sought, and which were not created by the person seeking the variance;
 - c. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
 - d. Will allow the intent of the zoning ordinance to be observed and substantial justice done.
6. If the Board grants a Variance, its actions will be accompanied by its reasons for making the required findings and by its certification that the Variance is the minimum Variance which will make possible the reasonable Use of land, Buildings, or Structures.
7. A Variance shall not be issued by the Board of Zoning Appeals for any development within the Regulatory Floodway if any increase in the elevation of the 100-Year Flood would result.
8. Exceptions to these rules and regulations as contemplated in Subsection 1.10(D)(3) shall be subject to the procedures of this Subsection 1.11(E).

Section 1.12 Zoning Amendments

(A) General.

1. Authority. Pursuant to and in accordance with West Virginia Code Chapters 8A-7-8, 8A-7-8a, and 8A-7-9, City Council upon recommendation by the City Planning Commission may, by ordinance, amend, supplement, change, modify or repeal the regulations and Zoning Districts established by this Ordinance. No such amendment shall be adopted by City Council unless and until:
- a. City Council, with the advice of the Planning Commission, finds either that the amendment is consistent with the City’s Comprehensive Plan, or that the amendment is not consistent with the Comprehensive Plan but that there have been major changes of an economic, physical, or social nature within the area involved that were not anticipated when the Comprehensive Plan was adopted and that such major changes have substantially altered the basic characteristics of the area;
 - b. Planning Commission has held a public hearing (after public notice) regarding the amendment and submitted its findings and recommendation relative thereto to City Council; and
 - c. If the proposed amendment to this Ordinance involves a change in the Zoning Map classification of any parcel of land, or a change to the applicable Ordinance text regulations that changes the allowed Dwelling Unit density of any parcel of land, City Council shall, at least thirty (30) business days prior to the enactment of the proposed amendment if there is not an election, or at least thirty (30) business days prior to an election on the proposed amendment to the zoning ordinance:



- (1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the Ordinance; and
- (2) Publish notice of the proposed amendment to the Ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II legal advertisement, in accordance with the provisions of West Virginia Code Chapter 59-3-1, *et. seq.*

2. *Proposal of Amendments.* Amendments may be initiated by City Council, upon petition of the City Planning Commission, or upon petition by the Owners of fifty percent (50%) or more of the real property in the area to which the petition relates.

(B) *Petitions for Zoning Amendment.*

1. A petition to amend regulations or the Zoning District boundaries of this Ordinance shall be obtained from the City Engineer/Planning Director or designee and completed in its entirety. A petition, when completed, shall be filed with the City Engineer/Planning Director or designee who will forward the petition to City Planning Commission so that a public hearing can be held.
2. Zoning amendment petitions shall provide the following information, except that petitions by the City Planning Commission shall exclude petitioner-related information other than identification of the Planning Commission as the petitioner:
 - a. A legal description of the property;
 - b. A scaled map of the property, correlated with the legal description, and clearly showing the property's location;
 - c. The name, address and phone number of the petitioner(s);
 - d. The interest of the petitioner(s) in the property, and if the petitioner(s) is (are) not the Owner(s) of all the real property in the area to which the petition relates, the name and address of the other Owner(s);
 - e. Description of the present Use(s) of the property and existing Zoning District;
 - f. Description of the proposed Use(s) of the property and requested Zoning District;
 - g. Proposed text amendment pursuant to Subsection (D)(4)(b) below;
 - h. Area of the property in square feet and/or acres;
 - i. Time schedule for development;
 - j. Additional exhibits may be required by the City Engineer/Planning Director or designee such as a plot plan or site plan showing existing and proposed



Structures, easements, Watercourses, curb cuts and description of the Uses of Adjacent Property that are necessary to describe existing or proposed conditions; and

- k. Signature(s) of petitioner(s) certifying the accuracy of the required information.

(C) Application Fee. An application fee shall be required according to the City's published Fee Schedule.

(D) City Planning Commission Hearing and Action.

1. Public Hearing. The Planning Commission shall hold a public hearing on each proposed amendment, whether initiated by City Council, upon petition of the Planning Commission, or upon petition by the Owners of fifty percent (50%) or more of the real property in the area to which the petition relates. The Planning Commission shall select a reasonable hour and place for such public hearing, and it shall hold such hearing within sixty (60) business days from the date on which the subject petition was filed or the date of City Council's referral of the amendment.

2. Notice of Hearing.

- a. At least thirty (30) business days prior to the scheduled hearing on the proposed amendment, the City Engineer/Planning Director or designee shall:

- (1) Publish either a Class I (amendments proposed by petition) or Class II (amendments proposed by the City) legal advertisement, in accordance with the provisions of West Virginia Code Chapter 59-3-1 *et seq.*, giving notice of the public hearing on the proposed amendment in a local newspaper of general circulation in the area affected by the proposed Zoning Ordinance;

- (2) Give written notice by certified mail to the Landowner(s) whose property is directly involved in the proposed amendment and to all Landowners of Adjacent Property, to the subject property; Adjacent Property owners are identified as properties within one hundred (100) radial feet of the proposed zoning amendment; *provided that*, the failure of any party to actually receive such notice shall not invalidate any subsequent action taken; and

- (3) Ensure that the public notice of the proposed amendment is conspicuously posted at points along the boundary of the affected property sufficient to notify potentially interested citizens. The affected property shall be posted at least one (1) week prior to the date of the scheduled hearing.

- b. Such public notices shall state the date, time and place of the hearing and shall contain a statement regarding the proposed change in regulations or restrictions, or the Zoning District classifications or boundaries of the



property. If the proposed amendment would change the Zoning District classification of any property, or the boundaries of any Zoning District, such notice shall contain the legal description and street address or general street location of such property, its present Zoning District classification, and the proposed classification.

3. Conduct of Hearing. The hearing shall be conducted with an accurate and complete audio record of all the Planning Commission's proceedings and be accessible within 24 hours of a written request for a period of three (3) years. The Planning Commission may request a report on any proposed amendment from any governmental official or agency, or any other Person. If such a report is made, a copy thereof shall be made available to the applicant and any other interested Persons and shall be available for review in the offices of the City Engineer/Planning Director or designee within three (3) days of the receipt of the report.
4. Action by City Planning Commission.
 - a. Recommendations. Within forty-five (45) business days of the public hearing, the Planning Commission shall prepare and adopt its recommendations and shall submit the same in writing, together with a record of the hearing thereon, to City Council. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.
 - b. Text Amendments. When a proposed amendment would result in a change in the text of this Ordinance but would not result in a change of Zoning District classification of any specific property, the recommendation of the Planning Commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:
 - (1) Whether such change is consistent with the intent and purpose of this Ordinance;
 - (2) Whether such change is consistent with the Martinsburg Comprehensive Plan;
 - (3) The areas which are most likely to be directly affected by such change and in what way they will be affected; and
 - (4) Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other socio-economic conditions in the areas and Zoning Districts affected.
 - c. In order to issue an approval of a zoning amendment, the Planning Commission must make the following findings regarding the zoning amendment change sought.



- (1) The proposed zoning amendment is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan and of the zoning ordinance.
- (2) The proposed zoning amendment will not affect adversely the health, safety, or welfare, or constitute a public nuisance of persons residing or working about the proposed amendment and will not be detrimental to public welfare.
- (3) The proposed amendment will not be detrimental to the value of adjacent property or improvements in the neighborhood.

(E) City Council Action.

1. Action by City Council. City Council shall consider the proposed amendment and may adopt the same by ordinance pursuant to West Virginia Code Chapter 8A-11-4. In considering the proposed amendment, City Council shall consider, but shall not be bound by, the findings and recommendations of the Planning Commission, as well as comments at its own public hearing. The adoption by City Council of any amendment to this Ordinance or the Zoning District boundaries, if such amendment renders the then existing Zoning Map inaccurate, shall be deemed the concurrent adoption of a revised official Zoning Map that accurately reflects the effect of the amendment, and authorization for the City Engineer/Planning Director or designee to have prepared and certified such revised Zoning Map.

- (F) Disapproval of Amendment. If an amendment petition by Owners is denied by City Council, no further action on another petition by the Owners for the same proposal shall be taken until after twelve (12) months from the date of such denial. However, if circumstances of the disapproved proposal change from the City Engineer/Planning Director or designee's perspective then a new petition by Owners may be submitted for the City's consideration pursuant to the application and hearing process described in Subsection 1.12 of this Ordinance.



ARTICLE 2 DEFINITIONS

(A) Rules of Interpretation. The following rules apply to the interpretation of this Ordinance:

1. Words in the singular include the plural and those in the plural include the singular;
2. Words used in the present tense include the future tense;
3. The words “Person”, “applicant”, “developer”, and “Owner” include a corporation, unincorporated association and a partnership, or other legal entity, as well as an individual engaged in the subject activity;
4. The word “Building” includes Structure and shall be construed as if followed by the phrase “or part thereof”;
5. The word “Watercourse” includes channel, creek, ditch, dryrun, spring, Stream and river;
6. The words “should” and “may” are permissive; the words “shall” and “will” are mandatory and directive;
7. The word “Lot” includes the word plot or parcel;
8. The word “used” or “occupied” as applied to any land or Building shall be construed to include the words “intended, arranged or designed to be used or occupied.”; and
9. Word and terms not specifically defined by this Ordinance shall be defined and interpreted by the City Engineer/Planning Director or designee using sound professional judgement and/or appropriate and acceptable industry standard resources.

(B) Defined Words and Terms. The following terms or words, when capitalized herein, shall be interpreted or defined as indicated:

ACCESS DRIVE – A Driveway, Street or Open Space of not less than the width required herein, that provides vehicular access to and from a road and an abutting property. Access Drive includes acceleration and deceleration lanes. Access Drive shall also include all drainage facilities as may be necessary for the proper construction and maintenance of the roadway and abutting property.

ADJACENT PROPERTY – Property that is contiguous with, or directly across a public Street or other right-of-way from, the boundaries of any side of the subject property.

AGGRIEVED OR AGGRIEVED PERSON – Means a Person who:

1. Is denied by The City Martinsburg Planning Commission or by the Board of Zoning Appeals, in whole or in part, the relief sought in any application or Appeal; or



2. Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the City may suffer.

ALLEY – A minor public way used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

ALTERATION – As applied to a Building or Structure, any change or rearrangement in the total floor area, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

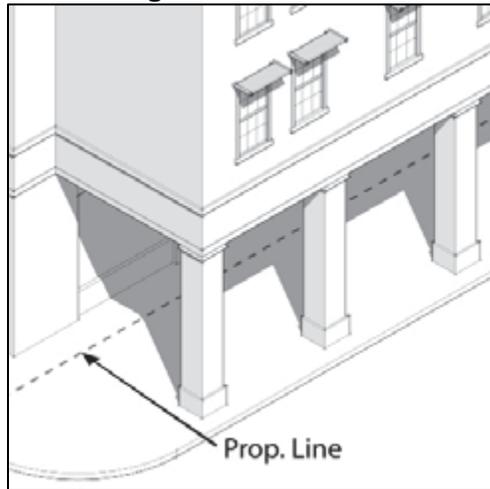
ANNEXATION – Shall have the meaning as set forth in Article 6, Chapter 8 of the West Virginia Code.

APARTMENT CONVERSION – An existing Single-Family Detached Dwelling that has been converted or will be converted to individual dwellings for three (3) or more families.

APPEAL – For the purpose of this Zoning Ordinance, an Appeal shall refer to a timely submitted and complete application on an application form prescribed by the Board of Zoning Appeals for appeal of an order, requirement, decision or determination made by the City Engineer/Planning Director or designee or rule or regulation adopted pursuant thereto.

ARCADE – A Private Frontage conventional for Retail use wherein the Facade is a colonnade supporting Usable Floor Area that overlaps the Sidewalk, while the Facade at Sidewalk level remains at the Frontage line (Figure 2-1, Arcade Illustration).

Figure 2-1 – Arcade



ARTIST – A person regularly engaged in and who derives at least twenty percent (20%) of his/her annual income from art or creative work either written, composed, created or executed for a “one of a kind, limited” production exclusive of any piece or performance created or executed for industry oriented distribution or related production.



ARTIST MURAL – See MURAL.

ART USE – The production of art or creative work either written, composed or executed for a “one of a kind, limited” production exclusive of any piece or performance created or executed for industry-oriented distribution or related production. Such use may include fine and applied arts including painting or other like picture, traditional and fine artisanry, sculpture, writing, creating film, creating animation, music and theater including lessons, choreography and the performing arts, but shall not include adult entertainment, or adult use.

BASEMENT – That portion of a Building which is partly or completely, or having a floor, below grade on all sides.

BOARD OF ZONING APPEALS – The Martinsburg Board of Zoning Appeals, acting in its capacity as a Board of Zoning Appeals under this Ordinance.

BODY ART ESTABLISHMENT – Any building or structure where the practices of body piercing and/or tattooing, whether or not for profit, are performed.

BUFFER AREA – A Yard, Park, or other undeveloped open area intended to separate incompatible elements or Uses, to control exposure of neighboring properties to noise, odors, or other Nuisances, and to define areas in which permanent Structures shall not be constructed or allowed.

BUILD-TO LINE – A line with which the exterior wall of a building in a development is required to coincide.

BUILDING – Any Structure which is permanently affixed to land and has one or more floors and a roof. This term shall not include Mobile Homes or other factory constructed buildings unless erected on a permanent foundation.

BUILDING HEIGHT – The vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of roof surface of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof; except that, if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the Street Line thirty-five (35) feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building.

BUILDING LINE – The line (determined with respect to each Lot line and Street Line) beyond which no portion of a Building or Structure shall extend as determined by Front, Rear, and Side Yard Setback requirements set forth herein.

CHURCH – A Building used for public worship excluding specific buildings used for residential, education, burial, recreational, or other uses.

CITY – The City of Martinsburg, West Virginia.

CLEARING – Any activity which removes the vegetative surface cover.



CLEARLY PREVAILING YARD PATTERN – The average of the actual Setbacks of the three nearest developed Lots on each side of the subject Lot that front on the same Street.

COMMERCIAL CENTER – A group of contiguous Lots organized into a shopping center, strip mall, business park, office condominium or similar grouping that share mutual access, ingress and egress easements.

COMMERCIAL SUBDIVISION – A Commercial Subdivision of land whether in single or multiple ownership shall mean all divisions of a tract or parcel of land into two (2) or more Lots, building sites, or other divisions for the purpose of a gift, sale, or commercial building development. These subdivisions may construct new public or private Streets to access new Lots.

COMMERCIAL USE/COMMERCIAL STRUCTURE – Any Use or Structure which provides goods or services on either a profit or nonprofit basis.

COMMERCIAL VEHICLE – A Vehicle, with or without motive power and engine, which: is designed or has been converted for use in the hauling of business products or goods, or the commercial transporting of Persons; or contains advertising insignia (Signage), business lettering or painting, designed for the promotion of goods or products, that is in excess of four (4) square feet; or is any truck with an open or closed bed having a payload capacity of more than 3,000 pounds; or is twenty-four (24) feet or longer, including Trailers and pull-along equipment; or is over 10,000 pounds in gross vehicle weight and not licensed as a Motor Home or Travel Trailer.

COMPREHENSIVE PLAN – The Comprehensive Plan of the City developed pursuant to Article 3, Chapter 8A of the West Virginia Code

CURB – The edge of the vehicular pavement that may be raised or flush to a Swale. It usually incorporates the drainage system.

DENSITY – The average number of persons, families, or dwellings per unit of area (acre, square mile, etc.).

DENSITY, NET RESIDENTIAL – The Density of the Building site.

DENSITY, GROSS RESIDENTIAL – Density of the Building site plus traversing streets, Alleys, and drives, open space and one-half of bounding streets.

DOMESTIC PARTNER – Shall refer to a spousal equivalent and “Domestic Partners” shall refer to such a couple who cohabitate and live together, whether married or not but who seeks the benefits usually available only to spouses.

DONATION BOX, UNATTENDED – An unattended container, receptacle, or similar device that is located on any property within the City used for soliciting and collecting donations of clothing or other salvageable personal property. This term does not include recycle bins for the collection of recyclable materials governed or regulated by the City Code.



DRIVEWAY – A private travel way for Vehicles that provides access to a public Street or road from a parking space, Garage, Dwelling, Structure or Use. Driveways shall be paved with asphalt, concrete or similar material.

DWELLING UNIT – One or more rooms in a residential Building or in a mixed Building, which are arranged, designed, used or intended for use by one or more Persons living together and maintaining a common household, and which include lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

EMERGENCY SHELTER – A building (except a hotel or motel) where sleeping rooms and lawful sanitary facilities are provided to persons who need lodging on an immediate and emergent basis. A meal(s) may be furnished. Compensation for lodging and/or meals is not a necessary component of an emergency shelter but compensation being provided does not exclude an otherwise qualifying facility from being an emergency shelter. The length of stay in an emergency shelter may not exceed six (6) weeks consecutively. An emergency shelter is not considered an accessory use or a home occupation.

ENCROACHMENT – The use, placement, or extension of private Uses into, upon, over, or under Public Space or a publicly-owned property. See Article 5(D), Encroachments.

ESSENTIAL UTILITIES AND EQUIPMENT – This term comprises underground or overhead electrical, gas, communications not regulated by the Federal Communications Commission, water and sewage systems, including poles, towers or pole structures, wires, lines, mains, drains, pumping stations, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the Structures in which they are housed, and other similar equipment accessories in connections therewith. It does not include Buildings, Yards, stations used for storage, repair or processing of equipment or material, and does not include Buildings, Yards, stations, or substations for transforming, boosting or switching purposes, where such facilities are constructed on the ground.

FAIR HOUSING ACT – The Fair Housing Act, 42 U.S.C. 3601 et seq., prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national, origin, familial status, or disability.

FAMILY – Defined as any one of the following groups:

1. Up to two (2) unrelated adults and their children occupying a dwelling unit;

OR

2. Four (4) or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.



3. It shall be presumptive evidence that four (4) or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family.
4. In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:
 - a. The group is one (1) which in theory, size, appearance, structure and function resembles a traditional family unit;
 - b. The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family;
 - c. The group shares expenses for food, rent or ownership costs, utilities and other household expenses;
 - d. The group is permanent and stable. Evidence of such permanency and stability may include:
 - (1) The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
 - (2) Members of the household have the same address for purposes of voter's registration, driver's license, motor vehicle registration and filing of taxes;
 - (3) Members of the household are employed in the area;
 - (4) The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;
 - (5) There is common ownership of furniture and appliances among the members of the household; and
 - (6) The group is not transient or temporary in nature.
 - e. Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

FARTHEST FACING WALL – The wall of a Building or Structure that faces, but is farthest in distance from, the subject Street Line or Lot line. In the case of a Building or Structure with walls that are not substantially parallel to Street Lines and Lot lines, separate Farthest Facing Walls may exist for different elevations of the Building or Structure.

FEMA – Federal Emergency Management Administration, or its duly designated and authorized successor agency.



FLAG – Any fabric, Banner, or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision, or other entity. Flags are regulated in accordance with the Sign regulation standards provided in this Ordinance.

FLOOD, 100-YEAR – An event that has a 1 in 100 chance (1% probability) of being equaled or exceeded in any given year. The 100-year flood is also referred to as the 1% flood, since its annual exceedance probability is 1%.

FLOOD PLAIN – Any land area susceptible to being inundated by floodwaters from any source.

FORE COURT – A Private Frontage wherein a portion of the Facade is close to the Frontage line and the central portion is set back.

FRONTAGE – A Lot boundary line that abuts a public Street, road, or highway, or rural right-of-way.

FRONTAGE BUILDOUT – Refers to the percentage of the Building’s front facade within the minimum/maximum Front Setback of the buildable area, excluding any required (non-buildable) side Setbacks.”

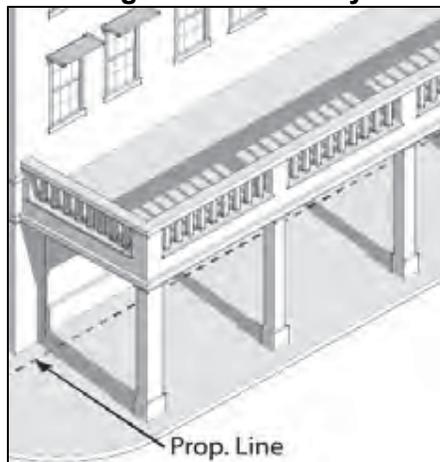
FRONTAGE, PRIVATE – The privately held layer between the Frontage line and the Principal Building Facade.

FRONTAGE, PUBLIC – The area between the Curb of the vehicular lanes and the Frontage line.

FUNERAL HOME – A Building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

GALLERY – A Private Frontage conventional for Retail use wherein the Facade is aligned close to the Frontage line with an attached cantilevered shed or lightweight colonnade overlapping the Sidewalk (Figure 2-2, Gallery).

Figure 2-2 – Gallery





GARAGE, RESIDENTIAL – An Accessory Structure, portion of a main Building, or Building attached thereto, used for the storage of private motor Vehicles owned and used by the occupants of the building to which it is accessory.

GARAGE, SERVICE – A garage, other than a Residential Garage, where motor Vehicles, Trailers, or other types of equipment are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

HISTORIC DISTRICT – Means a geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of Sites, Buildings, Structures or objects united historically or aesthetically by plan or physical development.

HISTORIC LANDMARK – Means a Site, Building, Structure or object designated as historic on a national, state or local register.

HISTORIC SITE – Means the location of a significant event, a prehistoric or historic occupation or activity, or a Building or Structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing Structure, and designated as historic on a national, state or local register.

HISTORIC STRUCTURE – Means any Structure that is:

1. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Registry;
2. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered Historic District or a district preliminarily determined by the Secretary to qualify as a registered Historic District;
3. Individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.



HOME ASSOCIATION – An incorporated, nonprofit organization operating under recorded land agreements through which: 1) each lot and/or homeowner in a planned unit or other described land area is automatically a member and 2) each lot is automatically subject to a charge for a proportionate share of the expenses for the Home Association’s activities, such as common property maintenance.

IMPERVIOUS COVER – Any natural or man-made material utilized to cover, pave or re-surface any portion or area of a Lot whether permeable or impermeable excepting only soil, plants or vegetative coverings. Impervious cover shall include, among other materials, any form or mixture of concrete, stone, asphalt, tar, porous pavement, or other substance designed and intended to alter the natural state of the land. Impervious cover shall also include rooftops of Buildings and Structures.

INDIVIDUAL BUSINESS – A single establishment or business occupying one or more Buildings designed to function as a single enterprise which does not share off-street parking, Driveways, or other common facilities with an adjacent establishment or development.

INFILL DEVELOPMENT – Means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

JUNK – Old or discarded scrap, copper, brass, iron, steel or other metals, or materials including but not limited to tires, household appliances, furniture, rope, rags, batteries, glass, rubber debris, waste, trash, construction debris, plumbing fixtures, or any discarded, dismantled, wrecked, scrapped, junk, or Nuisance motor Vehicles or parts thereof. Note building materials stored on Site for an active or pending construction project are not considered “junk” under this definition.

JUNK VEHICLE – Any motor vehicle, trailer, or semi-trailer, that does not display a lawful valid license plate or valid inspection decal upon a vehicle which is not in operating condition, or any vehicle which has been partially or totally dismantled, wrecked, extensively damaged or deteriorated, or is not capable of lawful operation on public roads

KARST – A type of geology that is formed over limestone, dolomite or gypsum by solution of the rock and is characterized by closed depressions or Sinkholes, caves and underground drainage.

KENNEL – Any Building or Structure and/or land used, designed, or arranged for housing, boarding, breeding, or care of more than two (2) adult dogs or cats kept or bred for hunting, sale, exhibition, or domestic use or other domestic animals for profit, but not including those animals raised for agricultural purposes.

LAND AREA – Land Area refers to net land area exclusive of Streets and other Public Space.

LANDOWNER – The legal owner of land as reflected in the tax records of the Sheriff of Berkeley County.



LOT – A parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required, and may consist of:

- a. A single lot of record;
- b. A portion of a lot recorded; and
- c. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of records, provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Ordinance. The term “lot of record” means the land designated as a separate and distinct parcel of land on a legally recorded subdivision or in a legally recorded deed filed in the Land Records of Berkeley County. A lot shall have its principal frontage on a public street or way, except where permanently established access easements, approved by the Planning Commission, are provided, as in a townhouse development or planned community development. The frontage requirements shall not apply to farm dwellings or vacation dwellings in isolated areas.

LOT AREA PER DWELLING UNIT – That portion of the lot area required for each dwelling unit located on a zoning lot.

LOT COVERAGE – That portion of a zoning lot that, when viewed directly from above, would be covered by a building or any part of a building. However, any portion of such building covered by a roof that qualifies as open space shall not be included in the lot coverage.

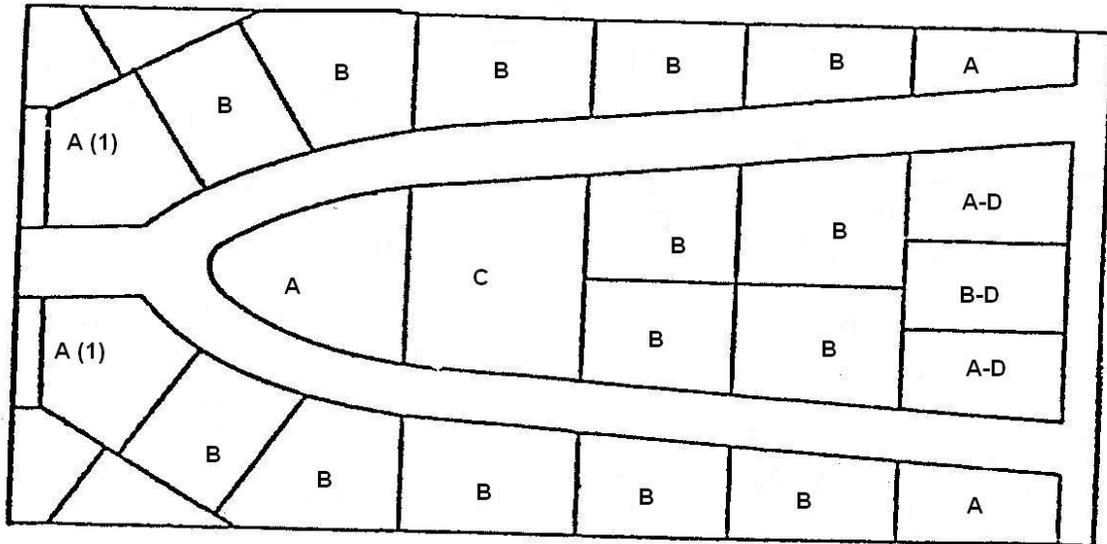
LOT DEPTH – The average horizontal distance between the front lot line and the rear lot line.

LOT WIDTH – The horizontal distance between the side Lot lines measured at the mid-point of the side Lot lines, or the length of the Frontage between said Lot lines, whichever is greater.

Figure 2-3 Lot Diagram below illustrates terminology used in this Ordinance with reference to Corner Lots, Interior Lots, Reversed Frontage Lots, and Through Lots:



Figure 2-3 – Lot Diagram



- A. CORNER LOT – A Lot located at the intersection of two or more streets. A Lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost points of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees. See lots marked A(1) in Figure 2-3.
- B. INTERIOR LOT – A Lot other than a Corner Lot with only one frontage on a street other than an Alley. See Lot C Figure 2-3.
- C. THROUGH LOT – A Lot other than a Corner Lot with frontage on more than one Street other than an Alley. Through lots with frontage on two streets may be referred to as double frontage lots. See Lot C in Figure 2-3.
- D. REVERSED FRONTAGE LOT – A lot to which the frontage is at right angles or approximately right angles to the general pattern in the area involved. A Reversed Frontage Lot may also be a Corner Lot or an Interior Lot (see Lots A-D and B-D in Figure 2-3). A reverse frontage lot is also a Lot extending between and having frontage on a freeway, arterial, or collector Street and a local street and with vehicular access solely from the latter.
- E. PIPE STEM (FLAG) LOT - A Lot which is occupied or intended to be occupied by a one-family dwelling, the width of which is less than eighty percent (80%) of the minimum lot width at any point between the front lot line and the building setback line, the width being determined by a line which is perpendicular to any side lot line (Figure 2-4).

Figure 2-4 – Pipe Stem (Flag) Lot



LOT LINE, FRONT – A line running along front of the lot separating it from the Street. In a “Through Lot,” both lines abutting the streets are deemed “front lot lines.”

MANSARD – A steeply pitched roof, pitched at such an angle as to resemble a building wall.

MARQUEE – Any permanent roof-like Structure projecting beyond a Building or extended along and projecting beyond the wall of the Building, generally designed and constructed to provide protection from the weather (Figure 2-5, Marquee).

Figure 2-5 – Marquee



MAXIMUM DENSITY – Shall mean the maximum number of Dwelling Units per acre.

MOTOR HOME – A Vehicle designed to provide temporary living quarters and built into an integral part of or permanently attached to a self-propelled licensed motor Vehicle, chassis or van including: (1) Type A Motor Home built on an incomplete truck chassis with the truck cab constructed by the second stage manufacturer; (2) Type B Motor Home consisting of a van-type Vehicle which has been altered to provide temporary living quarters; and (3) Type C Motor Home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.



MURAL – Artwork painted or applied directly on a wall or other permanent surface with the permission of the owner of said wall or surface and visible from the public right of way. A Mural shall not be a Sign.

NET BUILDABLE LAND AREA – When determining the allowed density for any given Lot in the City, the Net Buildable Land Area of the Site is used. Net Buildable Land Area, for the purpose of determining the allowed Dwelling Units for a Site, shall be calculated by subtracting areas where building is prohibited or subject to significant restrictions from the gross Lot area. The area remaining after these exclusions from the gross Lot area represents the Net Buildable Land Area. The following shall be deducted from the gross Lot area to determine Net Buildable Land Area:

1. Sensitive areas including: Type I, II, III and IV wetlands, Riparian Buffers, Flood Plain area, and Sinkholes;
2. Public rights-of-way and public easements, and private Streets and access corridors; and
3. Areas dedicated to stormwater management, except for Low Impact Design stormwater management improvements that are included in the Open Space areas

NFPA – NATIONAL FIRE PROTECTION ASSOCIATION.

NUISANCE – A thing, act, occupation, condition or Use of property which shall continue for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose, or safety of the public; or
2. In any way render the public insecure in life or in the Use of the property; or
3. Greatly offend the public morals or decency; or
4. Unlawfully and substantially interfere with, obstruct, or tend to obstruct or render dangerous for passage any Street, Alley, highway, navigable body of water or other public way.

OPEN SPACE – One or more areas of land and/or bodies of water within a development intended for the use and enjoyment of the residents living within the development. No more than fifty percent (50%) of the required Open Space may be a water body or impervious area. Open Space is calculated as a percentage of the total usable area of land in the development, with the following items excluded in such calculation from both Open Space and the total usable land: Buffer Areas, Streets, Sidewalks, off-street parking areas, traditional stormwater management areas, such as stormwater ponds [but stormwater management areas of low impact design, such as bioretention basins (rain gardens) shall be included], and other areas not practically usable by residents.



- OWNER** – The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other Person in control of a property.
- PAVED SURFACE** – A level horizontal surface covered with a paving material comprised of asphalt or concrete.
- PERMIT, BUILDING** – A written statement or other signed document issued by the City Engineer/Planning Director or designee that permits construction or any change to the use of any property, as determined by the West Virginia State Building Code, including additions and alterations and certain accessory buildings or structures (i.e.: garages, decks, walls, fences, swimming pools, etc.).
- PERMIT, SIGN** – A written statement or other signed document issued by the City Engineer/Planning Director or designee that authorizes Sign Use in accordance with the provisions of Article 6 of this Ordinance.
- PERMIT, USE AND OCCUPANCY** – A written statement or other signed document issued by the City Engineer/Planning Director or designee that authorizes Building or Structure Use and Occupancy in accordance with the provisions of this Ordinance.
- PERSON** – Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the State, any interstate body or any other legal entity.
- PLANNING COMMISSION** – The City of Martinsburg Planning Commission.
- PLAT** – A map, plan or layout showing the subdivision of land and indicating the location and boundaries of individual properties.
- PLAZA** – A Civic Space type designed for Civic purposes and Commercial Uses in the more urban Transect Zones, generally paved and spatially defined by building Frontages.
- PLOT** – A parcel of land consisting of one or more lots or portions thereof, which is described by reference to a recorded plat or metes and bounds.
- PUBLIC SPACE** – A public gathering spot or part of a neighborhood or downtown or other area within the public realm that helps promote social interaction and a sense of community. Possible examples may include such spaces as plazas, town squares, Parks, marketplaces, public commons and malls, public greens, piers, special areas within convention centers or grounds, sites within public buildings, lobbies, concourses, or public spaces within private buildings.
- RECREATION, ACTIVE** – A facility that has been constructed for organized recreational activities, primarily for core activities including sports (i.e., Site improved playing fields and ball courts), events (i.e., amphitheater for a concert), and playground facilities.



RECREATION, PASSIVE – Recreation open area which is generally left in its natural state for the enjoyment of outdoor recreation, or open area which is landscaped as gardens, sitting-out areas, waterfront promenades, paved areas for informal games, walking bridges, walking tunnels, hiking trails, jogging/fitness trails, bird watching facilities, fenced in areas for pets, public art, and public horticulture and agriculture areas.

REDEVELOPMENT – The process of developing land that is or has been previously developed.

REGULATORY FLOODWAY – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

RELIGIOUS INSTITUTION - A facility used primarily for religious assembly or worship and related religious activities.

RENEWABLE ENERGY – Energy that is generated from a resource that is replaced rapidly by a natural process such as power generated from the sun or from the wind.

RESTAURANT – An establishment where food and drink are prepared, served, and consumed primarily within the principal Building. The term includes lunchrooms, cafeterias, cafes, taverns, delicatessens, dinner theaters, pubs, soda fountains, and dining accommodations of public or private clubs.

RESTAURANT, FAST-FOOD – An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the Restaurant Building or off premises.

RIPARIAN BUFFER – Vegetated areas next to water resources that protect water resources from nonpoint source pollution and provide bank Stabilization and aquatic and wildlife habitat.

RURAL TO URBAN TRANSECT – The Rural-to-Urban Transect is a system that places all of the elements of the built environment in useful order, from most rural to most urban. The rural-to-urban Transect is divided into six zones: natural (T1), rural (T2), sub-urban (T3), general urban (T4), center (T5), and core (T6). For the City of Martinsburg Zoning Ordinance, the Urban Transect uses zones T1 – T5. Also, see, TRANSECT and TRANSECT ZONE (T-ZONE).

SALVAGE – Old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries or rubber and any junked, dismantled or wrecked machinery, machines or motor Vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor Vehicles.

SANITARY LANDFILL – A waste disposal facility where layers of garbage are covered, usually with layers of earth and a cap made of a synthetic membrane. Per Article 4, Sanitary Landfill is a prohibited Use.



SETBACK – The minimum horizontal distance required between the Building Line as defined herein and the related front, side or rear property line, unless otherwise allowed by this Ordinance. In cases where the property line is located within a Street, Alley, or other right-of-way for Vehicle access (e.g., for older parcels in Martinsburg where the property line is the center line of the Street), the required Setback shall be measured from the face of the curb if a curb exists, or otherwise from the edge of Street pavement, whichever applies.

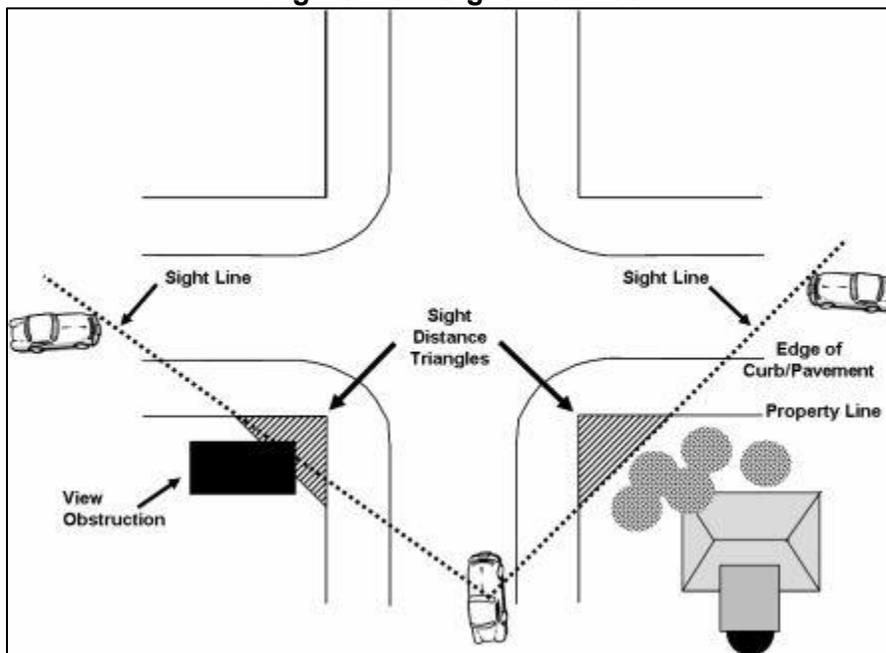
SIDEWALK – That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

SIGN – See Article 6 for Sign definitions.

SINKHOLE – Any natural depression formed as a result of subsurface removal of soil or rock materials and causing the formation of a collapse feature that exhibits internal drainage. The existence of a sinkhole shall be indicated by the uppermost closed depression contour lines on the United States Geological Survey (7.5-minute quadrangle topographic maps or as determined by field investigations.

SIGHT DISTANCE – The distance measured between the height of a driver’s eye and the height of an object without horizontal or vertical obstruction to the line of sight (See Figure 2-6, Sight Distance)

Figure 2-6 – Sight Distance



SITE – The parcel of land developed or being developed, or a designated portion thereof.



SLOPE – The face of an embankment or cut section; any ground whose surface makes an angle with the plane of the horizon. Slopes are usually expressed in a percentage based upon vertical difference in feet per one hundred (100) feet of horizontal distance.

SOLAR ENERGY, ACTIVE – The practice of using mechanical devices (e.g., solar panel system) to capture or deflect the sun’s energy. Active solar heating relies strongly on three components: a solar collector to absorb the solar energy, a solar storage system, and a heat transfer system to disperse the heat to the appropriate places in your home. Active heating systems can be divided into two categories: air systems and liquid systems.

SOLAR ENERGY, PASSIVE – The practice of non-mechanical devices (e.g., windows, walls, trees, Building placement and other simple techniques) to capture or deflect the sun’s energy.

SQUARE – A Civic Space type designed for Passive Recreation and Civic purposes, spatially defined by building Frontages and consisting of Paths, lawns and trees, formally disposed

STABILIZATION – The use of practices that prevent exposed soil from eroding.

STOOP – A private frontage wherein the Facade is aligned close to the Frontage line with the first Story elevated from the Sidewalk for privacy, with an exterior stair and landing at the entrance.

STREAM – As defined in West Virginia State Code Chapter 7-1-3U, any Watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

STREAM CHANNEL – A natural or artificial Watercourse with a definite bed and banks that conducts continuously or periodically flowing water and shall include wet weather stream channels.

STREET – A street, avenue, boulevard, road, highway, freeway, parkway, lane, Alley, viaduct and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private. This definition shall not include Driveways.

STREET LINE – A line defining the edge of a Street right-of-way and separating the Street from abutting property or Lots (same as Lot line or right-of-way line). If, on the Comprehensive Plan of Streets and highways duly adopted by the City, a Street is scheduled for future widening, the proposed right-of-way line shown on the Comprehensive Plan shall be the Street Line.

STRUCTURE – Anything constructed, the use of which requires fixed location on the ground or attached to something having such location, but not including fences, power, gas, water, sewage or communication lines or poles, towers or pole structures, Sidewalks, Driveways or curbs.



STRUCTURE, PRINCIPAL – Also referred to as the principal Building. A Building that contains the dominant Use of the Lot. It is typically located toward the front of the Lot in the front Build-To Line or behind the front Setback.

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE – The Martinsburg Subdivision and Land Development Ordinance, Part 13, Chapter 1, Articles 1 – 6, of the Martinsburg Code.

SWALE – A low or slightly depressed natural area for drainage.

SWIMMING POOL – Any Structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, aboveground, and on-ground Swimming Pools, hot tubs, and spas.

TATTOOING – Any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing.

THEATER – A Building or part of a Building devoted to showing motion pictures, or for dramatic, musical, or live performances.

TOP OF BANK – The lines depicted on the Flood Insurance Rate Maps delineating each side of a Stream indicate the Top of Bank. In the field, a professional familiar with fluvial geomorphology should document the Top of Bank. When a professional is not employed the Top of Bank will be considered to be the top of the first significant slope landward of the water's edge when it is followed by at least fifty (50) feet of relatively flat land.

TRAILER – A Vehicle with or without motor power designed for carrying persons or property and for being drawn by a motor Vehicle.

TRANSECT – A cross-section of the environment showing a range of different habitats. The rural-urban Transect of the human environment used in the SmartCode template is divided into six Transect Zones. These zones describe the physical form and character of a place, according to the density and intensity of its land use and urbanism.

TRANSECT ZONE (T-ZONE) – One of several areas on a Zoning Map regulated by the SmartCode. Transect zones are administratively similar to the land use zones in conventional codes, except that in addition to the usual building use, density, height, and Setback requirements, other elements of the intended habitat are integrated, including those of the private Lot and Building and Public Frontage.

TRANSPARENCY – The measurement of the percentage of a façade that has highly transparent, low reflectance glass with a minimum fifty percent (50%) transmittance factor and a reflectance factor not greater than one quarter percent (0.25%).

TRASH DUMPSTER – Any temporary ground stored receptacle for refuse, garbage, waste, etc.



UNNECESSARY HARDSHIP – A deprivation of the economic Use and benefit of property resulting under the Martinsburg Zoning Ordinance due to unique characteristics of the property that were not created by the applicant for a Variance. An Unnecessary Hardship may justify the granting of a Variance if the Board of Zoning Appeals makes the findings specified in Section 1.11(D)(3) of this Ordinance. The burden of proving an Unnecessary Hardship rests upon the applicant for the Variance.

USABLE FLOOR AREA – Total of all fully-enclosed area within a Building that is not occupied by fixed structural elements (such as columns or walls). Fully enclosed area that is available for the exclusive use of a building occupant for habitation, personnel, materials, furniture, fixtures and equipment.

USE – Any purpose for which a Building or Structure, including Signs, or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on, or intended to be carried on, in a Building or other Structure or on a tract of land. The term Permitted Use or its equivalent shall not be deemed to include any Legally Nonconforming Use.

USE, ACCESSORY (OR ACCESSORY STRUCTURE) – A Use or Structure customarily incidental and subordinate to the principal Permitted Use or an approved Special Exception Use and located on the same Lot as the Principal Use. Examples include, but not limited to, a detached Garage, shed, above ground Swimming Pool, and satellite dish.

USE, LEGALLY NONCONFORMING – (commonly referred to as a “Grandfathered Use”) – Any Use of land, a Building or a Structure (including Signs) lawfully existing at the time of the adoption of this Ordinance or at the time this Ordinance is subsequently amended, which Use may be continued without prohibition by this Ordinance as long as such Use is maintained, subject to the provisions of this Ordinance.

USE, NON-CONFORMING – A Use that was valid when brought into existence but, by subsequent regulation or ordinance, which has been lawfully continued and which does not now conform with the Use regulation or ordinance. “Nonconforming Use” is a generic term and includes (1) nonconforming Structures (by virtue of size, type of construction, location on land, or proximity to other Structures), (2) Nonconforming Use of a conforming building, (3) Nonconforming Use of a nonconforming building, and (4) Nonconforming Use of land. Thus, any Use lawfully existing on any piece of property that is inconsistent with a new or amended regulation or ordinance, and that in turn is a violation of the amendment subsequently adopted, will be a Nonconforming Use.

USE, PERMITTED – Means any Use allowed by right within a Zoning District, subject to the restrictions applicable to that Zoning District, and that is not a Special Exception Use.

USE, PRINCIPAL – The dominant purpose for which a Lot or Building is utilized.



USE, SPECIAL EXCEPTION – A Use conditionally permitted in a particular Zoning District under this Ordinance that may be undertaken only following the issuance of a Special Use Permit by the Board of Zoning Appeals pursuant to standards and criteria established in this Ordinance.

USE, TEMPORARY – Any Use authorized under and in accordance with the provision of this Ordinance which is limited to the time in which such Use may legally continue.

VARIANCE – A relaxation of the terms of the Zoning Ordinance where the Board of Zoning Appeals makes the findings specified in Section 1.10; 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 District classification of a parcel of land. W.Va. Code Chapter 8A-7-11.

VEHICLE – A device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchairs.

VEHICLE, NON-COMMERCIAL – Any motor Vehicle other than a Motor Home or Commercial Vehicle.

VEHICLE, RECREATIONAL – A Vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent Dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

VEHICLE, UNLICENSED – A Vehicle without lawfully displayed, current, and valid license plates registered and issued to that Vehicle by the West Virginia Division of Motor Vehicles or the appropriate agency of another State.

VETERINARY OFFICES, CLINICS, SERVICES AND LABORATORIES – An establishment for the medical or custodial care of animals. Boarding of animals is limited to short term stays associated with medical care provided.

WATERCOURSE – A permanent or intermittent Stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERSHED – A defined land area drained by a river, Stream, drainage ways or system of connecting rivers, Streams, or drainage ways such that all surface water within the area flows through a single outlet.

WATERWAY – A channel that directs surface runoff to a Watercourse, or to the public storm drain.

YARD – An open unoccupied space on the same Lot with a main Building or Structure.

YARD, FRONT – A Yard situated between a Street Line and a line running with the Farthest Facing Wall or Walls of the main Building or Structure on the same Lot, with said line projected to the boundaries of the Lot.



- YARD, REAR** – A Yard situated between the rear line of a Lot and a line running with the Farthest Facing Wall or walls of the main Building or Structure on the same Lot, with said line projected to the boundaries of the Lot. All Lots shall have a designated Rear Yard.
- YARD, REQUIRED** – A Yard between each Lot line or Street Line, as the case may be, and its respective Building Restriction Line, the depth of which is equal to the required Setback.
- YARD, SIDE** – A Yard situated between a sideline of a Lot and a line running with the Farthest Facing Wall or walls of the main Building or Structure on the same Lot, with said line projected to the boundaries of the Lot. Any Lot line not a rear line or a front line shall be deemed a sideline.
- YARD SALE** – Includes all sales entitled “garage sale,” “lawn sale,” “yard sale,” “attic sale,” “rummage sale,” or “flea market sale,” or any similar casual sale of tangible personal property that is advertised by any means whereby the public at large is or can be made aware of said sale.
- ZONE BUFFER** – A strip established to separate the protect one type of land use from another.
- ZONING DISTRICT** – A portion of territory designated on the official Zoning Map within which certain uniform regulations and requirements of various combinations thereof apply under provisions of this Ordinance.
- ZONING MAP** – The official Zoning Map of the City adopted, and incorporated in its entirety, as part of this Ordinance pursuant to Section 3.02 of this Ordinance.



ARTICLE 3 ZONING DISTRICTS

Section 3.01 Establishment of Zoning Districts

The following Zoning Districts are hereby established in the City (Table 3-1):

Table 3.01, Zoning Districts and Transect Subdistricts

ZONING DISTRICTS	RURAL-TO-URBAN TRANSECT SUBDISTRICTS				
	T-1	T-2	T-3	T-4	T-5
RESIDENTIAL					
UR – Urban Residential		UR-2	UR-3		
SR – Suburban Residential	SR – 1	SR-2			
MIXED USE DISTRICTS					
DTN – Downtown				DT-4	DT-5
MUR – Mixed Use Residential		MUR-2	MUR-3		
MUC – Mixed Use Commercial			MUC-3		
INSTITUTIONAL- DISTRICT					
MIN – Medical-Institutional			MIN-3		
SPECIAL DISTRICTS					
AR – Annexation Reserve					
HPO – Historic Preservation District Overlay					
FPO – Flood Plain District Overlay					
EDO – Economic Development Overlay					

Section 3.02 Zoning Map

The Zoning Districts established by Subsection 3.01 are shown on the City’s official Zoning Map, which is adopted, and incorporated herein in its entirety, as part of this Ordinance. The Zoning Districts include subdistricts based on transects

- (A) Promptly following enactment of this Ordinance, the City Engineer/Planning Director or designee shall place the following legend on the official Zoning Map adopted as part of this Ordinance, the Mayor shall execute the same on behalf of City Council, and the City Recorder shall attest to the same: “On <DATE>, by official action of City Council, the map bearing this legend was adopted as the official Zoning Map of the City by enactment of the Zoning Ordinance of the City, West Virginia, Part 13, Chapter 3 of the Martinsburg Code.”
- (B) If, in accordance with the provisions of this Ordinance and applicable law, the provisions of this Ordinance and/or Zoning District boundaries are amended in any manner that renders the existing Zoning Map no longer accurate, then, promptly following adoption of such amendment, the City Engineer/Planning Director or designee shall have prepared, and present to the Mayor and City Recorder for execution, a revised zoning map accurately reflecting all changes necessitated by the amendment, upon which is placed the following legend: “On <DATE>, by official action of City Council, the map bearing this legend was adopted as the revised official Zoning Map of the City in order to accurately



reflect amendments made on said date to the Zoning Ordinance of the City, West Virginia, Part 13 of the Martinsburg Code, and/or Zoning District boundaries provided for therein.” Upon execution by the Mayor on behalf of City Council and attestation by the City Recorder, such revised map shall be the official Zoning Map of the City.

- (C) No changes of any nature shall be made in the official Zoning Map except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any Person or Persons shall be considered a violation of this Ordinance.
- (D) Certified Zoning Maps shall be filed with the City Recorder, the City Planning Commission, and the Clerk of the County Commission of Berkeley County.

Section 3.03 Rules for Interpretation of District Boundaries

Where uncertainty exists as to the boundaries of Zoning Districts as shown on the official Zoning Map, the following rules shall apply:

- (A) Boundaries indicated as approximately following the centerlines of Streets, highways, or Alleys shall be construed to follow such centerlines;
- (B) Boundaries indicated as approximately following property lines or platted Lot lines, shall be construed as following such lines;
- (C) Boundaries indicated as approximately following City limits shall be construed as following City limits;
- (D) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks; and
- (E) Boundaries that are in un-subdivided property or where a Zoning District boundary divides a Lot shall be determined by the use of the map scale as shown thereon.

Section 3.04 Urban Residential (UR) District

The following regulations govern land Use within the Urban Residential (UR) District:

- (A) Purpose. The UR District is intended for the older residential areas of Martinsburg where a variety of housing types, built primarily on small lots, have been constructed over a long period to form a compact and urban grid pattern of residential development. New growth should be compatible with the character and scale of existing housing. The district also supports neighborhood-scaled, personal service businesses, and like the Downtown District, promotes reinvestment and revitalization that emphasizes high quality design of buildings and public spaces. Neighborhoods in this district successfully integrate diverse housing types available to a variety of household incomes. Common neighborhood characteristics include front porches, stoops, pitched roofs, and front entryways accessible to the larger City sidewalk system. Streets in the district are well lit, easy to cross, green, and pedestrian friendly. Many blocks include Alleys which allow rear parking and service.
- (B) Building Form Regulations. Figures 3-1 and 3-2 specify the UR District’s building form regulations.



FIG 3-1

URBAN RESIDENTIAL: UR-2

UR-2



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	2.5 stories max, 1 min. 35' max height
Outbuilding	1.5 stories max
Impervious Coverage	60% max
Lot Width	50' min 80' max
Lot Depth	100' min 180' max
Lot Area	5,000 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	12' min, 25' max*
(c.2) Corner Lot Secondary Street Front Setback	secondary frontage qualifies as a side
(c.3) Side Setback	5' min for detached; attached permitted
(c.4) Rear Setback	25' min
(c.5) Frontage Buildout	80% min at setback

C.a. ALLOWANCES FOR FRONT-LOADED LOTS

(c.2a) Side Setback	5' min
(c.5a) Frontage Buildout	50% min to setback
(d.1a) Outbuilding Front Setback	10' + bldg setback min, 35' max permitted in front

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	50' max from rear
(d.2) Side Setback	5' min
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	permitted
Stoop	not permitted
Shopfront & Awning	not permitted
Arcade	not permitted

F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Parking should be accessed from an alley. Existing lots without alley access may use the allowances in section C.a to obtain a larger setback.
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BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

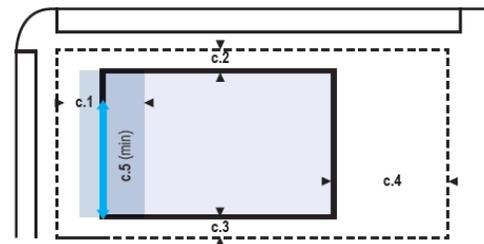


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:

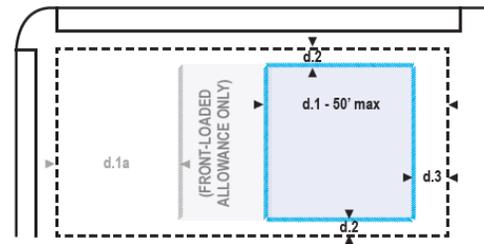


- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:



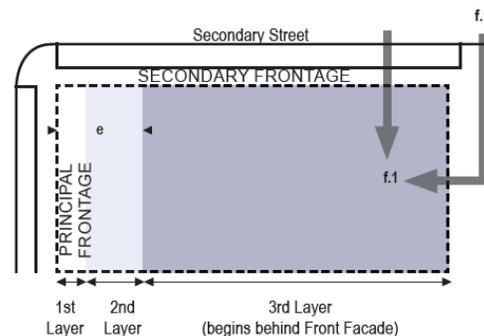
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.



FACADE ALIGNMENT

- Principal frontage should be within 5' of immediate neighbors (recommended).

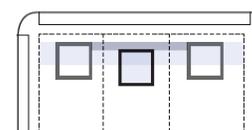




FIG 3-2

URBAN RESIDENTIAL: UR-3

UR-3



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	3.5 stories max, 2 min 46' max height
Outbuilding	2 stories max
Impervious Coverage	70% max
Lot Width	30' min 40' max
Lot Depth	100' min 140' max
Lot Area	3,000 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	8' min 16' max
(c.2) Corner Lot Secondary Street Front Setback	secondary frontage may be treated as a side or front
(c.3) Side Setback	detached units: 5' min attached units permitted: 0'
(c.4) Rear Setback	40' min
(c.5) Frontage Buildout	100% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	40' max from rear
(d.2) Side Setback	0' min if attached, 5' min. if detached
(d.3) Rear Setback	3' min

E. PRIVATE FRONTAGES

Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	permitted
Stoop	permitted
Shopfront & Awning	permitted on commercial uses only
Arcade	not permitted

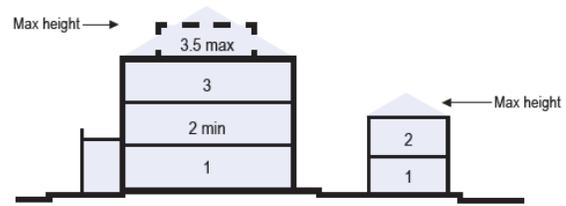
F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Parking is only allowed in the rear. Parking should be accessed from an alley.

BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

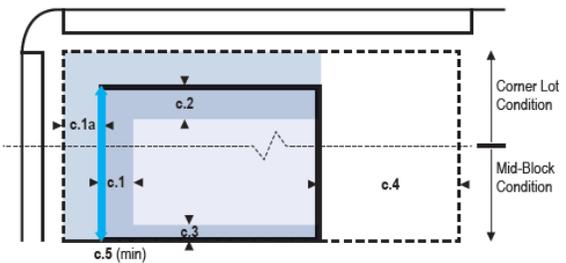


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:

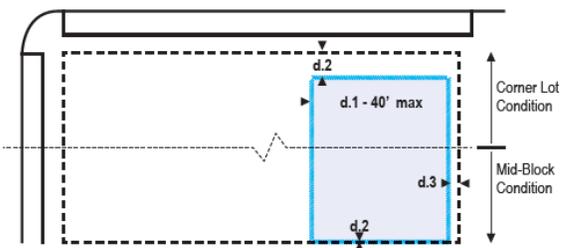


- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:



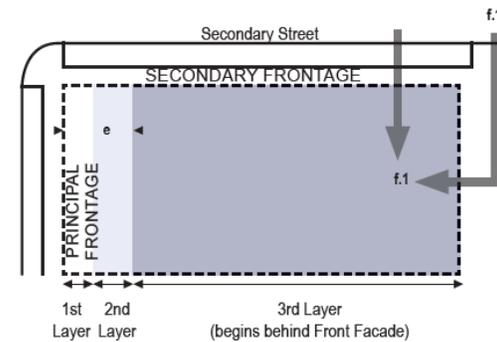
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



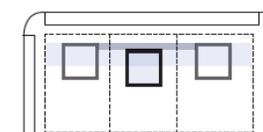
PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.



FACADE ALIGNMENT

- Principal frontage should be within 5' of immediate neighbors (recommended).





Section 3.05 Suburban Residential (SR) District

The following regulations govern land Use within the Suburban Residential (SR) District:

- (A) **Purpose.** The SR District provides for a moderately compact residential development at an average density of approximately under ten (10) dwelling units per acres with slightly higher density confined to specific blocks. This district includes single family housing neighborhoods with large front yards to provide privacy. Streets are lined with trees and landscaping, and blocks may or may not include Alleys for rear access. The maintenance and protection of the existing established residential neighborhoods is a major goal of the district and future development will generally occur in a gradual manner, through the infilling of vacant lots or the replacement of older structures. New infill should reflect the character, scale, and site placement of the neighboring homes on any given block.

- (B) **Building Form Regulations.** Figures 3-3 and 3-4 specify the SR District's building form regulations.



FIG 3-3

SUBURBAN RESIDENTIAL: SR-1

SR-1



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	2.5 stories max, 1 min 32' max height
Outbuilding	1.5 stories max
Impervious Coverage	40% max
Lot Width	80' min
Lot Depth	120' min
Lot Area	9,600 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	30' min, 50' max*
(c.2) Corner Lot Secondary Street Front Setback	may treat secondary frontage as a side or front
(c.3) Side Setback	10' min
(c.4) Rear Setback	30' min
(c.5) Frontage Buildout	50% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	10' + front setback
(d.2) Side Setback	10' min
(d.3) Rear Setback	5 min

E. PRIVATE FRONTAGES

Porch	permitted
Fence	permitted
Terrace or Forecourt	permitted
Stoop	permitted
Shopfront & Awning	not permitted
Arcade	not permitted

F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

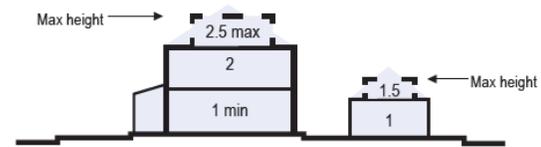
(f.1) Most lots in SR-1 are front-loaded. Alley access is encouraged where possible. Corner lots should access parking from the secondary street.

*CLEARLY PREVAILING YARD PATTERN:

For lots surrounding by pre-existing structures, the setback may match the smallest neighboring setback as shown in g.1, even if it exceeds the maximum as stated in c.1.

BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

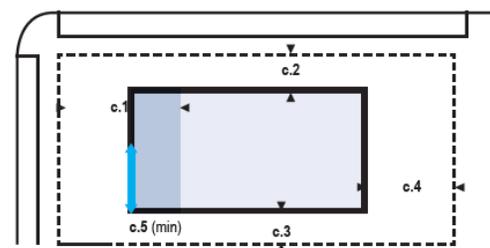


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:

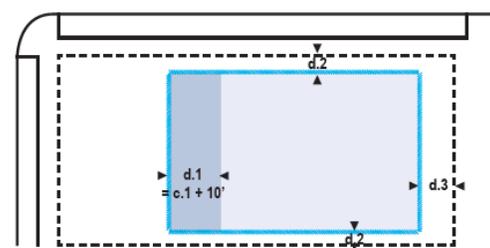


- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:



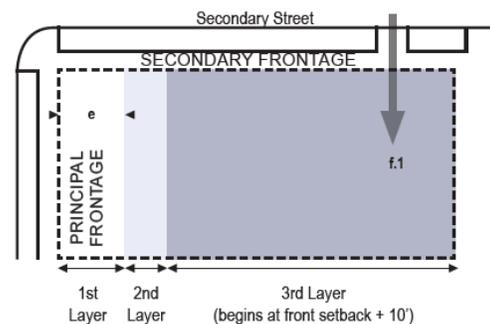
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.



*CLEARLY PREVAILING YARD PATTERN

- Properties adjacent to existing non-compliant structures may choose to maintain the existing (g.1) or apply the required setback.

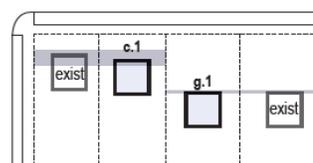




FIG 3-4

SUBURBAN RESIDENTIAL: SR-2

SR-2



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	2.5 stories max, 1 min 35' max height
Outbuilding	1.5 stories max
Impervious Coverage	50% max
Lot Width	50' min
Lot Depth	100' min
Lot Area	5,000 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	16' min, 25' max*
(c.2) Corner Setback	secondary frontage qualifies as a side
(c.3) Side Setback	5' min
(c.4) Rear Setback	50' min
(c.5) Frontage Buildout	80% min at setback

C.a. ALLOWANCES FOR FRONT-LOADED LOTS

(c.2a) Side Setback	5' min
(c.5a) Frontage Buildout	50% min to setback
(d.1a) Outbuilding Front Setback	10' + bldg setback min, 35' max permitted in front

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	50' max from rear
(d.2) Side Setback	5' min
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	not permitted
Stoop	permitted
Shopfront & Awning	not permitted
Arcade	not permitted

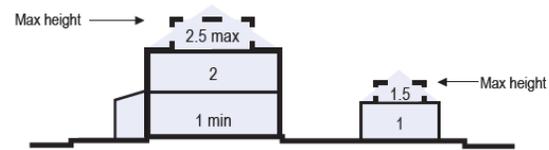
F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Alley access is encouraged where possible. Existing lots without alley access may use the allowances in section C.a to obtain a larger setback.

BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

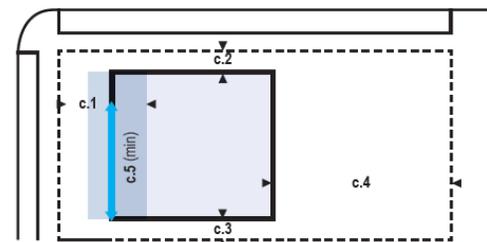


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:

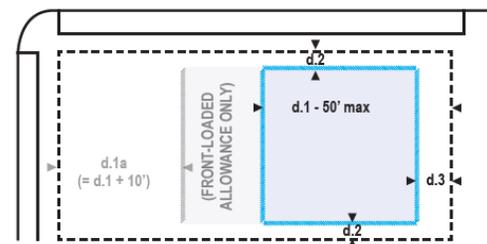


- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:



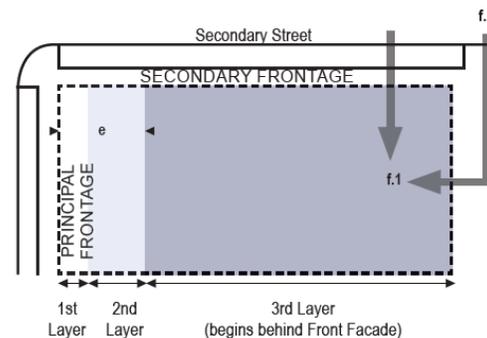
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



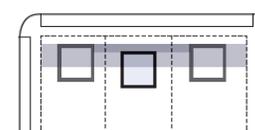
PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.



FACADE ALIGNMENT

- Principal frontage should be within 5' of immediate neighbors (recommended).





Section 3.06 Downtown (DT) District

- (A) **Purpose.** The Downtown Zoning District is established to maintain the character and function of the City's historic central business district and its bordering, historic residential neighborhoods. The district promotes a Main Street environment characterized by mixed use; walkability, accessibility and connectivity; public transportation access; civic and public spaces and the sharing of parking and other public infrastructure. This district promotes reinvestment and revitalization that emphasizes high quality design of buildings and public spaces to uphold the district's historic integrity. Retail uses are prioritized here, specifically on the ground floor. Building heights are permitted to be higher in this district than in any other, to encourage a mix of uses to focus on locating in the Downtown District. Blocks include Alleys for rear access, and streets include sidewalks and minimal or zero setback to encourage pedestrian activity and high visibility in the public realm and along the street frontage.
- (B) **Building Form Regulations.** Figures 3-5 and 3-6 specify the DT District's building form regulations.



FIG 3-5

DOWNTOWN NEIGHBORHOOD: DT-4

DT-4



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	3.5 stories max, 2 min 48' max height
Outbuilding	2 stories max
Impervious Coverage	80% max
Lot Width	30' min
Lot Depth	100' min
Lot Density	800-1800 sf per residential unit

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	0' min 8' max
(c.2) Corner Lot Secondary Street Front Setback	0' min 8' max
(c.3) Side Setback	0' min permitted if building is attached. 5' min, 8' max if detached
(c.4) Rear Setback	3' min
(c.5) Frontage Buildout	80% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	50' max from rear
(d.2) Side Setback	0' min if attached, 5' min. if detached
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	permitted
Fence	not permitted
Terrace or Forecourt	permitted. Maximum width 20% of lot frontage
Stoop	permitted
Shopfront & Awning	permitted
Arcade	not permitted

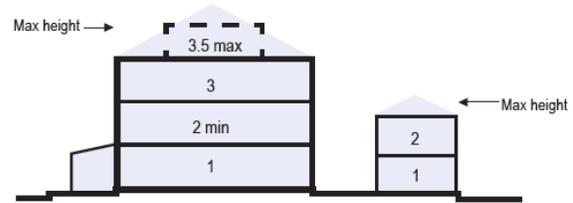
F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Parking is only allowed in the rear. Parking should be accessed from an alley where possible.
(f.2) Building setback from parking is 0' min

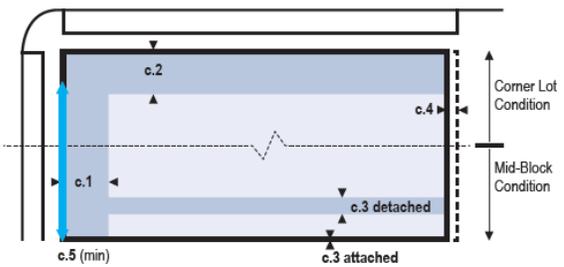
BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling, except for a first floor Commercial function which must be a minimum of 14 ft with a maximum of 20'
- Raised Basements are permitted.



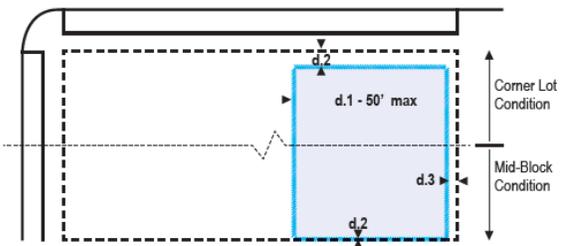
SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:
- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:



SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.

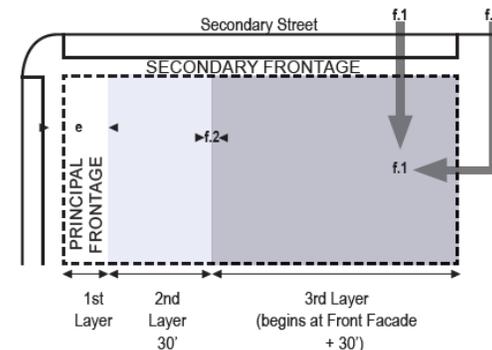
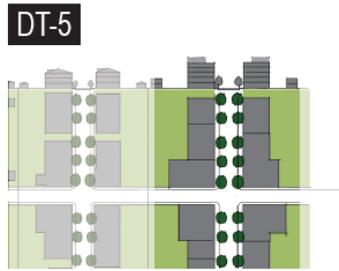




FIG 3-6

DOWNTOWN CORE: DT-5



A. USE (See Table 4.01)

Ground Floor	residential not permitted
Upper Floors	all uses permitted per Table 4.01

B. BUILDING CONFIGURATION

Principal Building	5 stories max, 3 min 66' max height
Height Addition	additional 6th floor is allowed if recessed 20'
Outbuilding	3 stories max
Impervious Coverage	100% max
Lot Width	30' min
Lot Depth	100' min
Lot Density	800-1600 sf per residential unit

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	0' min 3' max
(c.2) Corner Lot Secondary Street Front Setback	0' min 5' max
(c.3) Side Setback	0' min 5' max
(c.4) Rear Setback	3' min
(c.5) Frontage Buildout	100% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	50' max from rear
(d.2) Side Setback	0' min if attached, 5' min. if detached
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	not permitted
Fence	not permitted
Terrace or Forecourt	not permitted
Stoop	not permitted
Shopfront & Awning	permitted
Arcade	not permitted

F. PARKING PROVISIONS

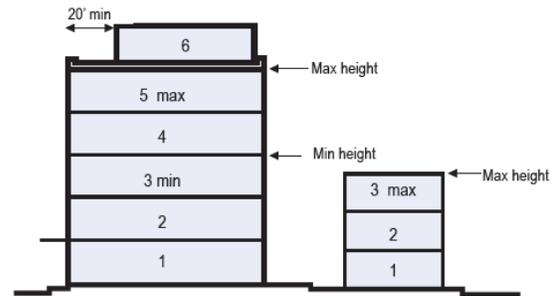
See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Parking is only allowed in the rear. Parking should be accessed from an alley where possible.

(f.2) Building setback from parking is 0' min

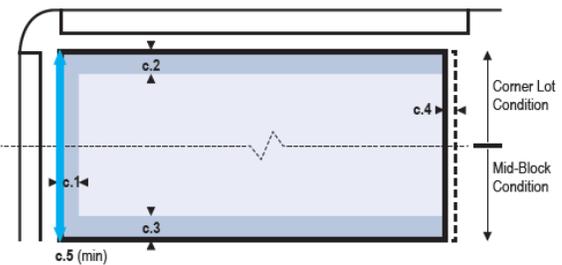
BUILDING CONFIGURATION

- An additional floor is allowed with a 20' setback.
- Raised basements are not permitted.
- Ground floor stories must be a minimum height of 16 ft with a maximum of 20'. Upper floors may be a maximum height of 14'



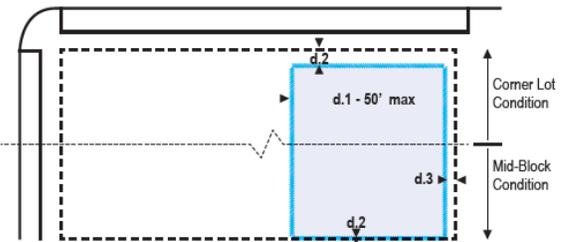
SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:
-
- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:



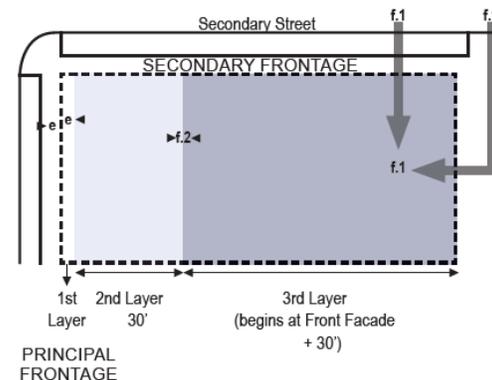
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:
-



PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.





Section 3.07 Mixed Use Residential (MUR) District

- (A) **Purpose.** The MUR District provides a place for where diverse residential living is encouraged. This District permits modern larger scale residential development integrated with needed personal and professional services as well as retail uses existing separately or within a residential building to provide opportunities for new development and redevelopment in existing well-connected, neighborhoods. A range of residential housing types are permitted and will be the majority of new development, including detached single-family houses, duplexes, patio homes, townhomes, live/work units, or apartments. Some small-scale commercial uses may be allowed on larger streets if the buildings are scaled to the neighborhood and the uses are those that are compatible with the neighborhood. These could include a church, small boutique clothing store, doctor's office, day care center, coffee shop, or dry cleaner. The MUR district is intended to accommodate new growth in areas near activity centers and major streets and to allow for a vertical or horizontal mix of uses on sites. All new development and redevelopment will be pedestrian-oriented and shall be accessible via local streets to parks, schools, and nearby commercial centers. Development will be designed so that its form, height, and proportion are compatible with existing adjacent development.
- (B) **Building Form Regulations.** Figures 3-7 and 3-8 specify the MUR District's building form regulations.



FIG 3-7

MIXED USE RESIDENTIAL: MUR-2

MUR-2



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	3 stories max, 1 min 40' max height
Outbuilding	1 story max
Impervious Coverage	60% max
Lot Width	20' min
Lot Depth	100' min
Lot Area	2,000 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	20' min, 35' max*
(c.2) Corner Lot Secondary Street Front Setback	16' min, 28' max*
(c.3) Side Setback	detached units: 5' min attached units permitted: 0'
(c.4) Rear Setback	20' min
(c.5) Frontage Buildout	75% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	20' min. May protrude up to 5' beyond Front Facade
(d.2) Side Setback	0' min if attached, 5' min. if detached
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	permitted
Stoop	permitted
Shopfront & Awning	not permitted
Arcade	not permitted

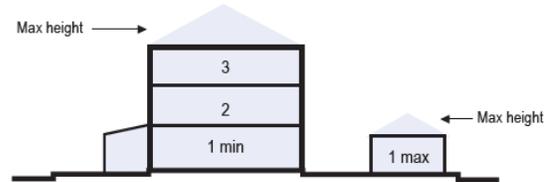
F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Lots may be front-loaded, side-loaded, or alley-loaded.

BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

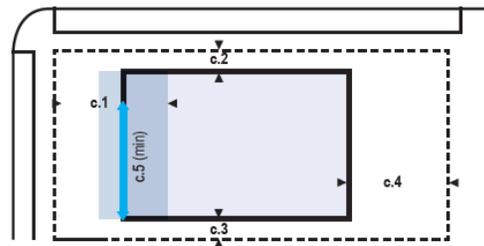


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:



- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:

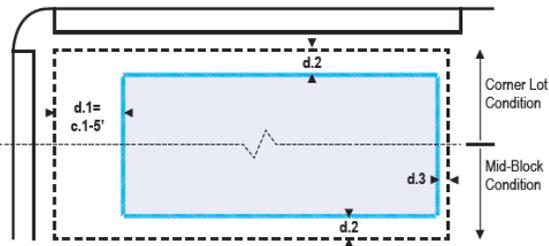


SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



- Attached garages will be treated as outbuildings.



PARKING PLACEMENT

- Garages may protrude 5' beyond Front Facade (d.1)
- Surface parking is permitted in the First and Second Layers only directly in front of a Garage.
- Surface parking spaces may be provided anywhere within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.

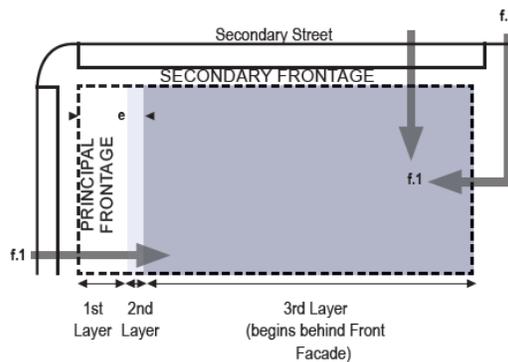




FIG 3-8

MIXED USE RESIDENTIAL: MUR-3

MUR-3



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	3.5 stories max, 2 min 46' max height
Outbuilding	2 stories max
Impervious Coverage	60% max
Lot Width	20' min
Lot Depth	100' min
Lot Area	2,000 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	8' min 16' max
(c.2) Corner Lot Secondary Street Front Setback	secondary frontage may be treated as a side or front
(c.3) Side Setback	detached units: 5' min attached units permitted: 0'
(c.4) Rear Setback	50' min
(c.5) Frontage Buildout	75% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	20' + front setback
(d.2) Side Setback	0' min if attached, 5' min. if detached
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

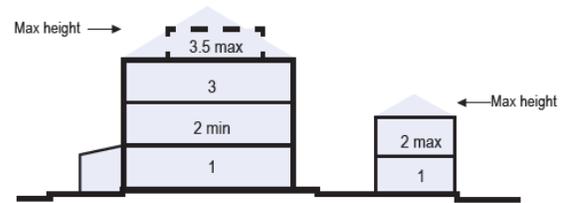
Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	permitted
Stoop	permitted
Shopfront & Awning	not permitted
Arcade	not permitted

F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards
(f.1) Lots may be front-loaded, side-loaded, or alley-loaded. In all cases, garages must be located in the third Layer and recessed 20' behind the Front Setback (d.1).

BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

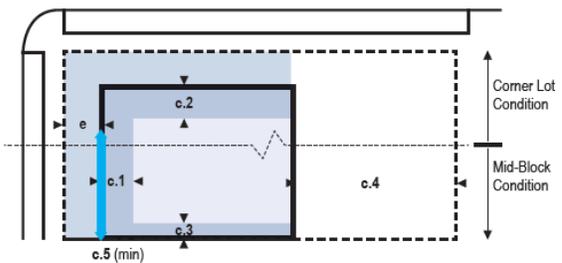


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:



- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:

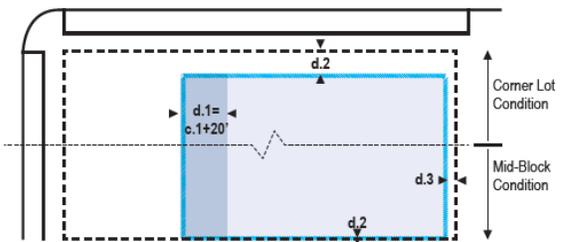


SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:

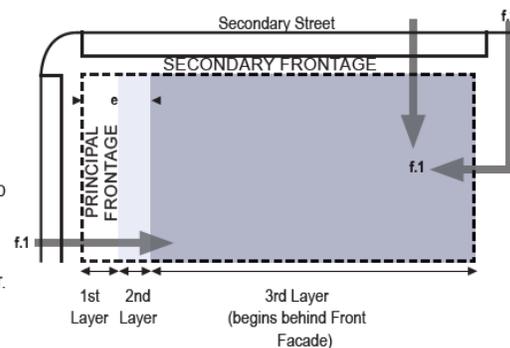


- Attached garages will be treated as outbuildings.



PARKING PLACEMENT

- Surface parking spaces may be provided within the third Layer as shown in the diagram.
- All garages must conform to outbuilding setbacks of 20' behind Front Setback (d.1)
- Trash containers shall be stored within the third Layer.





Section 3.08 Mixed Use Commercial (MUC) District

- (A) Purpose. The MUC District provides for the development of commercial and related business activities designed to serve the community and will incorporate upper floor residential and or other multifamily buildings within a planned development. It is intended that this District be located outside the Downtown at the City's gateway areas and adjacent or connected to major transportation corridors in the City including I-81 and Routes 9, 11 and 45. Direct access to major highways requires additional attention be given to connector road widths, access drive, bike lane, and pedestrian movement and safety requirements. Uses permitted in this district draw customers from a wide trade area and in many cases their size and scale of operation would not be compatible with the Downtown District. This District blends residential, commercial, cultural, institutional, or entertainment uses into one space, where those functions are to some degree physically and functionally integrated, and that provides pedestrian connections. Mixed-use development may be applied in new real estate development projects or future redevelopment projects in the City or may apply to a single building either existing or new.
- (B) Building Form Regulations. Figure 3-9 specifies the MUC District's building form regulations.



FIG 3-9

MIXED USE COMMERCIAL: MUC-3

MUC-3



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	3.5 stories max, 1 min 46' max height
Outbuilding	2 stories max
Impervious Coverage	80% max
Lot Width	20' min
Lot Depth	100' min
Lot Density	1200-2000 sf per residential unit

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	8' min 16' max
(c.2) Corner Lot Secondary Street Front Setback	secondary frontage may be treated as a side or front
(c.3) Side Setback	detached units: 5' min attached units permitted: 0'
(c.4) Rear Setback	30' min
(c.5) Frontage Buildout	75% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	60' max from rear
(d.2) Side Setback	0' min if attached, 5' min. if detached. Corner lots: 10' required from street-facing side
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	permitted
Stoop	permitted
Shopfront & Awning	not permitted
Arcade	not permitted

F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Parking is only allowed in the rear. Alley access is encouraged. Alleys should be accessed from the secondary street where possible.

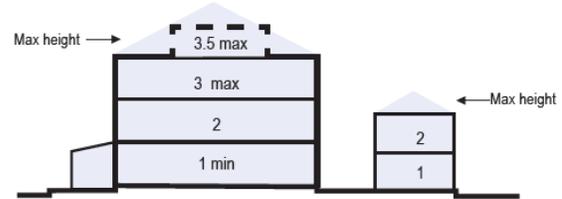
G. MASTER PLAN REQUIREMENT

a. For a redevelopment of developed properties, expansion over 25% of existing buildings, or development of vacant properties, development within the Mixed Use Commercial district shall be depicted on a master plan prepared and submitted pursuant to the site plan application process specified under Section 1.09 of this Ordinance.

b. For development of pad-sites or out-parcels of existing, developed properties, or an expansion of up to 25% of an existing building, development within the Mixed Use Commercial district shall be depicted on a land development plan, with no master plan required.

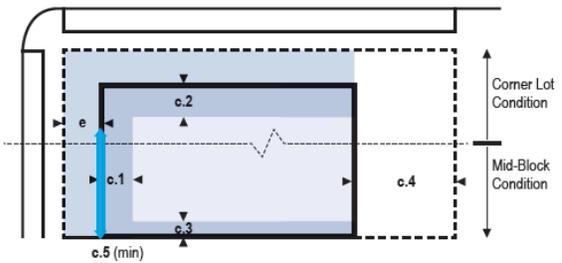
BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling, except for a first floor Commercial function which must be a minimum of 14 ft with a maximum of 20'.
- Raised Basements are not permitted.



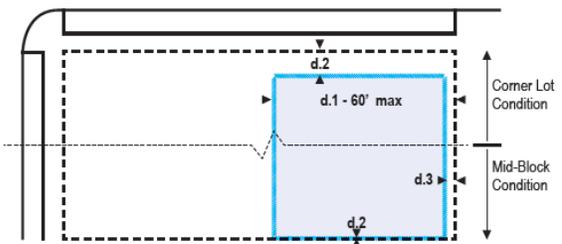
SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:
 - MINIMUM (indicated by a blue arrow)
 - MAXIMUM (indicated by a black arrow)
- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.5) and shown as:
 - MINIMUM (indicated by a blue arrow)



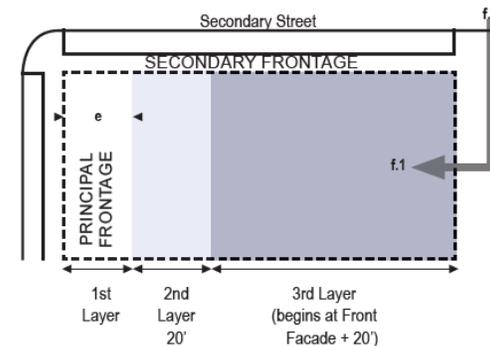
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:
 - MINIMUM (indicated by a blue arrow)



PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.





Section 3.09 Medical-Institutional (MIN) District

- (A) Purpose. The MIN District is established to recognize that there are certain public, quasi-public, and institutional land uses needed in the City and should be located in close proximity to one another. Buildings in this district have flexibility in their placement and size but are intended to face entrances towards a street or public space. They should include a front layer of landscape or yard that reflect the scale of the residential neighborhoods that are immediately adjacent and contribute to a walkable neighborhood character. Large medical centers and small separate facilities are accommodated in this district. Shared access and parking areas set back from the street help simplify traffic flow and keep the street safe for pedestrians and other users.
- (B) Building Form Regulations. Figure 3-10 specifies the MIN District's building form regulations.



FIG 3-10

MEDICAL-INSTITUTIONAL: MIN-3



A. USE

See Table 4.01

B. BUILDING CONFIGURATION

Principal Building	4 stories max, 1 min 54' max height
Outbuilding	2 stories max
Impervious Coverage	80% max
Lot Width	60' min
Lot Depth	100' min
Lot Area	6,000 sf min

C. SETBACKS - PRINCIPAL BUILDING

(c.1) Front Setback Principal	20' min 30' max
(c.2) Side Setback	10' min
(c.3) Rear Setback	40' min
(c.4) Frontage Buildout	50% min at setback

D. SETBACKS - OUTBUILDING

(d.1) Front Setback	front setback principal + 20'
(d.2) Side Setback	10' min
(d.3) Rear Setback	5' min

E. PRIVATE FRONTAGES

Porch	permitted; may extend up to 8' beyond front setback
Fence	permitted
Terrace or Forecourt	permitted
Stoop	permitted
Shopfront & Awning	permitted
Arcade	permitted

F. PARKING PROVISIONS

See Martinsburg Subdivision and Land Development Ordinance, Article 4, Parking and Loading Standards

(f.1) Parking must be located min 20' behind the front facade of the principal building. Shared parking lots and access drives are encouraged.

BUILDING CONFIGURATION

- Stories may not exceed 14 feet in height from finished floor to finished ceiling.

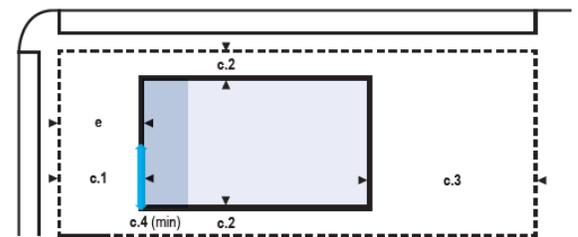


SETBACKS - PRINCIPAL BLDG

- The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as specified width in the table (C) and shown as:

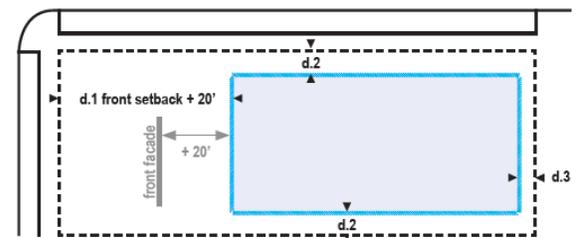


- Facades shall be built along the Principal Frontage to the minimum specified width in the table (c.4) and shown as:



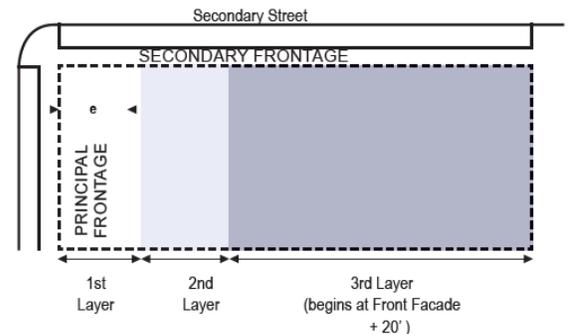
SETBACKS - OUTBUILDING

- The Elevations of the Outbuilding shall be distanced from the Lot lines as specified width in the table (D) and shown as:



PARKING PLACEMENT

- Parking spaces may be provided within the third Layer as shown in the diagram.
- Trash containers shall be stored within the third Layer.



CAMPUS CONFIGURATION

- Shared public space such as courtyards and greens are encouraged.
- Buildings arranged as a campus with shared parking and open space may:
 - exceed the maximum lot size
 - calculate the impervious coverage across the full site, including the internal public space
 - utilize a 5' front setback (c.1) for buildings that front onto the internal open space



Section 3.10 Annexation Reserve (AR) District

(A) Purpose.

1. The Annexation Reserve (AR) District is the zoning classification applied to an annexed parcel(s) upon approval and assignment into the City's jurisdiction. The AR District is a temporary holding district meant to accommodate existing Uses until the zoning classification(s) deemed most appropriate for the annexed parcels has been enacted through the zoning amendment provisions specified under Section 1.12 of this Ordinance.
2. Parcels in the AR District may not be subdivided until the City has enacted the zoning classification(s) deemed most appropriate for the annexed parcels.
3. An approved rezoning to any other Zoning District authorized by this Ordinance, or as amended, is necessary prior to subdivision or further development of such parcels or undertaking Uses other than the Uses existing thereon at the time of annexation. The rezoning request must be compatible with the goals and policies of the Martinsburg Comprehensive Plan.

(B) Authority. The AR District is hereby created under the authority of Chapters 8-6-1(a) and 8A-7-2(b)(1) of the West Virginia Code. Respectfully thereunder, unincorporated territory may be annexed to and become part of a municipality contiguous thereto and municipalities may regulate the use of land and designate or prohibit specific land uses within its municipal jurisdiction.

Section 3.11 Historic Preservation Overlay (HPO) District

(A) Purpose. The purpose of the HPO District is to provide a mechanism for the protection, enhancement and perpetuation of those historic Structures and areas in the City that have significant historical, architectural, archeological and cultural merit. Sites established to reflect elements of the cultural, social, economic, political or architectural history are intended to:

1. Safeguard the heritage of Martinsburg own as embodied and reflected in such Structures;
2. Stabilize and improve property values in such zones and in the City generally;
3. Foster civic pride in the beauty and noble accomplishments of the past;
4. Strengthen the economy of the City; and
5. Promote the use of Historic Sites, Structures and Landmarks for the education, pleasure, and welfare of Martinsburg residents.

(B) Authority. The "Martinsburg Historic Preservation Overlay District," is hereby created in accordance with Chapters 8A-7-2(b)(3) and 8A-7-2(b)(7) of the West Virginia Code.

(C) Application. Except as modified by the overlay Zoning District, the provisions of the applicable base Zoning District shall apply to all development within the boundary of the



designated area. If regulations conflict, the applicable overlay Zoning District regulations shall prevail. Whenever an overlay district is established, any subsequent application to change the base Zoning District shall not be construed to be an application to eliminate the overlay district for the property covered by the application. An intent to eliminate the overlay district on a given property shall be expressly stated to be part of the application.

- (D) Boundaries of District. The Historic Preservation Overlay (HPO) District is created as a special Zoning District to be overlaid on to the existing underlying “fixed” Zoning Districts. The boundaries of the HPO District shall conform to the boundaries of Lots lawfully created and of record in the Office of the Clerk of Berkeley County at the time of designation of the HPO District.
- (E) Historic Overlay District Map. The area included within the Martinsburg Historic District is that as shown on the Official Historic Martinsburg Map, which together with all explanatory matters thereon, is hereby adopted by reference and declared to be part of this Ordinance.
- (F) Official Map. The Official Historic Martinsburg Map, which shall be located in the City Planning Department, shall be the final authority as to the current historic status of Buildings and other Structures in the City for purposes of this Section.
- (G) Boundaries. The boundaries of the HPO District are established according to the Official Historic Martinsburg Map.
- (H) Changes to Map.
 - 1. If, in accordance with the provisions of this Section, changes are made to the Historic District boundaries or other matter portrayed on the Official Historic Martinsburg Map, such changes shall be entered on the Official Historic Martinsburg Map promptly after the amendment has been approved by the City Council, with an entry on the Official Historic Martinsburg Map as follows: “On <DATE>, by official action of City Council, the following (change) changes were made in the Official Historic Martinsburg Map: <BRIEF DESCRIPTION OF NATURE OF CHANGE>,” which entry shall be signed by the Mayor and properly attested to by the City Recorder. No amendment to this Section which involves a matter portrayed on the Official Historic Martinsburg Map shall become effective until after such change and entry has been made on said map and until such change, if it involves the addition of an area to the district, has been approved by the West Virginia Division of Culture and History by virtue of a resolution certifying to the historical significance of the new area.
 - 2. No changes of any nature shall be made in the Official Historic Martinsburg Map or matter shown thereon except in conformity with the procedures set forth in this Subsection (E). Any unauthorized change of whatever kind by any Person or Persons shall be considered a violation of this Section.
- (G) Uncertain Boundaries. Where uncertainty exists as to the boundaries of the HPO District as shown on the Official Historic Martinsburg Map, the following rules shall apply:
 - 1. Boundaries indicated as approximately following the center lines of Street or Alley rights-of-way shall be construed to follow such center lines;



- 2. Boundaries indicated as parallel to, or extensions of features indicated in the above shall be so construed; and
 - 3. Where physical or cultural features existing on the ground are at variance with those shown on the Official Historic Martinsburg Map, or in other circumstances not covered by the above, the City Engineer/Planning Director or designee shall interpret the HPO District boundaries.
- (H) **Certification.** The existing Martinsburg Historic District has been duly certified under state law by the West Virginia Division of Culture and History. Prior to any changes in the Official Historic Martinsburg Map, all required certification shall be received from the West Virginia State Historic Preservation Officer (SHPO).
- (I) **Historic Preservation Review Commission.** Pursuant to the authority granted to the City by Article 26A, Chapter 8 of the West Virginia Code, the City has established the “Martinsburg Historic Preservation Review Commission”.
- (J) **Historic Preservation Ordinance.** The City’s Historic Preservation Ordinance¹ is hereby incorporated by reference. Such ordinances establish the City’s rules, regulations, policies, procedures, and standards related to the administration and enforcement of the Historic District including provisions related to the appeal of the actions and decisions of the Historic Preservation Review Commission.

Section 3.12 Flood Plain Overlay (FPO) District

- (A) **Purpose.** The purpose of the Flood Plain Overlay (FPO) District is to:
- 1. Regulate the permitted Use of flood-prone areas;
 - 2. Where there happens to be any conflict between the provisions or requirements of any of the Flood Plain Districts and those of any underlying district the more restrictive provisions and/or those pertaining to the Flood Plain Districts shall apply.
 - 3. In the event any provisions concerning a Flood Plain District is declared inapplicable, as a result of any legislative or administrative actions or judicial discretion, the basic underlying district provision shall remain applicable.
 - 4. Require the utilization of appropriate construction practices and design standards in order to prevent or minimize flood damage in the future; and
 - 5. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise use and development of property in areas subject to flooding.
- (B) **Authority.** West Virginia Code Chapter 8A-7-2(b)(12) gives municipalities the authority to identify flood-prone areas subject to periodic flooding and regulate with specific control the

¹ Adopted April 8, 1982 and as amended by Ordinance Adopted June 29, 1988.



permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters.

- (C) **Application.** Except as modified by the overlay Zoning District, the provisions of the applicable base Zoning District shall apply to all development within the boundary of the designated area. If regulations conflict, the applicable overlay Zoning District regulations shall prevail. Whenever an overlay district is established, any subsequent application to change the base Zoning District shall not be construed to be an application to eliminate the overlay district for the property covered by the application. An intent to eliminate the overlay district on a given property shall be expressly stated to be part of the application.
- (D) **Flood Plain Ordinance.** The City's Flood Plain Ordinance, Ordinance 2009-06, is hereby incorporated by reference and establishes requirements for Flood Plain management including: general provisions, interpretations and definitions, establishes Flood Plain areas, boundary disputes, alternations, criteria for building and site plan approval, administration, appeals and penalties, government actions, and municipal liability.
- (E) **Boundaries of District.**
 - 1. To the extent the City Flood Plain Ordinance as amended identifies areas prone to or otherwise at risk of flood, including without limitation by reference to a Flood Insurance Rate Map or FEMA Flood Insurance Study, such areas shall be deemed identified as flood-prone areas for purposes of this Ordinance and included within the FPO.
 - 2. Boundaries indicated as approximately following the center lines of Street or Alley rights-of-way shall be construed to follow such center lines;
 - 3. Boundaries indicated as parallel to, or extensions of features indicated in the above shall be so construed; and
 - 4. Where physical or cultural features existing on the ground are at variance with those shown on the Flood Insurance Rate Map, or in other circumstances not covered by the above, the City Engineer/Planning Director or designee shall interpret the FPO District boundaries.

Section 3.13 Economic Development Overlay District

- (A) **Purpose.** The purpose of the Economic Development Overlay (EDO) is to facilitate the redevelopment and reinvestment within approved Urban Renewal Districts in the City.
- (B) **Authority.** The Urban Renewal Authority Law established under West Virginia Code Chapter 16, Article 18, authorizes the City Council to establish an Urban Renewal Authority and Urban Renewal Districts.
- (C) **Application.** Except as modified by the overlay Zoning District, the provisions of the applicable base Zoning District shall apply to all development within the boundary of the designated area. If regulations conflict, the applicable overlay Zoning District regulations shall prevail. Whenever an overlay district is established, any subsequent application to change the base Zoning District shall not be construed to be an application to eliminate



the overlay district for the property covered by the application. An intent to eliminate the overlay district on a given property shall be expressly stated to be part of the application.

- (D) *Boundaries of District.* Redevelopment plans prepared by the City Planning Department, reviewed by the City Planning Commission and adopted by City Council identify the boundaries of geographically delineated areas within the City, which have been identified as areas of blight. To mitigate these conditions, the Urban Renewal Authority redevelopment plans contain specific provisions for land use, development standards, façade restoration, demolition and other redevelopment-related activities to foster new public and private capital investment.
- (E) *Permitted Uses.*
1. Property and buildings in the Urban Renewal District may be used for the purpose permitted by the base Zoning District legislatively approved for the district by City Council. Furthermore, additional uses may be permitted by the Urban Renewal Redevelopment Plan for each Urban Renewal District approved by City Council pursuant to the Code of West Virginia, Chapter 16, Article 18, as amended.
 2. When an Urban Renewal District expires, the properties included within the expired district's boundaries shall continue to be permitted and limited in accordance with the expired redevelopment plan until such time as City Council rezones the properties in accordance with Section 1.12 of this Ordinance.
- (F) *Applications.* All applications for development and redevelopment activities of properties located within an Urban Renewal District, as approved by City Council, shall be initiated with the Urban Renewal Authority.



ARTICLE 4 ZONING USES

Section 4.01 General Provisions

The following general provisions apply to the uses outlined in this section.

- (A) A Lot may contain more than one Principal Use, unless otherwise specified.
- (B) Each of the principal uses may function as either a principal Use or Accessory Use on a Lot, unless otherwise specified.
- (C) Uses are either permitted by right in a District, permitted by right with conditions, or require a Special Exception in order to be developed.
- (D) Each use shall be located indoors (i.e., within a Building) unless otherwise expressly stated.

Section 4.02 Applicability

- (A) No Building, Structure, or Land shall be used in any way other than the uses permitted in the Zoning District in which the Building, Structure, or Land is located, with the exception of the continuation of existing Uses.
- (B) Continuation of Existing Uses. The continuation of any Use existing and permitted at the time of adoption of these regulations is permitted, subject to the Nonconforming Use standards specified in Article 5, Supplemental Regulations.

Section 4.03 Uses

- (A) Table 4.01, Table of Permissible Uses, identifies the Principal, Accessory, and Temporary Uses allowed in each Zoning District and are defined in this Article.
- (B) Principal, Accessory, and Temporary Uses are given one of the following designations specified in Table 4.01.
 1. Permitted by Right (“R”). These Uses are permitted automatically by right in the Zoning Districts in which they are listed are subject to the general regulations under this Ordinance.
 2. Permitted by Special Exception (“SE”). These Uses are not permitted by right but are subject to the general regulations and the conditions imposed in a Special Exception permit issued by the Board of Zoning Appeals under this Ordinance.
 3. Prohibited Uses. Uses without a designated letter symbol (i.e. “R” or “SE”) are prohibited in the Zoning District because they are considered incompatible with the intent of the District.



Section 4.04 Organization

Uses are grouped into general categories, which are further broken into subcategories and specific use types that are specifically defined in this Article.

Section 4.05 Unlisted Uses

Uses not expressly listed in Table 4.01 shall be permitted if directly related and incidental to the allowed principal Permitted Use or Special Exception Use of the subject Lot, as determined by the City Engineer/Planning Director or designee.

Section 4.06 Prohibited Uses

The following Uses are prohibited in any Zoning District.

- (A) Sanitary Landfills.
- (B) Scrapyards/Junkyards.
- (C) Any Use that, though properly and safely operated with ordinary care, according to good and reasonable practice, causes noxious or offensive odors, gas, fumes, smoke, dust, vibrations or noise that would substantially interfere with other principal Permitted Use or Special Exception Use of the subject Lot, or with development in adjacent Zoning Districts, shall be prohibited. Determination of whether a use is allowed shall be made by the City Engineer/Planning Director or designee and the decision may be appealed to the Board of Zoning Appeals.
- (D) Accessory Uses not expressly covered in Table 4.01.



Table 4.01, Table of Permissible Uses.

MARTINSBURG ZONING ORDINANCE DISTRICT USE TABLE Key: R = Permitted by Right SE = Permitted by Special Exception Blank Cell = Non-Permitted Use	MAPPED ZONING DISTRICTS <i>Refer to Article 3 Zoning District Building Form Regulations for Specific Application of Uses</i>					
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical- Institutional
USES	UR	SR	DT	MUR	MUC	MIN
PRINCIPAL USES						
<i>RESIDENTIAL AND LODGING</i>						
Household Living						
<i>Single Family Detached Dwelling</i>	R	R	R	R		
<i>Single Family Semi-Attached Dwelling</i>	R	R	R	R		
<i>Two-Family Dwelling</i>	SE	SE	R	R		
<i>Multi-Family Dwelling</i>	SE		R	R	R	R
<i>Townhouse Dwelling</i>	SE		SE	R	R	R
<i>Efficiency/Micro-Unit Dwelling</i>	SE		R	R	R	R
Bed and Breakfast ²	R	R	R	R	R	R
Tourist Home ²	R	R	R	R	R	R
Group Residential Facility/Home ³	R	R	R	R	R	R
Hotel/Apartment Hotel			R	R	R	R
Manufactured Homes and Factory-Built Housing	SE			SE		
Nursing Home Facility				SE	SE	R
Roominghouse and Boardinghouse	SE		SE	SE		
Temporary Shelter Facility	SE		SE	SE		

² Pursuant to West Virginia Code §8-1-5a, Municipal Home Rule Program, municipalities may not prohibit or effectively limit the rental of a property, in whole or in part, or regulate the duration, frequency, or location of such rental, in whole or in part.

³ Pursuant to West Virginia Code §8A-11-2, a Group Residential Facility / Home shall be a permitted residential use of property for the purposes of zoning and is a permitted use in zones or districts where single family dwelling units or multifamily dwelling units are permitted. A governing body of a municipality or a county, and a planning commission, cannot discriminate in regard to housing and cannot require a group residential facility or its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance to locate a group residential facility in a zone or district where single family dwelling units or multifamily dwelling units are permitted.



MARTINSBURG ZONING ORDINANCE DISTRICT USE TABLE Key: R = Permitted by Right SE = Permitted by Special Exception Blank Cell = Non-Permitted Use	MAPPED ZONING DISTRICTS <i>Refer to Article 3 Zoning District Building Form Regulations for Specific Application of Uses</i>					
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical-Institutional
USES	UR	SR	DT	MUR	MUC	MIN
CIVIC AND INSTITUTIONAL						
Assembly, Neighborhood	R	SE	R	R	R	R
Assembly, General	SE	SE	SE	R	R	R
Government Facility	R	R	R	R	R	R
Higher Education			SE		R	R
Hospital						R
Library/Museum	SE		R	R	R	R
Police/Fire/EMS	R	R	R	R	R	R
School, Pre-K, Elementary, Intermediate	SE	SE	R	R	R	R
School, High School, Higher Education	SE	SE	R	R	R	R
Stadium/Arena					SE	SE
Transit Station	SE		R	R	R	R
OPEN SPACE						
Community Garden	R	R	R	R	R	R
Honey Beekeeping	SE	SE	SE	SE	SE	SE
Intensive Park Uses	SE	SE	SE	SE	SE	SE
Park	R	R	R	R	R	R
Urban Farm			SE	SE	SE	SE
RETAIL USES						
Neighborhood Retail	R		R	R	R	R
General Retail	SE		R	R	R	R
Commercial Equipment and Supply	SE				R	
Convenience Store	SE		R	R	R	R
Convenience Store with Gas Dispensing					SE	SE
Discount Variety Store	SE		R	R	R	



MARTINSBURG ZONING ORDINANCE DISTRICT USE TABLE Key: R = Permitted by Right SE = Permitted by Special Exception Blank Cell = Non-Permitted Use	MAPPED ZONING DISTRICTS <i>Refer to Article 3 Zoning District Building Form Regulations for Specific Application of Uses</i>					
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical-Institutional
USES	UR	SR	DT	MUR	MUC	MIN
Outdoor Sales Lot					R	
SERVICE USES						
Neighborhood Service	R		R	R	R	R
Medical Clinic	SE		SE		SE	R
General Service	SE		R	R	R	R
Adult Day Care	SE		R	SE	R	R
Automobile Fueling and Limited Service			SE		R	R
Automobile Service/Car Wash					SE	SE
Automobile, Truck, Limousine Rental					R	R
Bail Bonds Agency	SE		R		R	
Child Day Care	SE		SE	SE	SE	SE
Community Service	SE		R	SE	SE	R
Drinking Places			R	SE	R	R
Eating Places	SE		R	SE	R	R
Electronic Cigarette / Vaporizer Store			R	SE	R	
Entertainment Assembly			R	SE	R	R
Mini-Self Storage Facility					SE	
Pawn Shop/Check Cashing Establishment	SE		R		R	
Private Club			R	SE	R	R
Smoking Places			R		R	
Tattoo/Piercing Parlor			R	SE	R	
ADULT USES						
Adult Uses	The location of Adult Uses is regulated under City Code Section 705.04.					
EMPLOYMENT USES						
Office	R		R	R	R	R



MARTINSBURG ZONING ORDINANCE DISTRICT USE TABLE Key: R = Permitted by Right SE = Permitted by Special Exception Blank Cell = Non-Permitted Use	MAPPED ZONING DISTRICTS <i>Refer to Article 3 Zoning District Building Form Regulations for Specific Application of Uses</i>					
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical-Institutional
USES	UR	SR	DT	MUR	MUC	MIN
Craftsman Studio	SE		R	R	R	R
Medical Marijuana Production Facility					SE	SE
INFRASTRUCTURE USES						
Parking	SE		SE	SE	SE	SE
Transportation & Utilities	R	R	R	R	R	R
Wireless Telecommunication Facilities	Use regulated pursuant to City Ordinance No. 2002-06 titled "A Local Ordinance Regulating the Siting of Wireless Telecommunication Facilities" and incorporated herein by reference.					
ACCESSORY USES						
RESIDENTIAL						
Accessory Dwelling Unit	R	SE	R	R		
Home Childcare	SE	SE	SE	SE		
Home Occupation	R	R	R	R	R	
Room Rental ⁴	R	R	R	R	R	R
Sleeping Quarters for Caretaker	SE	SE	R	R	R	
COMMERCIAL						
Drive-Through Facility			SE	SE	SE	SE
Outdoor Café	R		R	R	R	R
Outdoor Display	R		R	R	R	R
Outdoor Storage					R	
Limited Video Lottery			SE		SE	
Parking	SE		SE	SE	SE	SE

⁴ Pursuant to West Virginia Code §8-1-5a, Municipal Home Rule Program, municipalities may not prohibit or effectively limit the rental of a property, in whole or in part, or regulate the duration, frequency, or location of such rental, in whole or in part.



MARTINSBURG ZONING ORDINANCE DISTRICT USE TABLE Key: R = Permitted by Right SE = Permitted by Special Exception Blank Cell = Non-Permitted Use	MAPPED ZONING DISTRICTS <i>Refer to Article 3 Zoning District Building Form Regulations for Specific Application of Uses</i>					
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical- Institutional
USES	UR	SR	DT	MUR	MUC	MIN
OTHER						
Heliport						SE
Signs	See Article 6, Table 6.01					
TEMPORARY USES						
Temporary Food Establishment	SE	SE	R	R	R	R
Temporary Outdoor Events	SE		SE	SE	R	R
Farmers Market	R		R	R	R	



Section 4.07 Principal Uses

- (A) Residential and Lodging Uses. A category of Uses for residential and overnight accommodations.
1. Household Living. Household living means the Use of one or more Dwelling Units located within the Principal Structure of a lot by a household, in which the units may or may not share a common wall with the adjacent unit or have individual entrances from the outside. Nothing in this section shall be deemed to limit the ability of lawful occupants of a Dwelling Unit to have bona fide guests.
 2. Dwelling. A building containing one or more Dwelling Units. The term “Dwelling” or any combination thereof shall not be deemed to include Hotel, Roominghouse, motel, clubhouse, Hospital or other accommodations used for transient occupancy.
 - a. Single Family Detached Dwelling. A Building used by one (1) Family, having only one (1) Dwelling Unit and having two (2) Side Yards. Only one (1) single family Dwelling shall be permitted for each legally subdivided building Lot.
 - b. Single Family Semi-Attached Dwelling. (Townhouse or Row House): One of two Buildings arranged or designed as a Dwelling, located on abutting Lots and separated from each other by a solid partition—without openings—extending from the Basement floor to the highest point of the roof along the dividing Lot line and separated from any other Building or Structures by space on all sides.
 - c. Two-Family Dwelling. A Building located on one zoning Lot containing not more than two Dwelling Units, arranged one above the other or side by side, and not occupied by more than two Families. The following supplemental regulation applies:
 - a. The maximum Lot size for Two-Family Dwellings shall be ten thousand (10,000) square feet.
 - d. Multi-Family Dwelling. A Building containing three or more Dwelling Units. (i.e., Apartment house).
 - e. Townhouse Dwelling. One of a series of three and a maximum of eight attached Dwelling Units separated from one another by continuous vertical solid partitions without openings from Basement floor through the roof.
 - f. Efficiency/Micro-Unit. A Dwelling Unit with at least three hundred (300) square feet and no more than five hundred (500) square feet of Usable Floor Area, and only one combined living and sleeping room. The unit may also have separate rooms containing only kitchen facilities or bathroom facilities.



3. **Bed and Breakfast.** A rental facility providing temporary lodging to the general public consisting of no more than nine (9) sleeping rooms without in-room kitchen facilities, in either an owner-occupied Principal Structure or in a Principal Structure on the same lot of an owner-occupied Accessory Structure. The following supplemental use regulations apply:
 - a. Shall not alter the residential nature of the neighborhood and/or the character of the Dwelling as a residence.
 - b. Kitchen facilities shall comply with all Berkeley County Health Department requirements and regulations.
 - c. Access to guestrooms shall be via a main entrance, lobby or foyer within the Building. No guestroom shall have a separate exterior access, except as may be required by fire or building codes.
 - d. No employees who are not otherwise eligible to be a member of the same household with the owner of the Bed and Breakfast may live on-site.
 - e. A Bed and Breakfast may have a sign in accordance with Article 6 of this Ordinance.
 - f. Off-street parking requirements shall comply with the Martinsburg Subdivision and Land Development Ordinance.
4. **Tourist Home.** A Building (except a Hotel, Motel or Bed and Breakfast) where, for compensation, temporary lodging is provided for the transient guests where the property owner is generally not on site and meals are not provided. Guests have access to all areas of the Building, including kitchen facilities and function as a Single-Family Dwelling.
5. **Group Residential Facility.** A facility which is owned, leased or operated by a behavioral health service provider and which: (1) provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities.
6. **Group Residential Home.** A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for under Chapter 27 of the West Virginia Code pertaining to Mentally Ill Persons.
7. **Hotel/Apartment Hotel.** A facility offering temporary lodging to the general public consisting of 10 or more sleeping rooms with a bathroom for each room and



providing daily room cleaning services and other guest services. In-room kitchen facilities may or may not be provided. Includes apartment or residential hotels. Secondary service uses may also be provided, such as restaurants and meeting rooms. The following supplemental use regulations apply:

- a. A private lobby shall be included.
- b. Rooms shall be accessed from the interior of the building, including from interior courtyards, lobbies, or halls.

8. **Manufactured Homes and Factory-Built Housing.** A transportable, single family Dwelling intended for permanent occupancy, contained in one (1) unit, or in two (2) or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a Site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed on a permanent foundation. A Manufactured Home shall not be used for purposes other than originally designed. The term "Manufactured Home" does not include a "Recreational Vehicle". However, for the purposes of Flood Plain management only, this term includes park trailers, Travel Trailers, Recreational and other similar Vehicles which are placed on a site for more than one hundred eighty (180) days. The following supplemental use regulations apply:

- a. **Manufactured Homes and Factory-Built Housing Prohibited on Individual Lots:** Manufactured Homes and Factory-Built Housing are prohibited on individual Lots and are to be permitted only in planned Manufactured Homes and Factory-Built Housing parks, which are permitted in certain Zoning Districts specified in Table 4.01. A manufactured/factory-built home is not permitted as an Accessory Use to the principal residential structure on a lot.
- b. **Manufactured Homes Parks** are subject to the design standards specified in the Subdivision and Land Development Ordinance.

9. **Nursing Home Facility.** Any West Virginia State Department of Health and Human Resources-licensed institution, residence or place, or any part or unit thereof, however named, that is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

10. **Roominghouses and Boardinghouses.**

- a. **Roominghouses.** A residential Structure whose Principal Use is to provide lodging, but not meals, for compensation by prearrangement for definite periods, to between three (3) and six (6) roomers, wherein no



- dining facilities are maintained for the roomer and in which bathrooms may or may not be shared.
- b. Boardinghouses. A residential Structure where lodging and meals are provided for compensation to between three (3) and six (6) persons by pre-arrangement for indefinite periods and in which bathrooms may or may not be shared.
 - c. Roominghouses and Boardinghouses are distinguished from Hotels/Apartment Hotels and Bed and Breakfast facilities by the following:
 - (1) the length of stay is typically longer (typically a minimum of two weeks) for Roominghouses and Boardinghouses;
 - (2) roomers and boarders often have personal household appliances (such as toaster ovens and mini refrigerators);
 - (3) there is no daily room cleaning or other guest services provided for rooming or boardinghouses; and
 - (4) the architectural character of a Roominghouse or Boardinghouse structure is primarily residential in nature.
11. Temporary Shelter Facility. A public or non-profit facility providing temporary, emergency housing, and social, health, and related services for families and/or individuals 18 years of age or older, who are without resources and access to shelter. The following regulations apply:
- a. The Use shall only be operated by or in conjunction with a governmental, welfare or charitable service.
 - b. The maximum number of residents of the lodging shall be based upon a ratio of one person for every fifty (50) square feet of interior space devoted to sleeping area, not to exceed one hundred (100) residents total.
 - c. The facility shall have staffing on-site during all hours of operation.
 - d. At least one toilet and shower must be provided for every fifteen (15) shelter beds.
 - e. New temporary shelter facilities shall not be located within two thousand (2,000) feet of another temporary shelter facility, group living facility, Residential Board and Care Home, Roominghouse/Boardinghouse, Medical Clinic, Hospital, School, or Park.
 - f. The temporary shelter facility must be open to the individuals it serves for twenty-four (24) hours per day, including the provision of an indoor waiting area for use by individuals when a portion of the facility is not



opened for operation. Lodging must be provided on a reservation or referral basis so that clients will not be required or allowed to queue for services outdoors.

- g. All functions associated with the temporary shelter facility, except for children’s play areas, outdoor recreation areas, and parking must take place within the building housing the shelter.
- h. There shall be annual licensing by the division of licenses and inspections to ensure the health and safety of residents and neighbors, and compliance with the zoning regulations.
- i. Operators of emergency shelters shall comply with the following:
 - (1) Annually submit to the City Engineer/Planning Director or designee copies of the organization’s up-dated program description.
 - (2) Annually submit updated listing of organization board members, staff, proprietors, and affiliated organizations.
 - (3) When there are no changes since the previously filed documents, a statement to this effect is sufficient.
 - (4) An annual review will occur at the anniversary of the date upon which approval was originally granted.

(B) Civic and Institutional Uses. A category of Uses related to fulfilling the needs of day-to-day community life including assembly, public services, educational facilities, and Hospitals.

- 1. Assembly. A facility that has organized services, meetings, or programs to benefit, educate, entertain, or promote discourse amongst the residents of the community in a public or private setting. Includes such uses as, community centers, auditoriums, civic centers, convention centers, performing arts facilities, and recreation centers.
 - a. Assembly, Neighborhood. An assembly use that occupies a building with less than ten thousand (10,000) square feet of gross floor area.
 - b. Assembly, General. An assembly use that occupies a building with ten thousand (10,000) square feet or more gross floor area.
- 2. Government/Higher Education/Hospital Facilities. Large-scale community-serving facilities associated with healthcare, universities, colleges, or government functions. Includes such uses as universities, theological schools, City hall, government offices, and Hospitals. Does not include vocational or trade schools.



- a. Government Facility. A single-purpose public facility used for Civic functions, which includes a place for public assembly in a portion of the facility, for the executive, legislative, or judicial branches of the State or a political subdivision thereof. Includes City Hall, council chambers, and courts. Does not include office buildings occupied by a government entity which do not contain assembly areas, or office buildings occupied by a government entity which are also utilized by private or non-governmental occupants.
 - b. Higher Education Facility. A non-profit institution for post-secondary education, public or private, for higher education that grants associate or bachelor's degrees and may also have research facilities and/or professional schools that grant master and doctoral degrees.
 - c. Hospital. A licensed institution providing medical care and health services to the community, primarily ill or injured in-patients. These services may be located in one Building or clustered in several Buildings, one of which must provide emergency services, and may include additional hospital-affiliated Accessory Uses such as laboratories, in- and out-patient facilities, training facilities, medical offices, staff sleeping quarters (but not full-time residences), food service, heliports, pharmacies, laundry facilities, florists, vendors of medical equipment, opticians, and gift shops.
3. Library/Museum. A structure open to the general public housing educational, cultural, artistic, or historic information, resources, and exhibits. Includes such uses as libraries, museums, aquariums, planetariums, and exhibitions. May also include theater space, food service, and a gift shop.
 4. Police/Fire/EMS. A facility providing public safety and emergency services; training facilities, locker rooms, and limited overnight accommodations may also be included.
 5. School, Pre-Kindergarten, Elementary, Intermediate. Public or private education facilities with classrooms and offices, which may also include associated indoor facilities such as ball courts, gymnasium, theater, and food service.
 6. School, High School, Higher Education. Public or private educational facilities for high school or higher education not considered a university. Facilities may be on a larger-scale campus and include significant traffic and parking. May include gymnasium, theater, cafeteria, offices, classrooms, athletic facilities, and athletic fields. Use does not include stadium; refer to paragraph B.7, Stadium/Arena.
 7. Stadium/Arena. A Building or Structure seating more than 1,000 spectators in tiered seating at sporting events, concerts, meetings, and gatherings of large groups. A stadium/arena may be open air or covered by either a fixed or retractable roof. The following supplemental use regulations apply:
 - a. Major Entrances. A stadium/arena shall have multiple public entrances, including one major entrance on the Facade designated by the property owner as the front setback. Such entrances shall be well-marked to cue



access and use through means of enhancement that may include but are not limited to architectural, landscape, or graphic treatments. Where possible, major entrances should take advantage of prominent intersection locations.

- b. Transparency. A minimum transparency of seventy percent (70%) is required on the ground-floor Facade.
 - (1) Transparency shall be measured between the height of two (2) feet and twelve (12) feet on the front Facade.
 - (2) For Stadiums/Arenas, Transparency includes open views into the stadium/arena in addition to the definition of Transparency (refer to Article 2, Definitions).
 - (3) Where Transparency into the structure cannot be achieved due to the interior layout required by the Use, alternate methods of achieving transparency or architectural design providing appropriate levels of visual relief and interest that is contextually appropriate to the surrounding area may be proposed.
 - (4) On side streets there is no required level of Transparency, but approval is contingent upon providing appropriate levels of visual relief and interest that is contextually appropriate to the surrounding area.
 - (5) Blank walls on any street frontage are prohibited.
 - (6) The City may impose additional requirements for Transparency in any District in which a Stadium/Arena is allowed.
 - c. Street-Level Experience. The design of a Stadium/Arena must avoid visual monotony and relate well with pedestrians through scale, material, and form. Ground floor spaces shall have not less than twelve (12) feet of floor-to-ceiling height, and the exterior architecture shall distinguish the ground floor from upper levels. The City may require that the facility contain Retail or consumer uses, which shall remain open during normal business hours year-round, including on days when the Stadium/Arena is not in active use for public assembly.
 - d. School Stadium. A Stadium/Arena is a permitted Accessory Use to a School.
8. Transit Station. A building or permanent platform with an area for passenger boarding and alighting which is roofed for at least thirty (30) feet, and which may include a waiting room, ticket office, ticket machines, restrooms, or concessions. A Transit Station must serve a passenger railway company, or a bus rapid transit service company, with or without other forms of transit or transportation at the same facility.



- (C) Open Space Uses. A category of Uses generally applicable to the use of the land and may not require buildings or other facilities uses for active or passive, public or private, outdoor recreation, education, or entertainment.
1. Community Garden. A space used to grow plants for personal use, education, recreation, community distribution, or beautification by members of the neighboring community. Community Gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained or used by community group members. The following supplemental use regulations apply:
- a. Requirements for Food Production.
- (1) The Site shall have reliable and legal access to an onsite source of water. Use of water storage systems is allowed.
 - (2) The Site shall be operated in a manner that prevents the drainage of water or chemicals onto any neighboring property.
 - (3) Site operators shall ensure that soils are suitable and shall obtain any permits for operation required by law. Prior to development, soils shall be tested to ensure the viability and safety of the location. At a minimum, soil shall be tested for the following heavy metals: boron, arsenic, mercury, selenium, lead, cadmium, chromium, nickel, zinc and copper. Analytical test shall be conducted with methods and procedures suitable for soil media.
 - (4) Tools, supplies, and machinery shall be stored in an enclosed structure or removed from the property daily. All chemicals and fuels shall be stored off the ground in an enclosed, locked structure when the Site is unattended.
 - (5) The Site must be maintained using organic agricultural practices, including the use of organic chemicals only. Use of pesticides must be in accordance with the West Virginia Pesticide Control Act of 1990 (Chapter 19, Article 16A of the Code of West Virginia).
 - (6) A composting and waste management plan, a plan for the use of organic agricultural chemicals, and a soil remediation plan (if necessary) must be approved by the City Engineering Department and Berkeley County Health Department prior to the issuance of any Use and Occupancy Permit.
 - (7) At the end of the growing season (and no later than December 15 of each year), all plant material must be cut to no more than 6 inches in height, unless there is an agricultural reason for keeping the plant materials uncut.
 - (8) One identification Sign containing the name and phone number of the contact person for the Site is required. The Sign shall be



designed in accordance with Article 6, Signs. The Sign shall be visible from the most active adjacent Street.

- b. Operating Rules. Applicants must establish operating rules addressing the governance structure of the garden, hours of operation, maintenance, assignment of garden plots when applicable, and security requirements.
 - c. Garden Coordinator. Applicants must identify a garden coordinator to manage the garden and act as the point of contact with the City. The coordinator shall be an employee or volunteer of a public entity, non-profit organization, or other community-based organization. Applicants must file the name and telephone number of the garden coordinator and a copy of the operating rules with the City Engineer/Planning Director or designee.
 - d. Farm Stand. A community garden may have one temporary farm stand selling and/or distributing agriculture and horticultural products produced on site for no more than two (2) consecutive days on two (2) different occasions during a calendar year. Such stand shall be attended during all hours of sales and/or distribution and shall be permitted in accordance with Article 5, Subsection (A), Accessory Uses and Structures.
 - (1) Shade Pavilions. A maximum of two (2) shade pavilions are permitted in accordance with the yard setback requirements specified under Article 5, Subsection (A), Accessory Uses and Structures.
 - (2) Community gardens are authorized as an Accessory Use in the same Districts in which they are authorized as Principal Uses, and accessory community gardens shall be subject to the same conditions set forth in this section.
2. Honey Beekeeping. The keeping of one or more colonies of the common domestic honeybee, Apis Mellifera. Colonies include a hive and its equipment and appurtenances, including bees, comb, honey, pollen, and brood. The following supplemental use regulations apply.
- a. Maximum Number of Colonies.
 - (1) Any lot containing a residential Use shall be limited to two (2) colonies. One additional colony is permitted for every 1,000 square feet of lot area over 10,000 square feet, and an absolute maximum of ten (10) colonies.
 - (2) The following exception shall be made for colonies located on rooftops: There shall be no limitation on the number of colonies located on rooftops in the Downtown, Institutional, and Mixed-Use Commercial Zoning Districts.
 - b. Colony Size. No colony shall exceed twenty (20) cubic feet in volume.



- c. Location.
 - (1) Yards. Shall be located in a Rear or Side Yard on any Lot with a residential Use. No colony shall be located closer than fifteen (15) feet from any property line, public Sidewalk or principal Building on an abutting Lot.
 - (2) Rooftops. Are permitted on rooftops in the Downtown, Institutional, and Mixed-Use Commercial Zoning Districts.
- d. Flyway Barrier. A flyway barrier of at least six (6) feet in height must shield any part of a property line within twenty-five (25) feet of a colony, unless the base of the colony is located more than six (6) feet above the ground.
 - (1) A required flyway barrier shall consist of a wall, fence, dense vegetation, or a combination thereof.
 - (2) The barrier shall be positioned to transect both legs of a triangle extending from an apex at the colony to each end point of the part of the property to be shielded.
- e. Farm Stand. No sales of honey shall occur on the lot containing the honey bee colony, except in the case of a honey bee colony located on an urban farm where there is a farm stand, in which case the operator of the honey bee colony shall be permitted to sell honey at the farm stand.
- f. State Registration Required. All persons keeping bees in the State of West Virginia shall apply for a certificate of registration for beekeeping pursuant to the West Virginia Apiary Act, West Virginia Code Chapter 19-13-1.
- g. Honey beekeeping is authorized as an Accessory Use in the same districts in which it is authorized as Principal Uses, and accessory honey beekeeping shall be subject to the same conditions set forth in this section.
- 3. Intensive Park Uses. A category of impactful Uses that includes Buildings (including additions of 1,000 square feet or more to existing buildings), golf courses, riding stables, zoos, campsites, and group camps.
- 4. Park. A use of land for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, parkettes, playfields, playgrounds, recreation centers, and tot lots for general recreation, athletics, and leisure. May include Historic Structures/monuments, botanical gardens, ornamental gardens, or arboretums. Accessory Uses may include picnic areas, fishing, ziplines, and Swimming Pools. See also: Intensive Park. The following supplemental use regulations apply:



- a. Hours of Operation. Park hours of operation shall be determined by the Martinsburg-Berkeley County Parks and Recreation Board and such hours of operation shall be conspicuously posted at the Park entrance.
- b. Site Design Components, Landscape Furnishings and Art
 - (1) The City shall review and approve the design of any and all pieces of furniture (including but not limited to benches, chairs, and tables), trash receptacles, drinking water fountains, lighting fixtures, fencing, buildings, structures, historic and monument sites, playground equipment, athletic equipment, decorative fountains, man-made ponds and water features, sculpture, signage programs, and artwork within any park, prior to such items being installed.
 - (2) Notwithstanding the preceding subsection, the City may adopt a schedule of approved site furniture, drinking water fountains, lighting fixtures, and fencing for each park or group of parks, and any item on the approved schedule may be installed for the relevant park without requiring additional City review.
 - (3) The City's review of proposals for any artwork to be placed in any park may be conducted simultaneously with the advisory review of the Martinsburg-Berkeley County Parks and Recreation Board.
- c. Special Events. Park uses may be utilized to host Temporary Outdoor Events and Farmers Markets pursuant to Subsection 4.10 of this Ordinance.
- d. Park Buildings. A limited number of park Buildings may be located in a park per the following regulations:
 - (1) Kiosks may be used for small-scale food and beverage service uses within parks, provided that the Structure is no more than two hundred (200) square feet in area.
 - (2) Uses within park buildings may include community spaces, gyms and other fitness facilities, classrooms, and park offices. Other Uses may be approved through a Use and Occupancy Permit.
 - (3) Buildings shall occupy no more than ten percent (10%) of a park site.
- 5. Urban Farm. A ground or roof-level agricultural operation of any size, including agricultural growing (such as aquaculture) occurring in a permanent indoor facility other than a farm structure, which is used for urban agriculture for commercial purposes, whether for profit or non-profit, with a single entity serving as the primary operator. The following supplemental use regulations apply.



- a. *Keeping of Farm Animals.* No person shall keep, raise, stable or otherwise harbor any poultry, pigeons, hogs, swine, cows, bulls, cattle, goats, sheep, mules, ponies or horses at any place within the City.
 - b. *Requirements for Food Production.* All Requirements for Food Production, as defined under “Community Gardens” shall apply to all Urban Farms.
 - c. *Lighting.* Lighting should be limited to that required for operational and safety purposes of any activity defined as urban agriculture and shall not create a Nuisance through excessive brightness to abutting residential Uses. Under no circumstances shall lighting be used between 10 p.m. and 5 a.m.
 - d. *Operating Hours.* An Urban Farm shall only operate between the hours of 7 a.m. and 9 p.m.
 - e. *Odors.* No odors or fumes from an Urban Farm shall be allowed to escape into the open air in such amounts as to be detrimental to the health of any individuals or the public or create a Nuisance.
 - f. *Farm Stand.* An Urban Farm may have one farm stand selling and/or distributing agriculture and horticultural products produced on site, provided. Such stand shall be attended during all hours of sales and/or distribution.
 - g. *Equipment.* Applicants shall submit a description of the type of equipment intended for use in each season and the frequency and duration of anticipated use.
 - (1) Where an Urban Farm is located, the operator of the garden shall utilize no more than one motorized tractor, of a compact utility size or smaller (26 horsepower or less), over the course of any calendar year, and shall utilize no other large-scale motorized vehicles. The preceding sentence shall not apply to walk- behind tractors or other small motorized devices (such as snow blowers or tillers) primarily moved by human power.
 - h. *Roof-Level Operations.* Roof-level Urban Farm operations are subject to the applicable Zoning District’s building height restrictions and must be constructed/operated to have zero impact on the building’s roof structure design limitations.
- (D) *Retail Use.* A category of Uses involving the sale of goods and provision of services to the general public for personal or household consumption. Visibility and accessibility are important to these uses, as most businesses typically rely heavily on walk-in customers or clients and rarely utilize scheduled appointments.
- 1. *Neighborhood Retail.* A retail Use with a gross floor area of less than 3,000 square feet and outdoor sales limited to no more than ten percent (10%) of the indoor gross floor area of the retail Use. Neighborhood retail includes such uses as those



listed in Table 4.02, Typical Retail Uses. In the event a specific Neighborhood Use is not identified in Table 4.02, the City Engineer/Planning Director or designee shall have the authority to review the proposed Use and the applicant shall submit to the City Engineer/Planning Director or designee such additional information as the City Engineer/Planning Director or designee deems necessary to render an official interpretation under the Ordinance.

- 2. **General Retail.** A retail Use with a gross floor area of 3,000 square feet or greater and outdoor sales limited to no more than twenty percent (25%) of the indoor gross area of the retail Use. General retail includes such Uses as those listed in Table 4.02, Typical Retail Uses.
 - a. **Grocery Store.** Any store commonly known as a supermarket, food store, or grocery store, with at least sixty percent (60%) of gross square footage dedicated to the retail sale of fresh and/or frozen meat, seafood, poultry, fruits, and vegetables; and dairy and bakery products.
 - b. **Public Market.** An indoor or covered, open-air permanent Structure dedicated to the sale of local and regional food, flowers, baked goods, and small crafts, excluding secondhand goods.

Table 4.02 – Typical Retail Uses.

Typical Neighborhood Retail Uses	Typical General Retail Use
Antique Shop	All Neighborhood Retail 3,000 sf and over
Apparel, Shoes, and/or Accessory Store	Appliance Sales
Small Appliance Store	Automotive Supply (no service)
Art Gallery and Sales	Computer Software Sales and Leasing
Art and/or Education Supplies	Department Store
Bakery with no distribution	Medical Supply Store
Bicycle and Accessory Sales	Motorcycle and Motor Scooter Sales, limited outdoor display
Book &/or Video Store	Nursery
Camera and Photo Supply Store	Outdoor Recreation Equipment
China and/or Glassware	
Cigar, Cigarettes, Tobacco Shop	
Coin and/or Philatelic Store	
Craft Store	
Drug and/or Cosmetics Store, including Medical Marijuana Dispensary ⁵	

⁵ **Medical Marijuana Dispensary.** A place of business where marijuana may be dispensed or sold at retail to qualifying patients and primary caregivers and for which the State of West Virginia Office of Medical Cannabis has issued a dispensary permit pursuant to the West Virginia Medical Cannabis Act, West Virginia Code, Chapter 16A.



<p>Electronics Sales Fabric and Sewing Supply Store Florist Framing Shop Furrier Shop, no storage Garden Supply and/or Nursery Gift, Novelty and Souvenir Shop Grocery Store Hardware Store Home Furnishings and Accessories Jewelry and/or Gem Store Luggage and/or Leather Goods Magazine and/or Newspaper Store Music and/or Musical Instruments Office Machines and Supply Optical Goods Paint and Wallpaper Store Party Supply Shop Pet and/or Pet Supplies Shop Public Market Secondhand sales of any item permitted for sale new Specialty Food (Candy, Fish, Produce, Prepared Foods, etc.) Sporting Goods Stationery and Paper Store Toy and/or Baby Supplies</p>	
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3. **Commercial Equipment and Supply.** A Use involving the large-scale sale of goods to residents or businesses within the region. The goods or merchandise sold may be of the same type or a variety of types and typically occupy a space greater than 20,000 square feet. This use may include bulk sales and typically involves frequent commercial vehicle and consumer traffic. This use is primarily located indoors but may also include accessory outdoor storage of goods. This includes such uses as those listed in Table 4.03, Typical Commercial Equipment and Supply Uses. The following supplemental use regulations apply:
 - a. Loading docks shall be fully screened from any residential Uses pursuant to the requirements of the Subdivision and Land Development Ordinance.

4. **Convenience Store.** A store with less than 3,000 square feet of gross floor area primarily engaged in the retail sale of a limited range of household products including, but not limited to, dry goods, canned goods, dairy and other food products, bottled and fountain drinks, and delicatessen food items. The following supplemental use regulations apply:



- a. No Convenience Store shall be located within 1,500 feet radius of another Convenience Store or Grocery Store.
- 5. Convenience Store with Gas Dispensing. A store with more than 3,000 square feet of gross floor area that sells gasoline for motor vehicles in conjunction with a Convenience Store that provides the retail sales of a limited range of household products including, but not limited to, dry goods, canned goods, dairy and other food products, bottled and fountain drinks, and delicatessen food items. The following supplemental use regulations apply:
 - a. No Convenience Store with Gas Dispensing shall be located within 1,500 feet radius of another Convenience Store, Convenience Store with Gas Dispensing, or Grocery Store.
- 5. Discount Variety Store. A Use involving the sale of a wide variety of daily consumer retail goods typically at a discount price, especially multiple items for one dollar, and commonly known as dollar stores or five and dime stores. The following supplemental use regulations apply:
 - a. Discount Variety Stores shall not be located less than 1,500 feet from another discount variety store.
- 6. Outdoor Sales Lot. A Use involving the sale of goods or merchandise to businesses and/or the general public, where the majority of the goods are stored or displayed outdoors. Outdoor Sales Lots include such uses as: the sale and rental of automobiles, trucks, trailers, boats, and recreational vehicles; and the outdoor sale of building materials, landscape materials, and garden supplies. The following supplemental use regulations apply:
 - a. Outdoor sales lots must include permanent construction of a building utilizing one of the permitted building types in the district.

Table 4.03 – Typical Commercial Equipment and Supply Uses.

Bottled Gas (such as propane) Sales and Supply Heating & Air Conditioning Supply, Sales and Service Building Materials, Hardware, and Lumber Supply Machine Sales and Rental Cabinet Supply (display only) Electrical Supply Plumbing Sales and Service Farm Equipment and Supply Wholesale Trade

- (E) Service Uses. A category of Uses that provide patrons services and limited retail products related to those services.
 - 1. Neighborhood Service. A service Use with a gross floor area of 3,000 square feet or less. Neighborhood Service includes such uses as those listed in Table 4.04, Typical Service Uses.



- a. Medical Clinic. Medical Clinic means a licensed institution providing same-day, walk-in, or urgent medical care and health services to the community, primarily ill or injured out-patients, which is not a hospital, and which is not a medical office, and which shall not include methadone or drug rehabilitation clinics. Provision of an indoor waiting area for use by individuals when a portion of the facility is not opened for operation is required, so that clients will not be required or allowed to queue for services outdoors.
- b. The following supplemental use regulations apply:
 - (1) Neighborhood Service Uses may operate only at times during which the Use is a not a Nuisance to adjacent Uses, except for the following Uses, which may be open 24 hours: fitness club, athletic club, dance studio, yoga studio and gym; mailing and delivery services; Medical Clinic; photocopying and printing; and veterinary services/animal hospital (no outdoor kennels).
2. General Service. A Service Use with a gross floor area 3,000 square feet or greater as well as larger scale indoor and outdoor entertainment Uses. General Service includes such Uses as those listed in Table 4.04, Typical Service Uses.
3. Adult Day Care Center. Adult day care means a licensed non-residential facility in which custodial care is provided for up to 12 adults, related or unrelated, who are in need of supervision and/or assistance with routine daily functions but who are not in need of regular medical attention (including drug or alcohol rehabilitation services). The following supplemental use regulations apply:
 - a. Such a facility shall be licensed by the West Virginia Department of Health and Human Resources and comply with all other applicable state and local statutes, codes and/or Ordinances regarding licensing, zoning, building, fire, health and housing.
4. Automobile Fueling and Limited Repair Service. A business involving the sale and distribution of fuel, electric vehicle battery exchange stations, and/or limited repair service for vehicles to residents of the community and region. A convenience store may also be included as a secondary use, as well as the sale of propane and kerosene. The following supplemental use regulations apply:
 - a. Proximity Restriction. No Automobile Fueling and Limited Repair Service use shall be located within a 1,200-foot radius of another Automobile Fueling and Limited Repair Service use.
 - b. Permitted Types of Repair Service. Repairs include minor engine repairs and repairs and replacement of cooling, electrical, fuel and exhaust systems, brake adjustments, relining and repairs, wheel alignment and balancing, and repair and replacement of shock absorbers. Engine rebuilding, bodywork, and painting are not included in this definition.



- c. Outdoor Storage. Disabled or inoperable Vehicles and those awaiting pick-up may be stored outdoors if all of the following occur:
 - (1) No more than four (4) Vehicles are stored for no more than two (2) days each.
 - (2) The storage area is located in the Rear Yard screened from view of the front Lot line.
 - (3) The storage area is screened per the requirements of the Subdivision and Land Development Ordinance.
 - (4) The Vehicles must be stored in a legitimate parking space, and not in the public right of way or in a part of the lot not specifically designated as a parking space.
 - d. Outdoor Activities. All repairs or washing activities must occur inside a structure.
 - e. Bathroom Facilities. At least one bathroom must be provided and open during regular business hours for customers.
5. Automobile Service/Car Wash. A business involving the servicing of Vehicles and/or the sale and distribution of fuel to residents of the community and region. A Convenience Store may also be included as a secondary use, as well as the sale of propane and kerosene. Vehicle service includes such uses as automotive filling stations, vehicle repair, car wash facilities, and tire sales and mounting. Engine rebuilding, bodywork, and painting are included in this definition. The following supplemental use regulations apply:
- a. Use Limitation. Repair and wash facilities for Vehicles which are not automobiles are not permitted.
 - b. Service Bays. Vehicular service bays, including garages and car wash bays, shall not be located on the front Facade, unless otherwise expressly permitted by the building type.
 - c. Outdoor Storage. Disabled or inoperable Vehicles and those awaiting pick-up may be stored outdoors under all of the following conditions:
 - (1) The Vehicles are not stored for more than two (2) days.
 - (2) The storage area is located in the Rear Yard screened from view of the front Lot line.
 - (3) The storage area is screened per the requirements of the Subdivision and Land Development Ordinance.



- (4) The Vehicles must be stored in a legitimate parking space, and not in the public right of way or in a part of the Lot not specifically designated as a parking space.
- d. Outdoor Activities.
 - (1) All repairs or washing activities must occur inside a Structure.
 - (2) Vacuuming activities may occur in open air but must be located in the Side or Rear Yards, screened from the front Lot line.
 - (3) Temporary outdoor display of seasonal items, such as windshield wiper fluid or salt, is permitted during business hours under the canopy and adjacent to the principal Structure.
- 6. Automobile/Truck/Limousine Rental Service. A commercial facility that offers automobiles, trucks, and/or limousines for rent or lease for specific periods of time, including a stand-alone facility for automobile leasing services associated with an off-site automobile dealership.
- 7. Bail Bonds Agency. An entity that charges a fee or premium to release an accused defendant or detainee from jail and/or engages in or employs others to engage in any activity that may be performed only by a licensed and appointed bail bond agent.
- 8. Child Day Care Center. A facility licensed pursuant to West Virginia Code Chapter 49-2B-1, et seq., and related federal and state code that is maintained by the State or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than thirty (30) days per year per child, except:
 - a. A kindergarten through grade twelve education program, that is operated by a public school or that is exempt from the compulsory school attendance law by the state department of education;
 - b. A West Virginia Pre-K classroom operated by the Berkeley County Board of Education in a public-school setting;
 - c. Any other kindergarten, preschool or school program that operates with sessions not exceeding four (4) hours per day for any child;
 - d. An individual or facility that offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;



- e. Hospitals or other medical facilities that are primarily used for temporary care of children for treatment, convalescence, or testing; and
 - f. Persons providing care solely for children related to them.
9. Community Service. A public or not-for-profit service or activity undertaken to advance the welfare of citizens in need that provides food and goods distribution to private citizens.
10. Drinking Places. Any established licensed and permitted under the West Virginia Alcohol and Beverage Control Administration to sell alcoholic beverages, including beer, wine, and liquor for on-site consumption.
11. Eating Places. An establishment selling prepared foods and/or non-alcoholic drinks for on-premise consumption. Includes such uses as restaurants, cafes, coffee shops, diners, delis, fast-food establishments, lunch counters, and cafeterias. The following supplemental use regulations apply:
- a. Drive-in or drive-through services are not permitted in the Suburban Residential and Urban Residential Zoning Districts.
 - b. Eating Places are required to have a door that opens directly onto the adjacent public right-of-way during all hours of operation.
12. Electronic Cigarette / Vaporizer Store. A business establishment for which more than fifty percent (50%) of the floor area is dedicated to the storage, mixing, display, and/or retail sale of electronic cigarette devices, nicotine-enriched solutions, and/or liquid products that are manufactured for use with electronic cigarettes. The following supplemental use regulations apply:
- a. Applicants shall present information to the Building Code Official regarding proper ventilation.
 - b. Outdoor Use Prohibited. In all districts, this Use is prohibited in outdoor spaces.
13. Entertainment Assembly. A facility, other than a Stadium/Arena or Adult Entertainment, for holding events, indoors or outdoors, to which members of the public are invited with or without charge. Events may include theatrical performances; live music performances; dances, balls; shows or exhibitions; or live or broadcasted wrestling, boxing/sparring matches, or other sporting events.
14. Pawn Shop/Check Cashing Establishment. An establishment primarily engaged in the businesses of lending money on the security of pledged goods left in pawn; purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller; or providing cash to patrons for, payroll, personal, and bank checks.
15. Private Clubs. Private Clubs shall be defined and regulated pursuant to West Virginia Code §60-7-2. The following supplemental use regulations apply:



- a. The City may conduct routine inspections of the premises to ensure the absence of illegal activity on the premises, adequate maintenance of the interior and exterior of the premises, the absence of public disturbance or Nuisance, and compliance with the zoning regulations.
16. Self-Service Storage Facility. Any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such facility for the purpose of storing and removing personal property. The following regulations shall apply:
- a. The only activities permitted at a Self-Service Storage Facility shall be rental of storage units, pickup and deposit of goods and/or property in dead storage. Storage units shall not be used to: manufacture, fabricate or process goods; service or repair vehicles, boats, small engines or electrical equipment, or to conduct similar repair activities; conduct garage sales or retail sales of any kind; or conduct any other commercial activity.
 - b. All property stored on a site shall be entirely within enclosed buildings.
 - c. The rental of trucks and trailers used for moving and the installation of hitch and towing packages may be allowed in association with a Self-Service Storage Facility.
 - d. The maximum size of a storage unit shall be five-hundred (500) square feet.
 - f. Design Standards.
 - (1) Storage unit doors shall not face any abutting property which is zoned for residential use or upon which a residence exists. The unit doors of a multi-access Self-Service Storage Facility shall be screened from the view of any street right-of-way through the use of landscaping material or architectural design features.
 - (2) The exterior colors, facades, windows, roof, and building materials of all structures shall be compatible with the character of the surrounding area.
17. Smoking Places. Establishments for which the sale of tobacco products for on-site consumption yields at least seventy five percent (75%) of gross revenues, including such Uses as hookah lounges. The following supplemental use regulations apply:
- a. Applicants shall present information to the Building Code Official regarding proper ventilation.
 - b. Outdoor Use Prohibited. In all districts, this Use is prohibited in outdoor spaces.



18. Tattoo/Piercing Parlor. Establishments primarily in the business of applying lettering, art, and other images with permanent and semi-permanent inks, paints, pigments, or piercings to the body of patrons.

Table 4.04 – Typical Service Uses.

Typical Neighborhood Service Uses	Typical General Service Uses
Arcades and Billiards Barber Shop, Beauty Salon, and Spas Coffee Shop Dry Cleaning (pick-up/outlet only) Financial Depository Institutions/Banks, chartered and excluding Check Cashing Establishments Fitness Club, Athletic Club, Dance Studio, Yoga Studio and Gym Funeral Home Home Furniture and Equipment Repair Laundromat Locksmith Mailing and Delivery Services Medical Clinic Pet Grooming Phone Sales and Service Photocopying and Printing Photography Studio with Supplies Post Office, limited distribution Rental of any good permitted to be sold in the district Repair and/or servicing of any good permitted to be sold in the district Tailor or Seamstress Tanning Salon Therapeutic Massage establishment, licensed proprietor Travel Agency, Ticketing, and Tour Operator Veterinary Services/Animal Hospital (no outdoor kennels)	All Neighborhood Services over 3,000 square feet Animal Boarding, Daycare, & Training (interior only) Aquatic Facilities Archery Ranges (indoor only) Batting Cages Bowling Alleys Miniature Golf Courses Motion Picture Theaters Recreation, Commercial Indoor Rental of any good permitted to be sold in the district Repair of any good permitted to be sold in the district Skating Rink



(F) Adult Uses.

- 1. Adult Uses. Adult Uses are defined and regulated under City Code Section 705.04.

(G) Employment Uses. A category of Uses for businesses involving activities that may not be associated with walk-in customers.

- 1. Office Uses. A category of Uses for businesses that involve the transaction of affairs and/or the training of a profession, service, industry, or government. Patrons of these businesses usually have set appointments or meeting times; the businesses do not typically rely on walk-in customers. Office Uses include those listed in Table 4.05, Typical Employment Uses.

- 2. Craftsman Studio. A Use with a gross floor area limited to 10,000 square feet or less that includes a showroom or small retail outlet and production space, and involves small scale production, assembly, and/or repair with little to no noxious by-products. Craftsman Studio includes such Uses as those found in Table 4.05, Typical Employment Uses. This Use may also include associated facilities such as offices and small-scale warehousing, but distribution is limited as determined by City Engineer/Planning Director or designee.

- 3. Medical Marijuana Production Facility. A Person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit to dispense medical cannabis issued by the West Virginia Health and Human Resources pursuant to the West Virginia Medical Cannabis Act, West Virginia Code, Chapter 16A. The following supplemental use regulations apply:

- a. Additional Application Information. The City Engineer/Planning Director or designee may request additional information to ensure proper evaluation of such application. Such information may include ventilation plans, materials characteristics, drainage plans, waste disposal plans, and chemical disposition plans.

Table 4.05 – Typical Employment Uses.

Typical Office Uses	Typical Craftsman Studio Uses
Architecture/Engineering/Design	Apparel and Finished Fabric Products
Broadcasting, Recording, and Sound Studio	Beverages, including Beer, Wine, Soft Drinks, Coffee
Business Consulting	Liquor, Botanical Products
Construction Trade and Contractor (office only)	Brooms and Brushes
Charitable Institutions	Canning and Preserving Food
Computer Programming and Support	Commercial Scale Copying and Printing
Data Processing	Cut Stone and Cast Stone
Detective Services	



Educational Services (tutor and testing)	Electronics Assembly
Employment Agency	Electrical Fixtures
Financial and Insurance	Engraving
Government Offices and Facilities	Fabricated Metal Products
Laboratories, Medical, Dental, Optical	Film Making
Legal Services	Firearms and Ammunition
Management Services	Furniture and Fixtures
Medical and Dental Offices (other than in hospitals or on a hospital campus, and other than clinics)	Glass
News Agency	Household Textiles
Physical Therapy/Physical Rehabilitation	Ice
Public Relations and Advertising	Jewelry, Watches, Clocks, and Leather Products (no tanning)
Property Development	Meat and Fish Products, no processing
Real Estate and Apartment Finders	Musical Instruments and Parts
Research and Development	Pottery, Ceramics, and Related Products
Research Agency	Printing, Publishing and Allied Industries
Support Offices for other uses	Shoes and Boots
Surveying	Signs and Advertising
Trade Schools	Silverware
Training Center	Smithing
	Taxidermy (with incidental tanning)
	Textile, Fabric, Cloth
	Toys and Athletic Goods
	Upholstery
	Woodworking

(H) Infrastructure Uses. A category of Uses for the provision of public and private infrastructure to support other uses. Infrastructure Uses typically do not include a Principal building meeting the building type requirements. Accessory Structures may be included.

1. Parking. A Lot that does not contain a permitted Building of more than 1,000 square feet, is not used for Open Space, and is almost exclusively used for the parking of vehicles. The following supplemental use regulations apply:
 - a. Corner Lots. A Corner Lot shall not be used solely for parking.
 - b. Adjacent Parking Facilities. Two principal parking facilities shall not be located directly adjacent to one another, except for a new structured parking facility replacing an existing parking lot.
 - c. Parking shall be constructed pursuant to the applicable design standards specified in the Subdivision and Land Development Ordinance.



2. Transportation and Utilities. A Lot that is primarily utilized for the City's infrastructure needs. Transportation and Utilities include such Uses as street rights-of-way, rail rights-of-way, electric or gas services, sewage treatment, water treatment and storage, pumping stations, transmission and receiving stations, and energy conversion systems. The following supplemental use regulations apply:
 - a. All Buildings and Structures shall be set back from every adjacent property a minimum distance of twenty-five (25) feet and, in addition, not closer than fifty (50) feet from any adjacent residential property, except that any tower shall be set back a minimum distance of that equal to the height of the tower from any adjacent residential property.
 - b. Any electric or other utility lines between the infrastructure and the Street shall be underground.
 - c. The infrastructure shall be suitably screened from any adjacent residential property by a solid fence or planting screen which shall provide year-round screening. Screening shall be applied pursuant to the requirements of the Subdivision and Land Development Ordinance.
 - d. The City Engineer/Planning Director or designee shall provide the City's Chief of Police and City Fire Chief or their respective designees the opportunity to provide input on applications for Transportation and Utilities and shall provide such input to the City Planning Commission and Council, which shall take such input into account in making a decision about any Transportation and Utilities application.
3. Wireless Telecommunication Facilities. Wireless Telecommunication Facilities are regulated pursuant to the City's Ordinance No. 2002-06 titled "A Local Ordinance Regulating the Siting of Wireless Telecommunications Facilities" and is incorporated herein by reference.

Section 4.08 Accessory Uses

(A) General Provisions.

1. Accessory Uses Allowed. Accessory Uses as listed in Table 4.01, Table of Permissible Uses, are allowed only in connection with the lawfully established Principal Uses. Accessory Uses for nonconforming Principal Uses and Structures are addressed in Article 5, Supplemental Regulations.
2. Allowed Uses. Allowed Accessory Uses are limited to those expressly regulated in this Article as well as those that, in the determination of the City Engineer/Planning Director or designee, satisfy the following criteria:
 - a. They are customarily found in conjunction with the subject Principal Use(s) or Principal Structure;



- b. They are subordinate and clearly incidental to the Principal Use(s) of the property; and
 - c. They serve a necessary function for the comfort, safety or convenience of occupants of the Principal Use(s).
3. Accessory Structures. Refer to Article 5, Supplemental Regulations.
 4. Time of Construction and Establishment. Accessory Uses shall be established only after the Principal Use of the subject property is in place.
 5. Location. Accessory Uses must be located on the same lot as the Principal Use to which they are accessory, unless otherwise expressly stated.
- (B) Accessory Residential Uses.
1. Accessory Dwelling Unit. A Dwelling Unit that is associated with and is incidental to another Dwelling Unit on the same Lot which serves as the Lot’s Principal Use. The following supplemental use regulations apply:
 - a. A property owner must file a Use and Occupancy Permit for an accessory dwelling unit prior to its recognition as an accessory dwelling unit. The property proposed for an accessory Dwelling Unit must contain one, but no more than one, residential structure occupied as a one-unit dwelling.
 - b. The property must be owner-occupied, either in the Principal Structure or principal Dwelling Unit, or in the Accessory Dwelling Unit and be related to at least one (1) adult occupying the Accessory Dwelling Unit by blood, marriage, adoption, custodianship, or guardianship.
 - c. At any one time, the number of dwellers in an Accessory Dwelling Unit shall be limited to:
 - (1) One (1) adult and minor children related to said adult by blood, marriage, adoption, custodianship, or guardianship,
 - (2) Two (2) adults (in total) and minor children related to at least one of the adults by blood, marriage, adoption, custodianship, or guardianship.
 - d. The Accessory Dwelling Unit shall be located either:
 - (1) in a detached accessory structure occupied, or formerly occupied, on the first floor by a garage, barn, or similar Accessory Use; or
 - (2) in a Principal Structure, provided that there is a separate entrance to the exterior or to an unconditioned porch type space.
 - e. The Usable Floor Area of the accessory Dwelling Unit shall not exceed fifty percent (50%) of the Usable Floor Area of the principal dwelling unit



or 1,000 square feet, whichever is less. Exterior patios, decks, porches, and staircases providing interior access from the principal unit to the accessory Dwelling Unit will not be counted toward the Usable Floor Area of the accessory Dwelling Unit.

- f. Parking for the Accessory Dwelling Unit must be provided on-site in accordance with the parking requirements specified in the Martinsburg Subdivision and Land Development Ordinance.
 - g. The orientation of the proposed accessory Dwelling Unit shall, to the maximum extent practical, maintain the privacy of residents in adjacent Dwellings as determined by the physical characteristics surrounding the accessory Dwelling Unit including landscaped screening, fencing, and window and door placement. The exterior entrance of an accessory Dwelling Unit located in a Principal Structure shall not be visible from the front right of way. A separate numeric address for the accessory apartment is prohibited.
 - h. No new, separate utility connection may be installed for the accessory Dwelling Unit in a Principal Structure, unless more than one utility connection already serves the lot, to the location of the proposed accessory Dwelling Unit, at the time of the application for the accessory Dwelling Unit.
 - i. The Lot size must be a minimum of 7,500 square feet.
2. Home Child Care. Supplementary, temporary care of children, unrelated to the caregiver, on a regularly recurring basis for a portion of one (1) or more days in the week and provided in the home of the caregiver. The following supplemental use regulations apply:
- a. Limited Attendees. More than six (6) and fewer than thirteen (13) children may be cared for at a time. Six (6) or fewer children is considered a Home Occupation. Thirteen (13) or more children is considered a Child Day Care Center.
 - b. Outdoor Play Area. Home Child Care shall include a fenced outdoor play area.
 - c. Accessory Use. Home Child Care may only be an Accessory Use to the Principal Use of Household Living.
 - d. State Licensing Requirements. All applicable provisions of West Virginia Code Chapter 49-2-113 and related federal and state codes shall be met.
 - e. Revocation. The City Engineer/Planning Director or designee shall have discretion to revoke a Use and Occupancy Permit for home Child Care if such Use is a Nuisance to neighboring properties.



- f. Limited Number. The number of Home Child Care Accessory Uses on any zoning Lot shall not exceed one (1).
- 3. Home Occupation. A Use that is clearly subordinate and incidental to the Principal Use as a residence and is conducted in a Dwelling Unit by permanent residents thereof by one or more members of the occupying household and does not alter the exterior of the Building or its appearance.
 - a. Included Uses. Home Occupation includes the following and other uses deemed similar by the City Engineer/Planning Director or designee: accountant, artist, attorney, author, computer operator or programmer, child care of six (6) or fewer children, designer (computer, graphic, architect, interior, etc.) home crafts, seamstress or tailor, sales person or representative (no on-site retail or wholesale transactions), tutoring, and instruction of craft and fine art.
 - b. Excluded Uses. Home Occupation excludes such Uses, as otherwise defined in these regulations, Civic and Institutional Uses; Retail Uses; Service Uses other than photography studio, tailor or seamstress, therapeutic massage establishment (licensed proprietor).
 - c. The following supplemental use regulations apply:
 - (1) Advertisement. Offering, displaying or advertising any commodity or service for sale on the premises is prohibited, except that an identification Sign is permitted in accordance with the regulations of Article 6, Signs.
 - (2) Outside Storage. No materials or products shall be stored outside of a Building.
 - (3) Area. The customary home occupation shall not occupy more than twenty five percent (25%) of the Usable Floor Area of a Dwelling Unit in which the Home Occupation is operated.
 - (4) Employees. Employment is limited to any member of the immediate household residing in the Dwelling Unit plus one Person not residing in the Dwelling Unit.
 - (5) Hours of Operation. Permitted hours of operation are 7 AM to 6 PM.
 - (6) Limited Attendees. Up to four (4) attendees may be served or instructed at a time, except as provided for in Home Child Care.
 - (7) Residence. The operator of the Home Occupation shall reside in the Dwelling Unit in which the Home Occupation operates.
 - (8) Physical Appearance. The appearance of the Structure shall conform to the general character of the area.



- (9) Vehicles. No more than one (1) motor Vehicle shall be used in connection with a Home Occupation.
 - (a) The Vehicle shall be of a type ordinarily used for conventional private passenger transportation, such as a passenger automobile, van, or pickup truck not exceeding a payload capacity of one (1) ton.
 - (b) The Vehicle shall not be designed to carry more than 12 Persons.
 - (c) Parking of the vehicle must be accommodated on site.

4. Room Rental.

- a. Pursuant to West Virginia Code Chapter 8, Article 1, Section 5A(k), municipalities may not prohibit or effectively limit the rental of a property, in whole or in part, or regulate the duration, frequency, or location of such rental, in whole or in part.
- b. A municipality may regulate activities that arise when a property is used as a rental provided that such regulation applies uniformly to all properties, without regard to whether such properties are used as a rental provided, that nothing in §8-1-5A et. seq. may be construed to prohibit a municipality from imposing a hotel occupancy tax as prescribed in §7-18-1 et. seq. of the Code.
- c. All Room Rental Uses shall be registered as a permitted Use with the City.

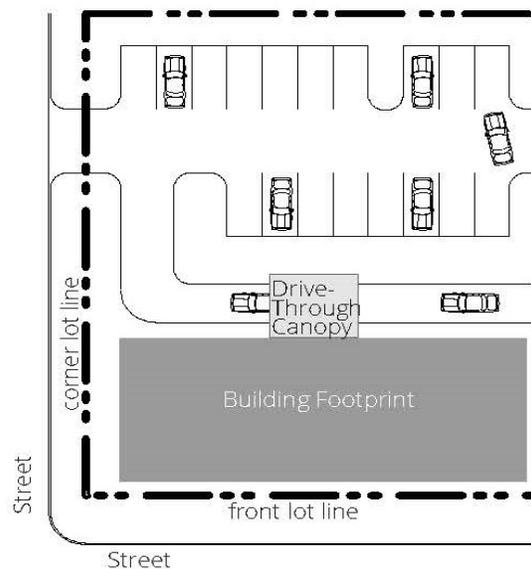
(C) Accessory Commercial Uses.

- 1. Drive-Through Facility. A type of drive-in establishment related to a Coffee Shop, Eating Place, Financial Depository Institution/Bank, and Laundromat and Dry Cleaning subject to Section 4.08.E, Services Uses, or to a Drug or Cosmetic Store allowed pursuant to Section 4.08.D, Retail Uses, where part of its retail or service character is dependent on providing a Driveway approach or parking spaces for motor Vehicles to either serve patrons food or beverage while in the motor Vehicle or else intended to permit consumption in the motor Vehicle of food or beverage obtained by a patron from such business establishment. The following supplemental regulations apply:
 - a. Layout. Refer to Figure 4-1, Drive-Through Facility for one illustration of the following requirements.
 - (1) Structure/Canopy. Drive-Through structures or canopies shall be located on the rear Facade of the Building or in the rear of the Lot behind the Building, where permitted by Use. The Structure shall not be visible from the front Lot line or any primary Street.



- (2) Stacking Lanes. Stacking lanes shall be located perpendicular to the front Lot line or behind the Building.
- (3) Materials. The canopy and Structure shall be constructed of the same materials utilized on the Building.
- (4) Drive Locations. There shall be a minimum distance of forty (40) feet between any two (2) curb cuts and a minimum distance of twenty-five (25) feet between any curb cut and the corner of any Corner Lot which is at the intersection of two (2) Streets.

Figure 4-1 – Drive Through Facility



- b. Recommendations. A recommendation in support of the drive-through is required from the City Engineer/Planning Director or designee, subject to the conditions of this section. The City Engineer/Planning Director or designee shall specifically approve each entrance and exit to any facility.
- c. Lot Requirements. There shall be a minimum Lot area of 15,000 square feet and a minimum lot width of one hundred twenty (120) feet;
- d. Front Yard Landscape. The area between the Building Line and the front Lot line not utilized for Driveways shall be landscaped with year-round plantings so as to prohibit parking over the Building Line.
- e. Proximity to Residential. The Drive-through facility shall not be located directly abutting any lot in a Residential District or any Lot containing a Dwelling.
- f. Proximity to Other Drive-Through Facilities. The drive-through facility shall not be located within a three hundred (300) feet radius of another drive-through facility.



- d. If the Outdoor Café does not consistently comply with all conditions listed in this subsection and its Use and Occupancy Permit, or if the Use becomes a nuisance for any reason as determined by the City Engineer/Planning Director or designee, the City Engineer/Planning Director or designee may order such Use terminated. For purposes of this subsection a “nuisance” shall not be deemed limited to the existence of the conditions referenced in Article 5(I) but shall instead be deemed to include any condition considered a nuisance under applicable law.
 - e. This subsection applies to any and all Uses of land or Structures, including existing Uses and Structures.
 - f. Maximum Size. The total area occupied by the Outdoor Café shall not exceed six hundred (600) square feet in area in the public right-of-way and may not exceed one hundred percent (100%) of the square footage of the active commercial floor area (exclusive of kitchen, office and storage areas) of the indoor portion of the eating and drinking establishment.
 - g. Enclosure. The Outdoor Café shall be enclosed by a fence with a minimum height thirty (30) inches and a maximum of forty-two (42) inches. All construction in the right-of-way shall be fully removable during the off-season or when the Outdoor Café is not in use. No chain link fencing, plastic fencing, or other material not durable enough to endure the season shall be utilized. Steel or colored PVC may be used. For outdoor seating areas of eight (8) chairs or fewer, the preceding enclosure requirements may be waived by the City Engineer/Planning Director or designee, as applicable, upon a determination that an enclosure may cause undue interference with the public right-of-way or is unnecessary because of site conditions.
 - h. Cover. The Outdoor Café may have a covering or overhead enclosure and shall be open-air.
 - i. Alcoholic Beverage Retail Sales. The Outdoor Café use involving the lawful retail sale of alcoholic liquor that operates as a retail licensee pursuant to the provisions of the West Virginia State Retail Liquor License Act, West Virginia Code, Chapter 60.
3. Outdoor Storage. Permanent outdoor storage of goods not typically housed or sold indoors, such as large-scale materials and building and landscape supplies. The following supplemental use regulations apply:
- a. Outdoor storage areas shall be located in the Rear or Side Yard of the Lot.
 - b. Loose materials shall not be stacked higher than ten (10) feet.
 - c. Loose materials shall at a minimum be stored in a three (3)-sided shelter and shall be covered.
 - d. Materials shall be set back a minimum of five (5) feet from any Lot line.



- e. All outdoor storage areas shall be screened from view of adjacent parcels and street rights-of-way.
4. Limited Video Lottery. Limited Video Lottery is defined and regulated pursuant to West Virginia Code, Chapter 29, Article 22b, Limited Video Lottery Act. The additional supplemental regulations shall apply:
- a. Limited Video Lottery shall only be permitted as an accessory use to the principal use of a restaurant; For the purposes of this section, restaurants are defined as a structure in which the principle use is the preparation and service of food and beverages to its customers. Customers may consume food and beverages either inside or outside the structure or take the products off premises to consume as allowed by applicable laws.
 - b. Limited Video Lottery machines must be in a separate room, closed-off from the restaurant and/or bar area and not visible to general restaurant patrons.
 - c. Applicant must submit detailed floor plan with the special exception application and the City Engineer/Planning Director or designee may inspect the area prior to the public hearing by the Board of Zoning Appeals;
 - d. Restaurant, not including kitchen and preparation area, storage and utility areas, restrooms, proposed limited video lottery room, and other areas not open to the general public, must have at least thirty (30) seats, five tables and have a gross floor area of at least eight hundred (800) square feet;
 - e. Restaurant must be in operation for a minimum of one calendar year prior to application for special exception and be open to the general public and include patrons under the age of eighteen (18) years old;
 - f. Structure containing video lottery machines is not located within three hundred (300) foot of a church or place of worship, school, park or recreational facility.
 - g. The aforementioned three hundred (300) foot prohibition for a church or place of worship, school, park or recreational facility shall be measured in a straight line from the nearest point of the exterior wall of a building containing a limited video lottery establishment to the nearest exterior wall of a building containing of a church or place of worship, school, recreational facility or property line of a park, irrespective of other uses that may exist on the property.
 - h. The City Engineer/Planning Director or designee may revoke applicant's special exception application if applicant fails to meet and/or maintain any of the conditions listed within the aforesaid section.



- 5. Parking. Parking as an Accessory Use in conjunction with an adjacent Principal Use on the lot.
 - a. Parking Lot. A parking lot is a Paved Surface used solely for the parking of Vehicles, intended for use by the occupants in an adjacent building on the Lot. A parking lot may be uncovered or covered by a Renewable Energy Structure.
 - b. Parking Structure. An Accessory Structure used solely for the parking of Vehicles, intended for use by the occupants in an adjacent building on the Lot. The following supplemental use regulations apply:
 - (1) Location. An accessory parking structure shall be located as follows:
 - (a) Parking structures shall be located in the Rear Yard only and shall be screened from view from the front of the lot or the primary Street to the Principal Use Structure.
 - (2) Height. The maximum height of parking structure shall be no greater than regulatory height of the Principal Use Structure.
 - c. The following supplemental use regulations apply:
 - (1) Parking Lots in Parks. New parking lots may be permitted in public parks through a Site Plan application pursuant to the requirements specified in the Subdivision and Land Development Ordinance.

Section 4.09 Temporary Uses

- (A) General. Temporary Uses are limited to those expressly regulated in this Article as well as those that in the determination of the City Council are deemed appropriate as a Temporary Use.
- (B) Temporary Uses.
 - 1. Temporary Food Establishment. An operation that runs at a fixed location for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration, such as a fair, festival, carnival, circus, regatta, or similar transitory gathering. Includes “Mobile Food Establishment”, which may operate at more than one location or event, is equipped with a permanent hand sink and three bay sink with hot and cold water source, and is set up to be easily moved from one location to another without having to set up a structure. The following supplemental regulations apply:
 - a. A Temporary Food Establishment must obtain an operating permit from the Berkeley County Department of Health.



2. Temporary Outdoor Event. A Temporary Outdoor Event shall constitute a Special Event as defined and regulated under the City Ordinance 2016-32.
3. Farmers Market. A Farmer's Market is a Special Event defined and regulated under the City Ordinance 2016-32.



ARTICLE 5 SUPPLEMENTAL REGULATIONS

Purpose. The purpose of these supplemental regulations is to set specific conditions for various Uses, classification of Uses, or areas where problems are frequently encountered, and to aid applicants in the permitting process. Use requirements contained elsewhere in this Ordinance apply to all Uses and Structures, whether or not specifically listed in this Article. Likewise, the provisions of this Article shall not be interpreted as a waiver of the application of City Building Code Requirements or any other requirements of the City or the State of West Virginia. Certain of the following supplemental regulations or provisions thereof, to the extent specified therein, are applicable to any and all Uses of land or Structures, including existing Uses and Structures.

Section 5.01 Accessory Uses and Structures

In addition to the other applicable requirements of the City, Accessory Uses and Structures shall also be governed by the following provisions:

1. In all Zoning Districts, any Accessory Use or Structure shall not be located closer than five (5) feet to an Alley line or side or rear Lot line.

Section 5.02 Density Standards

The following density standards apply to all Zoning Districts:

1. Land donated for a public facility may be counted as part of the Net Buildable Land Area when calculating the density of a development.
2. **Density Bonuses.** To encourage better design practices in developments, the City Planning Commission shall allow the density bonuses listed below when the specified criteria are satisfied. Such density bonuses may be used to increase the Maximum Density of a development as specified herein for the underlying Zoning District:
 - a. **Open Space.** For every five percent (5%) of the total usable land that is provided as Open Space above the minimum required Open Space, one (1) Dwelling Unit per acre density bonus may be added, up to two (2) additional Dwelling Units per acre. This density bonus is subject to the provision that the additional Open Space shall be located outside of Flood Plains and wetlands;
 - b. **Public Park.** If a public park, versus a private park, is provided as part of a development project, a density bonus of one (1) Dwelling Unit per acre may be applied; and
 - c. **Best Management Practices (BMPs).** If in the opinion of the City Engineer/Planning Director or designee a development substantially exceeds the minimum requirements of City's Stormwater Management Control Standards of the Martinsburg Stormwater Management Ordinance, a density bonus of one (1) Dwelling Unit per acre may be applied, provided that the development will continue to substantially exceed the minimum requirements.



Section 5.03 Donation Containers, Unattended

The following regulations apply to donation containers that accept new or gently used clothing items:

1. Size. The Donation Container may not be larger than seven (7) feet tall, six (6) feet wide or six (6) feet long.
2. Maximum Number. Donation Containers are limited to a maximum of two (2) per property located within the Side Yard and Rear Yard areas and may not exceed a use area within these locations of one hundred twenty (120) square feet.
3. Location and Placement. Donation Containers are only permitted on Civic, Institutional, and commercial properties 40,000 square feet or greater and may only be placed on such properties with written permission from the property owner. Such written permission must be made available to the City for review upon request.
4. Maintenance.
 - a. Donation Container items must be collected on a regular basis or within 48 hours following a property owner’s request.
 - b. Donated items or any refuse may not be left outside the containers for more than 24 hours and must be removed by the box owner/operator or property owners.
5. Identification. Each Donation Container must be properly identified and labeled with the following information:
 - a. Name and telephone number of the owner/operator;
 - b. Entity responsible for collecting donated items and any refuse left outside the container; and
 - c. Type of donated items accepted and a statement prohibiting liquids and dumping.

Section 5.04 Encroachments

The following regulations are intended to assist applicants and business owners in establishing attractive and safe Encroachments that benefit both the downtown business community and the citizens that enjoy those public spaces:

1. General Requirements.
 - a. The City’s goal is to maintain the highest standards of accessibility and safety while achieving an attractive and functional design within its downtown area;



- b. In general, Encroachments should complement public Use and improvements. In no case shall Encroachments exclude the public from any public Sidewalk or Street;
- c. Allowed Encroachments shall comply with all requirements of this Ordinance and the City's Codified Ordinance; and
- d. This subsection applies to any and all Uses of land or Structures, including existing Uses and Structures.

2. Location and Dimensional Requirements.

- a. Encroachments may be allowed where it can be determined by the City Planning Department that the Encroachment would not result, individually or cumulatively, in a narrowing of the Sidewalk such that important functional attributes of the downtown, (e.g., ability of pedestrians to stroll side-by-side and to pass comfortably for significant stretches, lingering and window shopping) are not jeopardized. The location and dimensions of any item located in a public place shall meet the minimum guidelines set forth herein and any other applicable local, state or federal law or regulation;
- b. Encroachments must maintain a clear path of no less than five (5) feet. The City Engineer/Planning Director or designee may permit paths of travel of less than five (5) feet in instances where safe access can be determined;
- c. Encroachments shall not block safe access to businesses, parking spaces, bike stalls, or other spaces required by local, state or federal building or safety codes;
- d. Encroachments shall not encroach into the areas near corners of Sidewalks or where crosswalks are present. This area shall be defined with a 15-foot area, beginning near the crosswalk or curb cuts;
- e. Tables shall not exceed forty-two (42) inches in width at the greatest dimension;
- f. Chairs shall not extend into the required accessible walkway at any time. Chairs must be at a scale appropriate to the size of the table or space available for seating;
- g. Portable outdoor heating devices and permanently mounted heating devices shall be reviewed by the City Engineer/Planning Director or designee for safety and aesthetics and require either a Use and Occupancy Permit or Building Permit as applicable;
- h. The City Council shall review any items placed in the public right-of-way; and
- i. Encroachments shall not intrude onto other private properties.



3. Maintenance and Operational Requirements.

- a. Maintenance of Encroachments shall be the sole responsibility of the owner of the Encroachment;
- b. Any item permitted to be placed in the public right-of-way shall be maintained in a safe manner so as not to obstruct pedestrian access to public Sidewalks, access ramps or doorways. Movable items, such as chairs, shall always be positioned to prevent obstruction of access routes. The permitted item shall always be relocated to the appropriate location if moved by patrons;
- c. All materials shall be well maintained without stains, rust, tears or discoloration. Materials that show signs of significant wear/age shall be replaced; and
- d. All Encroachments shall be constructed of durable fade resistant materials.

4. Colors and Materials.

- a. All items located on the public Sidewalk shall be constructed of durable materials appropriate for use in the public rights-of-way. Folding chairs, lightweight materials, deteriorated, ultraviolet ray damaged, splintered or other similar furniture will not be approved or placed in the rights-of-way. Sealed or painted metal or wood tables are recommended; and
- b. Encroachments shall be complementary in material, color and design to the Buildings they serve and to which they are adjacent.

5. Umbrellas and Outdoor Furniture. Umbrellas shall be installed and maintained to provide pedestrian clearance by maintaining seven (7) feet of clearance from the Sidewalk to the lowest edge of the umbrella. Umbrellas shall not exceed a maximum height of nine (9) feet from the base to the top portion of the pole.

6. Planters and Landscaping.

- a. Private planters should be kept to a minimum and shall be placed against Buildings to accent Building entrances and openings. Private planters should complement but not interfere with or be placed adjacent to City-maintained planters located along the Street curb. Planters shall not be used to define seating areas or otherwise cordon off public Sidewalk for private use;
- b. Plant material shall be of high quality and shall always be maintained in a viable condition; and
- c. Debris or litter caused by planters or nearby landscaping shall be maintained or cleaned by the responsible business or property Owner.



Debris, stains or litter shall be cleaned or removed by the responsible business or property Owner.

7. Other Encroachment Types. Other types of Encroachments, not anticipated by this Ordinance, may be considered and permitted by the City Planning Department, but must comply with the purpose and intent of these requirements.

Section 5.05 Fences and Walls

1. General Requirements.
 - a. A fence permit shall be obtained for the erection of fences less than seven (7) feet in height. A building permit shall be obtained for the erection of fences greater than or equal to seven (7) feet in height, walls and retaining walls greater than or equal to four (4) feet in height. Normal maintenance of fences and walls or replacement of like materials shall be excluded from the permit process.
 - b. No fence or wall shall obstruct the flow of stormwater, except as part of a City-approved stormwater system.
 - c. Fences and walls shall not be permitted within any right-of-way, drainage or storm water management easement, clear view triangle area, within the site visibility area adjacent to railroads, or below the 100-year Flood Plain of any lake, river, or wetland.
 - d. Fences and walls shall be exempt from Building Lines and Yard requirements except as follows:
 - (1) The proposed fence or wall may not adversely affect the safety of vehicular or pedestrian traffic or cause an obstruction to vision and/or a required Sight Distance triangle;
 - (2) Fences or walls located on a cul-de-sac Lot, Pipe Stem (Flag) Lot or other Lot located on a dead-end Street shall not extend beyond the front porch or principal face of any principal Structure located on any such Lot; and
 - (3) Rear Yard fences shall not extend beyond the front principal face of any principal Structure on a Lot.
 - e. To avoid creating any possible no-maintenance zone(s), perimeter fences and walls shall be installed along and up to a property line but within the property limits, except, however, when a fence is shared by adjoining properties it shall be installed on the property line.
 - f. Fences and freestanding walls (other than a necessary retaining wall) in Residential and Mixed-Use Districts (as listed in Section 3.01) shall not exceed seven (7) feet in height for Rear Yard applications and shall not



exceed 48 inches in height for Front Yard fences. Front Yards shall be measured from the principal face of a Dwelling.

- g. Fences and freestanding walls (other than a necessary retaining wall) in the Medical-Institutional District shall not exceed ten (10) feet in height for Rear, Side and Front Yard applications.

2. Maintenance and Materials.

- a. Any fence or wall shall be durably constructed and well-maintained. Privacy fences shall be constructed so that the finished side of the fence faces toward abutting properties and rights-of-way unless the fence is not visible from adjoining property. Fences and walls that have deteriorated shall be replaced or removed.
- b. A fence shall not be constructed out of fabric, Junk, Junk Vehicles, appliances, tanks, or barrels.
- c. Electric fences, except for in-ground pet fencing, are prohibited in all Zoning Districts.
- d. Barbed wire fences are prohibited in all Zoning Districts except, where the need is clearly demonstrated, for Civic and Institutional Use applications.
- e. Razor fences are prohibited in all Zoning Districts.

Section 5.06 Heliports

In addition to the other applicable requirements of the City, Heliports shall also be governed by the following provisions:

- 1. Federal Aviation Administration Heliport Design Standards, Advisory Circular (AC) No: 150/5390-2C or current edition.
- 2. Minimum Lot area shall be one (1) acre;
- 3. A fence shall be installed around Heliports. Fences must be at least six (6) feet in height when located at ground level and be made of wire mesh;
- 4. A landscaping screen shall be planted where abutting a residential Use and shall meet the applicable standards specified in the Subdivision and Land Development Ordinance; and
- 5. The parking area must be located at least twenty-five (25) feet from residential Use.



Section 5.07 Murals

In addition to the other applicable requirements of the City, Murals shall also be governed by the following provisions:

1. Murals must not contain any discriminatory language, imagery or symbology, incite or encourage violence or public disorder, pornography, profanity, defamatory, obscene, treasonous content or be in violation of any other laws.
2. Murals shall obtain a Mural Permit issued by the City Planning Department, and when located within the Historic District in conjunction with the Historic Preservation Review Commission, and must meet the following standards:
 - a. All applications for Murals shall be made on forms provided by the City Planning Department and shall contain an authorization by the Owner of the wall or structure the mural will be painted on or affixed to and a draft of the proposed Mural including color and specification of materials (e.g., paint, tile, etc.).
 - b. Murals shall be applied to a removable surface that is fastened to the Structure's wall.
 - c. The applicant may however be permitted to apply the mural directly to the Structure's wall surface provided the applicant agrees to remove the mural as may be required through the sale of the property to a new owner.
 - d. Murals shall be applied using weather resistant paint or materials.
 - e. Murals shall not be designed as to constitute or create a traffic hazard as determined by the City Engineer/Planning Director or designee in consultation with the Chief of Police.
 - f. No part of a Mural shall exceed the height of the structure to which it is painted on or affixed to.
 - g. No part of a Mural shall extend more than six (6) inches from the plane of the wall upon which it is painted or affixed to.
 - h. No Mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).
 - i. No Mural shall obstruct the exterior surface of any building opening, including, but not limited to, windows, doors, and vents.
 - j. Murals shall not be permitted in the SR Zoning District.



- k. No Mural shall be arranged and illuminated in a manner that will produce a light intensity of greater than three (3) foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.
- l. Murals shall be maintained at all times. Repairs to a Mural shall not require a new application under this definition if the image or content of the Mural does not or only minimally change.
- m. Murals advertising businesses, goods or services shall be considered a Sign and require a Sign Permit pursuant to Section 6.02 of this Ordinance.

Section 5.08 Nonconforming Uses

Except where otherwise provided in this Ordinance, any Use of land, a Lot, a Building or a Structure (including Signs) lawfully existing at the time of the adoption of this Ordinance or at the time this Ordinance is subsequently amended shall be deemed a Legally Nonconforming Use that may be continued without prohibition by this Ordinance as long as such Use is maintained, subject to the following provisions:

- 1. Single-Family Detached Dwellings deemed Legally Nonconforming Uses in any Zoning District may continue to operate and expand on the same land area/parcel containing the nonconforming use on the date the use first became nonconforming provided that the expansion may not increase the degree of nonconformity. Such Dwellings shall be treated as principal Permitted Uses in that Zoning District;
- 2. All other Alterations or additions to, or replacements, enlargements, extensions or expansions of, or changes in, Legally Nonconforming Uses shall be subject to review and approval by Board of Zoning Appeals, subject to the provisions of West Virginia Code Chapter 8A-7-10(c) pertaining to agricultural, industrial, and manufacturing Uses. In all Zoning Districts the Board of Zoning Appeals may approve the alteration or addition to, or enlargement, extension, or expansion of, a Legally Nonconforming Use provided such change is restricted to an additional area not exceeding thirty-five percent (35%) of the area of the existing Use, with the exception that no such change may be permitted for Junk Yards;
- 3. Legally Nonconforming Uses may not change to a less appropriate Use or classification;
- 4. Legally Nonconforming Uses may continue to operate as such through change of Ownership;
- 5. If a Legally Nonconforming Use has ceased or been discontinued for one (1) year or more or otherwise been abandoned, then the nonconforming Use may not thereafter be reestablished and any and all Use of the land, Building, Structure (including Signs), or premises shall thereafter be in conformance with this Zoning Ordinance, subject to the provisions of West Virginia Code Chapter 8A-7-10(d) pertaining to natural resources extraction or harvesting, agricultural, industrial, and manufacturing operations, and duly designated Historic Landmarks, Sites, or Districts;



6. Nothing in these regulations shall prevent the restoration or the thirty five percent (35%) expansion allowed under Section 5.08(2) above of a Building or Structure destroyed by fire, windstorm, explosion, flood, act of public enemy, accident, or other casualty while a Legally Nonconforming Use, or prevent the continuance of the Use thereof as it existed at the time of such destruction provided that a Building Permit is obtained and restoration begun within one (1) year of said destruction;
7. When a portion of a property is deeded to a public entity for a public purpose it shall not cause the remaining portion of the property to be in violation of any part of this Ordinance; and
8. Nothing in this Ordinance shall be deemed to make legal any Use otherwise prohibited by or illegal under applicable law.

Section 5.09 Nonconforming Lots

A Nonconforming Lot is a lot that was subdivided before adoption, or amendment, of the Zoning Ordinance and which, after adoption or amendment of the Zoning Ordinance, does not meet the requirements of the district in which it is located. Notwithstanding limitations imposed by other provisions of this Ordinance, in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single Lot of record at the effective date of adoption or amendment of this Ordinance. Such Lot must be in separate ownership and not of continuous frontage with other vacant lots in the same ownership. Where possible, contiguous parcels under common ownership shall be re-platted to create conforming Lots. This provision shall apply even though such Lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements (other than those applying to area or width, or both), of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Zoning Appeals.

Section 5.10 Nuisances

The following nuisance performance standards and restrictions shall apply for all non-residential Uses in any of the Zoning Districts.

1. Control of smoke, dust, dirt, fumes, vapors, gases and odors. The West Virginia Air Pollution Control Standards shall be used to control the emission of smoke, dust, dirt, fly ash, fumes, vapors, gases, or odors.
2. Noise.
 - a. At no point along a Residential or Mixed Use District (as listed in Section 3.01) or one hundred twenty-five (125) feet from the plant or operation property line shall the sound pressure level of any operation or plant (except as otherwise noted herein) exceed the decibel limits in the octave bands designated in Table 5-1 below.



- b. Sound levels shall be measured with a sound-level meter and associated octave band filter, manufactured in compliance with the standards prescribed by the American Standards Association.

Table 5-1, Noise Level Standards

Octave Bands Frequency (cycles per second)	Maximum Permitted Sound Level (Decibels) Along Residential District Boundaries or 125 feet from Industrial Use property line	Maximum Permitted Sound Level (Decibels) Along Commercial District Boundaries or 125 feet from Industrial Use property line
0 to 75	72	79
75 to 150	67	74
150 to 300	61	68
300 to 600	56	62
600 to 1,200	50	56
1,200 to 2,400	45	51
2,400 to 4,800	41	47
Above 4,800	38	38

- c. Exemptions. The following shall be exempt from noise performance standards:
 - (1) Noises of construction or maintenance activities;
 - (2) Noises of safety signals, warning devices, and emergency pressure relief valves;
 - (3) Transient noises of moving sources such as transportation Vehicles, including trains and aircraft;
 - (4) Other noises not under the direct control of the property user; and
 - (5) The Use of outdoor public address systems for any purpose shall be approved by the City Engineer/Planning Director or designee.
- d. In addition to the noise performance standards specified above, the requirements of Martinsburg City Code Section 509.06, Noise Control, shall also apply.
- 3. Vibration. Any Use creating intense earth-shaking vibrations shall be set back two hundred fifty (250) feet from a Residential or Mixed-Use District as listed in Article 3, Table 3.01. No perceptible vibrations shall be permitted at the property line. Vibration caused by maintenance and construction activities is exempt.
- 4. Glare and Heat.
 - a. All Uses shall minimize the production of light, heat or glare that is perceptible beyond any property line of the Lot from which the light, heat or glare is produced;



- b. Glare, whether direct or reflected, such as from spotlights or high temperature processes, and as differentiated from general illumination, shall be not visible beyond the Lot line of the Lot on which the Use is located;
 - c. Exterior lighting, other than that essential for the safety and convenience of the users of the premises shall be prohibited. All exterior lighting shall be shielded in such manner that the level of light (i.e., measured in foot candles) is zero at common, adjacent Lot lines, except within commonly owned properties under unified management such as commercial centers; and
 - d. Except for within commonly owned properties under unified management such as commercial centers, no direct or sky-reflected glare, whether from floodlights or from temperature processes such as combustion or welding or otherwise, to be visible at the Lot line of the subject property shall be permitted. Furthermore, there shall be no transmission of heat or heated air to be discernible (by a healthy observer such as the City Engineer/Planning Director or designee or a designee) at the Lot line.
5. Fire Hazards. No activity or operation shall be established which fails to meet requirements of National Fire Protection Association (NFPA) Life Safety 101: Fire Code standard.
6. Radiation of Electrical Emissions, Radioactivity or Electrical Disturbance. Activities that may emit dangerous radioactivity beyond closed areas shall comply with State and Federal Codes. No electrical disturbances (except from domestic household appliances) shall be permitted to affect adversely, at any point, any equipment other than that of the creator of such disturbance.
7. Electric, Diesel, Gas or Other Power. Every Use requiring power shall be so operated that any service lines, substation, etc., shall conform to the highest applicable safety requirements. They shall be constructed, installed, etc., so that they will be an integral part of the architectural features of the Building or, if visible from abutting residential properties, shall be concealed by evergreen planting.
8. Sewage and Waste Treatment. All methods of sewage and industrial waste treatment and disposal shall:
- a. Be approved by the Martinsburg Water and Sewer Department or applicable provider;
 - b. Meet requirements of the City Code if the Martinsburg Water and Sewer Department is receiving the effluent; and
 - c. Be in accordance with all applicable regulations.



Section 5.11 Outdoor Display and Sale of Merchandise

Outdoor Display and Sale of Merchandise shall be governed by the following provisions:

1. Outdoor displays may not extend more than five (5) feet from the building façade and in no instance shall merchandise or other items for sale or advertisement be located beyond an established Street Line. In the case of Street Lines and Building Lines being coincident, there shall be no outdoor display;
2. No outdoor display or sale of merchandise, whether upon public property or private property, shall be undertaken except in compliance with all conditions listed in this Section and the applicable Use and Occupancy Permit. Outdoor display and sales upon public Sidewalks and rights of way may be permitted only if vehicular and pedestrian circulation is not unreasonably restricted pursuant to the Encroachment requirements specified in Section 5.04;
3. If associated with a Principal Use on a Corner Lot, only a single Frontage shall be utilized for accessory outdoor display purposes;
4. Merchandise or other items, and all temporary structures used for outdoor display, shall be removed from the outdoor location or adequately secured when the store or business is closed;
5. The merchandise displays shall be on racks or display counters that are of similar quality to those used in the store or business; and
6. No Signage other than normal price markers the same size and design as those used on the interior shall be permitted.
7. Types of Merchandise.
 - a. Outdoor displays shall be limited to single items or object displays or a few examples of items or goods sold in the store and must comply with all other standards specified herein;
 - b. Outdoor displays and sales may include items offered for sale by or incidental to the store or business upon whose property, or fronting the Sidewalk on which, the display and sale is conducted;
 - c. Outdoor display and sale of automobiles, motorcycles, boats, campers, Travel Trailers, Motor Homes, and other Vehicles or mobile equipment shall be located on paved areas and may not occupy required parking spaces. No display of any kind of such items is permitted on any public Sidewalk or other right of way; and
 - d. Garden materials may be displayed and sold outdoors by hardware and building supply stores, nurseries, and other businesses on its property, provided the items do not occupy required parking spaces.
8. Yard/Garage Sales. See Section 5.17 below for applicable regulations.



Section 5.12 Riparian Buffers

The requirements of this subsection shall apply to Riparian Buffers in the City, which shall be provided and maintained in accordance with the United States Department of Agriculture's *Chesapeake Bay Riparian Handbook: A Guide for Establishing and Maintaining Riparian Forest Buffers*⁶, which is hereby adopted by reference. Additional requirements for protecting Riparian Buffers are as follows:

1. All lands within a Riparian Buffer shall be left in an undisturbed, vegetated condition, except that removal of dead trees or trees of immediate threat to human safety, as well as reasonable pruning of existing trees, is permitted.
2. The creation of new lawn areas within Riparian Buffers is not permitted. Property Owners already encroaching on the Riparian Buffer are encouraged to return mowed areas to their naturally vegetated state. Supplemental planting with appropriate native vegetation to restore and enhance the effective filtering and bank Stabilization functions of a Riparian Buffer is encouraged.
3. Any areas within a Riparian Buffer that are not vegetated or that are disturbed during construction shall be seeded with a naturalized mix of grasses rather than standard lawn grass.
4. Permitted Uses. The following activities are permitted within a Riparian Buffer:
 - a. The control of non-native species of nuisance plants including Eurasian milfoil, water chestnut, purple loosestrife and reed grass (Phragmites), where such control is by hand pulling of invasive plants;
 - b. Buffer re-establishment projects that use "soft" techniques such as tree revetments and root wads; and
 - c. Encroachments necessary to rectify a natural catastrophe for the protection of the public health, safety and welfare. All Stream encroachment activities shall be authorized and permitted under the West Virginia Department of Environmental Protection.
5. Special Exception Uses. The Board of Zoning Appeals may authorize the following as Special Exception Uses within Riparian Buffers subject to the standards and conditions enumerated for each Use and subject to the jurisdiction of the Department of Environmental Protection and Army Corps of Engineers:

⁶ Roxane Palone and Albert Todd, *Chesapeake Bay Riparian Handbook: A Guide for Establishing and maintaining Riparian Forest Buffers* (Washington, D.C.: U.S. Department of Agriculture, Forest Service, 1998), available online at https://www.chesapeakebay.net/content/publications/cbp_13019.pdf



- a. Clearing of vegetation and filling or excavating of earth materials, only to the extent directly necessitated for the construction or safe operation of a Special Exception Use on the same property and where the Board of Zoning Appeals finds that:
 - (1) There is no practical alternative to the Clearing, filling or excavating within the Riparian Buffer; and
 - (2) The purposes of these regulations will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures.

- b. Encroachments necessary for providing for or improving public facilities where the Board of Zoning Appeals finds that:
 - (1) There is no practical alternative to the Clearing, filling or excavating within the Riparian Buffer; and
 - (2) The purposes of these regulations will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures.

- c. Unpaved footpaths for the purpose of public recreation located at least ten (10) feet horizontal distance measured from the Top of Slope, where the channel runs adjacent to a valley wall or high terrace, or Top of Bank, where the channel has access to its Flood Plain.

- d. Paved paths for the purpose of public recreation located at least fifty (50) feet horizontal distance measured from the Top of Slope, where the channel runs adjacent to a valley wall or high terrace, or Top of Bank, where the channel has access to its Flood Plain. Access points are allowed but shall be limited to areas where the Stream or river channel is already confined and/or permanently constrained.

- e. Stormwater treatment facilities meeting the stormwater treatment practices specified herein where the City Engineer/Planning Director or designee find that:
 - (1) There is no practical alternative to the Clearing, filling or excavating within the Riparian Buffer;
 - (2) The purposes of these regulations will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures; and
 - (3) Evidence of an approved permit from the West Virginia Department of Environmental Protection for coverage under the applicable permitting requirements shall be required to meet this criterion for encroachment into a Riparian Buffer;



- f. Roadways or Access Drives for purposes of crossing a Riparian Buffer to gain access to land on the opposite side of the buffer, or for purposes of providing safe access to an approved Use, in cases where there is no feasible alternative for providing safe access. A roadway crossing or Access Drive shall occur at a right angle to the Stream Channel.
 - g. Public utility easements to the extent necessary to cross or encroach into the Riparian Buffer where there is no feasible alternative for providing or extending utility services.
 - h. Outdoor recreation and education facilities provided that any Building or Structure (including parking and Driveways) associated with such Use is located outside the Riparian Buffer.
 - i. Stream restoration projects, including dam removals, in accordance with a plan approved by the West Virginia Department of Environmental Protection.
6. Expansion of Legally Nonconforming Uses within Riparian Buffers. Notwithstanding the nonconforming Use provisions of Subsection 5(H) above, any Building, Structure, or land, or Use thereof, in or upon a Riparian Buffer, which is made nonconforming by reason of the adoption of these regulations, may be expanded or reconstructed, subject to the following provisions:
- a. The Structure to be expanded or reconstructed was originally constructed prior to the effective date of these regulations;
 - b. The Legally Nonconforming Use shall not be changed to another nonconforming Use;
 - c. A Legally Nonconforming Use that is discontinued for one year or otherwise abandoned shall not be resumed;
 - d. A Legally Nonconforming Use that is replaced by a conforming Use may not revert to a nonconforming Use;
 - e. If a Structure made nonconforming by reason of the adoption of this Ordinance is damaged or destroyed over fifty percent (50%) of its market value by flood water inundation or fluvial erosion, the Structure shall not be rebuilt within the Riparian Buffer unless a variance and Use and Occupancy Permit are obtained in accordance with this Ordinance;
 - f. Enlargement, repair or reconstruction of pre-existing Structures within Riparian Buffers shall be permitted if the City Planning Commission determines that the development activity will not decrease the existing Structure setback from the waterbody or increase the encroachment within the Riparian Buffer, and the total Building footprint area of the expanded or reconstructed Structure is no more than fifty percent (50%) larger than the footprint of the Structure lawfully existing on or before the effective date of these regulations; and



- g. New Accessory Structures appurtenant to a pre-existing Structure within a Riparian Buffer shall only be permitted if it is determined that the Accessory Structures do not extend into the buffer any further than the existing Structure and the total Building footprint area of the new Accessory Structure is no more than fifty percent (50%) of the footprint of the pre-existing Structure.

Section 5.13 Storage of Materials

In addition to the other applicable requirements of the City, the storage of materials shall also be governed by the following provisions:

- 1. No materials or wastes shall be deposited upon a Lot in such form or manner that they may be transferred off the Lot by natural causes or forces, nor shall any substance that can contaminate a Stream or Watercourse or otherwise render such a Stream or Watercourse undesirable as a source of water supply or recreation, or that will destroy aquatic life, be allowed to enter any Stream or Watercourse.
- 2. All materials or wastes that may cause fumes or dust or that may be edible or otherwise attractive to rodents or insects shall be stored only if enclosed in containers that are adequate to eliminate such hazards.
- 3. Outdoor storage shall be completely screened from view of any adjacent residential Use. Buffering and screening requirements specified in the Subdivision and Land Development Ordinance shall apply.
- 4. Temporary storage of construction materials is allowed in all Zoning Districts while building site construction is continuously occurring. A lapse of one (1) month shall not be considered “continuously occurring.”
- 5. No storage shall be permitted within the Front Yard of any Lot.
- 6. Outside storage of raw materials and/or finished products shall be permitted only within the buildable area of the Lot to the rear of the front Building wall of the principal Building and shall not exceed five (5) feet in height in the UR, SR, DT and MUR Zoning Districts and shall not exceed ten (10) feet in the MUC and MIN Zoning Districts.
- 7. The storage, handling, and use of flammable and combustible liquids shall be in accordance with *NFPA 30: Flammable and Combustible Liquids Code*.
- 8. No Structure or land shall be used or developed, and no Structure shall be located, extended, converted or structurally altered unless the applicant takes all reasonable measures to minimize the impacts of the above ground and underground storage of heating oil, gasoline, diesel fuel, chemical solutions, hazardous materials, or other substances which, if released, would constitute pollutants to surface water or groundwater or environment. It shall be within the sole discretion of the City Planning Commission, by majority vote and in



consultation with the City Engineer, to determine what constitutes a “reasonable measure”. The applicant shall also demonstrate compliance with all applicable federal and state regulations, including notification and registration requirements.

9. This subsection applies to any and all Uses of land or Structures, including existing Uses and Structures.

Section 5.14 Swimming Pools

In addition to the other applicable requirements of the City, Swimming Pools shall also be governed by the following provisions:

1. A Swimming Pool shall not involve any Commercial Use if it is an Accessory Use to a principal residential use;
2. The design and construction of all Swimming Pools shall be in accordance with the City’s most recently adopted Building Code; and
3. A Swimming Pool shall be within the principle Side Yard and Rear Yard Setbacks. A contiguous pool patio that is concrete, pavers, bricks, or other hard impervious non-combustible material that is flush with the surrounding grade shall not be required to meet principle setbacks.

Section 5.15 Trash Dumpsters

In addition to the other applicable requirements of the City, Trash Dumpsters where required by the City shall be governed by the following provisions:

1. Applicability. This subsection applies to any and all Uses of land or Structures, including existing Uses and Structures; *provided that*, the requirements of this subsection shall not apply to any dumpster temporarily located on property for the receipt of construction or demolition waste during ongoing construction, renovation, demolition, or similar activities.
2. Setbacks. Trash Dumpsters shall be located in accordance with the following setbacks:
 - a. Ten (10) feet from any residentially zoned or used property;
 - b. Five (5) feet from any non-residentially zoned property;
 - c. Twenty (20) feet from any public Street; and
 - d. Twenty-five (25) feet from any residential unit.
3. Service Access.
 - a. Placement of Trash Dumpsters and enclosures shall be planned and constructed in a manner that allows unobstructed access to each Trash



Dumpster and the unobstructed opening of the gates during the disposal process.

- b. Trash Dumpsters shall not be located in such a manner that the service Vehicle will block any public Street or Alley.
- c. When Trash Dumpsters are to be serviced from an Alley, enclosures shall be angled thirty (30) degrees and recessed off the Alley approximately six (6) feet (recessing the enclosure is necessary so that gates do not open into the Alley so as to obstruct traffic and so that adequate sight distance can be preserved).

4. Screening and Minimum Size.

- a. All Trash Dumpsters shall be enclosed on three sides based on the screening requirements specified in the Subdivision and Land Development Ordinance.
- b. Each screened enclosure shall provide a minimum ten (10) foot interior length and width subject to the following requirements:
 - (1) Each enclosure shall provide a minimum of twelve (12) inches of clear space between each side of the Trash Dumpster (including lifting flanges) and the adjacent wall surface of that enclosure, or any other Trash Dumpsters within that same enclosure; and
 - (2) Residential Trash Dumpsters shall not exceed five (5) feet five (5) inches in height; and
 - (3) Commercial Trash Dumpsters may be sized appropriately based on specific use requirements.

5. Service Gates.

- a. Consistent with the screening requirements specified in the Subdivision and Land Development Ordinance, all screened Trash Dumpster enclosures shall also have gates and their construction shall be of sturdy metal frame and hinges with an opaque facing material consisting of wood or other solid material. Metal or plastic slats inserted in chain link are permitted and shall be maintained.
- b. Service gates shall incorporate gate stops and latches that are functional in the fully open and closed positions.
- c. Gates that swing out from the container shall be set back from the property line at least a distance equal to the width of the gate. Hinge assemblies shall be strong and durable so that access and servicing gates function properly and do not sag.



Section 5.16 Vehicle Parking

In addition to the other applicable requirements of the City, parking of Vehicles shall also be governed by the following provisions:

1. General Restrictions – All Districts. No Vehicle may be used as living quarters, sleeping quarters, or a place of abode while in the City, excepting only Motor Homes or Travel Trailers when lawfully parked in a commercial park that provides temporary parking for camping or recreational purposes of Motor Homes and Travel Trailers.
2. Parking shall be prohibited in Front, Side, and Rear Yard areas in residential districts, except on paved areas or impervious driveways in areas beyond pedestrian sidewalks or, where pedestrian sidewalks do not exist, beyond the public right-of-way portion of the Front Yard.
3. Parking areas shall be designed pursuant to the requirements specified in the Subdivision and Land Development Ordinance.

Section 5.17 Yard/Garage Sales

In addition to the other applicable requirements of the City, Yard/Garage Sales shall also be governed by the following provisions:

1. A Yard/Garage Sale shall not involve the sale of new merchandise, excepting only custom craft items.
2. A Yard/Garage Sale may be conducted no more than four (4) times per year and last no longer than 48 hours each.
3. See Section 6.08(R) for Yard/Garage Sale Sign regulations.



ARTICLE 6 SIGNS

Section 6.01 General Provisions

- (A) **Purpose.** Signs perform an important function in identifying and promoting properties, businesses, services, residences, events, and other matters of interest to the public. The intent of this Article is to regulate all signs within the City to ensure that they are appropriate for their respective uses, in keeping with the appearance of the affected property and surrounding environment, and protective of the public health, safety, and general welfare by:
1. Setting standards and providing uniform, scientifically based controls that permit reasonable use of signs and preserve the character of the City;
 2. Prohibiting the erection of signs in such numbers, sizes, designs, illumination, and locations as may create a hazard to pedestrians and motorists;
 3. Avoiding excessive conflicts from large or multiple signs, so that permitted signs provide adequate identification and direction while minimizing clutter, unsightliness, and confusion;
 4. Establishing a process for the review and approval of sign permit applications; and
 5. Ensuring sign design that builds on the traditional town image and visual environment the City seeks to promote.
- (B) **Applicability.** Any sign erected, altered, or maintained after the effective date of this Ordinance shall conform to the regulations specified in this Ordinance.
- (C) **Alteration of Sign Face.** The physical alteration of a Sign face shall not be considered the same as construction of a new Sign and shall not be subject to dimensional requirements of this Article.
- (D) **Alteration of Supporting Sign Structure.** The physical alteration of a supporting Sign Structure shall be considered the same as construction of a new Sign and shall require a Sign Permit and conformity to all dimensional requirements of this Article.
- (E) **Signs on Public Property Forfeited.** Any Sign installed or placed on public property or within a public right-of-way, except in conformance with the requirements of this article, shall be forfeited to the public and is subject to confiscation. In addition to other remedies hereunder, the City Engineer/Planning Director or designee shall have the right to recover from the Owner or Person placing such a Sign the full costs of removal and disposal of such Sign.
- (F) **Vacant Parcels.** Land completely void of a permissible Use shall also be completely void of all Signs, except for governmental Signs, warning Signs, Temporary Signs associated with a Temporary Use, and real estate Signs, all of which must be in compliance with this Article.



- (G) Violations. Any of the following shall be a violation of this Article and shall be subject to the enforcement remedies and penalties provided by this Article, by the other provisions of the Zoning Ordinance, and by State law:
 1. To install, create, erect, or maintain any Sign in a way that is inconsistent with any plan or permit governing such Sign or the Lot on which the Sign is located;
 2. To install, create, erect, or maintain any Sign requiring a permit without such a permit;
 3. To fail to remove any Sign that is installed, created, erected, or maintained in violation of this Article, or for which the Sign Permit has lapsed; or
 4. To continue any such violation. Each such day of a continued violation shall be considered a separate violation when applying the penalty portions of this Ordinance. Each Sign installed, created, erected, or maintained in violation of this Ordinance shall be considered a separate violation when applying the penalty portions of this Ordinance.

- (H) Enforcement and Remedies. The enforcement provisions of Section 1.08.(E) are applicable to any violation or attempted violation of this Article or of any condition or requirement adopted pursuant hereto, and for such purposes a Sign shall be considered a Structure. Additionally, in the case of a Sign that poses an immediate danger to the public health or safety, the City may take such measures as are available to the City under the applicable provisions of the City’s other Ordinances and building code for such circumstances.

- (I) Excluding Wall Signs, Suspended Signs, Projecting Signs, Canopy/Awning Signs, and Window Signs, all Signs advertising a business shall be separated by a distance of not less than fifty (50) feet.

Section 6.02 Definitions

A-FRAME SIGN – A small unlit freestanding, on-site, portable Ground Sign that is displayed during business hours and removed when the business is closed. An A-Frame Sign shall abide by the Encroachment provisions specified in Article 5.

ABANDONED SIGN – A Sign that no longer identifies or advertises an ongoing business, product, location, service, idea, or activity conducted on the premises on which the Sign is located. Whether a Sign has been abandoned or not shall be determined by the intent of the owner of the Sign and shall be governed by applicable State Case Law and Statutory Law on abandoned structures.

ALTERATION – A change in the size or shape of an existing Sign. Copy or color change of an existing Sign is not an alteration. Changing or replacing a Sign face or panel is not an alteration.

ANIMATED SIGN – A Sign employing actual motion, the illusion of motion, or light and/or color changes achieved through mechanical, electrical, or electronic means. Animated signs, which are differentiated from changeable signs as defined and regulated by this Code, include the following types:



1. Environmentally Activated: Animated signs or devices motivated by wind, thermal changes, or other natural environmental input. Includes spinners, pinwheels, pennant strings, and/or other devices or displays that respond to naturally occurring external motivation.
2. Mechanically Activated: Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.
3. Electrically Activated: Animated signs producing the illusion of movement by means of electronic, electrical, or electromechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:
 - a. Flashing: Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of non-illumination. For the purposes of this ordinance, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds four (4) seconds.
 - b. Patterned Illusionary Movement: Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

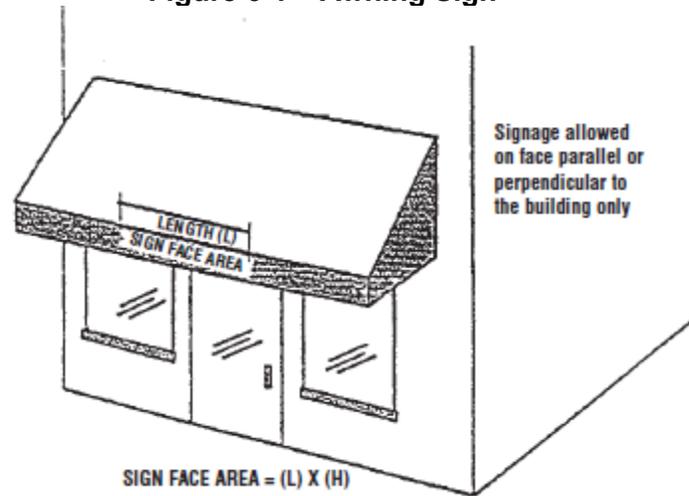
ARCHITECTURAL PROJECTION – Any projection from a building that is decorative and/or functional and not intended for occupancy, and that extends beyond the face of an exterior wall of a building but that does not include signs as defined herein. See also: Awning; Back-lit Awning; and Canopy, Attached and Freestanding.

AWNING – An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or non-rigid materials and/or fabric on a supporting framework that may be either permanent or retractable.

AWNING SIGN – A Sign displayed on or attached flat against the surface or surfaces of an awning. See also: Wall or Fascia Sign. Only the Sign or copy area displayed on an awning shall be used to determine the permitted Sign area – the entire awning shall not be included in a Sign Area calculation (See Figure 6-1, Awning Sign).



Figure 6-1 – Awning Sign



BACK-LIT AWNING – An awning comprised of covering material exhibiting the characteristic of luminosity obtained by means of a source of illumination contained within its framework.

BILLBOARD – See Outdoor Advertising (Billboard) Signs.

BUILDING FACADE – That portion of any exterior elevation of a Building extending vertically from grade to the top of a Parapet wall or eaves and horizontally across the entire width of the building elevation.

BUILDING SIGN – A Sign that is applied or affixed to a Building.

CANOPY, ATTACHED – A multi-sided overhead Structure or architectural projection supported by attachment to a Building on one or more sides and either cantilevered from such Building or also supported by columns at additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light. Similar to a Marquee Sign.

CANOPY, FREESTANDING – A multi-sided overhead Structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a freestanding canopy may be illuminated by means of internal or external sources of light.

CANOPY SIGN – A Sign affixed to the visible surface(s) of an attached or Freestanding Canopy. May be internally or externally illuminated. Similar to a Marquee Sign.

CHANGEABLE COPY SIGN – A Sign on which message copy is changed manually in the field through attachment of letters, numbers, symbols and other similar characters of changeable pictorial Panels; also known as a reader-board Sign.



CHANGEABLE SIGN – A Sign with the capability of content change by means of manual or remote input, includes the following types:

1. **Manually Activated** – A Changeable Sign whose message copy or content can be changed manually on a display surface.
2. **Electrically Activated** – A Changeable Sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also: Electronic Message Center.

COMBINED DEVELOPMENT – Two or more establishments or businesses occupying a common Building or adjoining Buildings which are designed and developed in a coordinated manner and which share parking, Driveways and other common facilities.

COMMERCIAL MESSAGE – Any Sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

CONFORMING SIGN – A Sign that is legally installed in conformance with all prevailing jurisdictional laws and ordinances.

COPY – The graphic content or message of a Sign.

COPY AREA OF SIGN – The actual area of the Sign copy as applied to any background. Copy area on any individual background may be expressed as the sum of the geometrically computed shape or shapes encompassing separate individual letters, words, or graphic elements on the background.

DIRECTIONAL SIGN – Any Sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

DOUBLE-FACED SIGN – A Sign with two faces, back to back.

DYNAMIC FRAME EFFECT – An Electronic Message Sign frame effect in which the illusion of motion and/or animation is used,

ELECTRIC SIGN – Any Sign activated or illuminated by means of electrical energy.

ELECTRONIC MESSAGE BOARD – A Sign which displays messages, such as time and temperature, in alternating light cycles.

ELECTRONIC MESSAGE CENTER SIGN (EMC) – An electrically activated changeable Sign whose variable message and/or graphic presentation capability can be electronically programmed by computer from a remote location. EMCs typically use light emitting diodes (LEDs) as a lighting source. (See also following terms



principally associated with Electronic Message Centers: Display Time, Dissolve, Dynamic Frame Effect, Fade, Frame, Frame Effect, Scroll, Transition, Travel).

ENTRANCE SIGN – A type of Ground Mounted Sign placed at the point of entry to a residential development or to a Street providing direct and sole access to an individual business or institutional Use located within a Combined Development or Commercial Subdivision.

EXTERIOR SIGN – Any Sign placed outside a building.

EXTERNALLY ILLUMINATED SIGN – See Illuminated Sign.

FAÇADE – See Building Facade.

FACSIMILE SIGN – An oversized, three-dimensional object, such as a chicken bucket, automobile (or automobile part), or human figure, which may or may not contain advertising matter, and may or may not contain information about products sold on the premises, and is located in such a manner as to attract attention.

FASCIA SIGN – See Wall Sign.

FLASHING SIGN – See Animated Sign, Electrically Activated.

FONT – A set of letters, numerals, symbols, or shapes conforming to a specific set of design criteria.

FOOT CANDLE – An English unit of measurement of the amount of light falling upon a surface (illuminance). One-foot candle is equal to one lumen per square foot. Can be measured by means of an illuminance meter.

FRAME – A complete, static display screen on an Electronic Message Sign.

FRAME EFFECT – A visual effect on an Electronic Message Sign applied to a single frame. See also Dynamic Frame Effect.

GALLERY – See Article 2, Definitions.

GALLERY SIGN – A Sign affixed to a Gallery.

GROUND MOUNTED SIGN – A free-standing Monument Sign with its base permanently attached to concrete foundations directly placed in or upon the ground. For the purposes of this Ordinance, a Ground-Mounted Sign shall be defined as one of the following: (1) two Sign faces that are located back-to-back on a single Structure, or (2) as an option only for entrances to subdivisions (residential and non-residential), two separate single-faced Signs.

GROUND MOUNTED SIGN, LOW PROFILE – A Ground Mounted Sign that that is no more than twelve (12) square feet in area and no more than five (5) feet in height.



GROUND MOUNTED SIGN, MEDIUM PROFILE – A Ground Mounted Sign that is no more than seventy-two (72) square feet in area and no more than ten (10) feet in height.

GROUND MOUNTED SIGN, HIGH PROFILE TYPE 1 – A Ground Mounted Sign that is no more than one hundred (100) square feet in area and no more than thirty (30) feet in height.

GROUND MOUNTED SIGN, HIGH PROFILE TYPE 2 – A Ground Mounted Sign that is no more than two hundred (200) square feet in area and no more than seventy-five (75) feet in height. The Type 2 Sign is for commercial uses located not more than four hundred (400) feet from the center line of the Interstate 81 right-of-way.

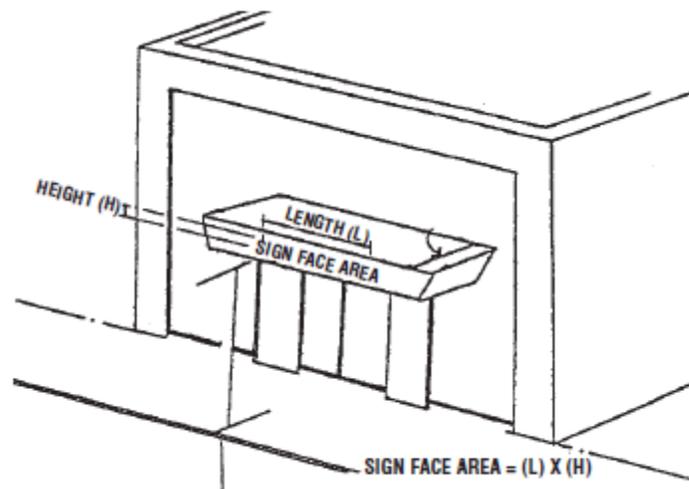
IDENTIFICATION SIGN – A Sign that identifies or names a Building and that may include the name of a Building, the Street name and number of a Building, and a logo or other symbol but does not include general advertising of products, goods or services.

ILLUMINATED SIGN – A Sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

INDIRECT ILLUMINATION – Illumination which reflects light from an artificial light source intentionally directed upon a surface. This shall also include silhouettes of letters or symbols placed before a background of reflected light. Indirect Illumination Signs are prohibited within the City.

MARQUEE SIGN – A Sign attached to the face of a Marquee and not projecting above or beneath said Marquee face (See Figure 6-2, Marquee Sign).

Figure 6-2 – Marquee Sign



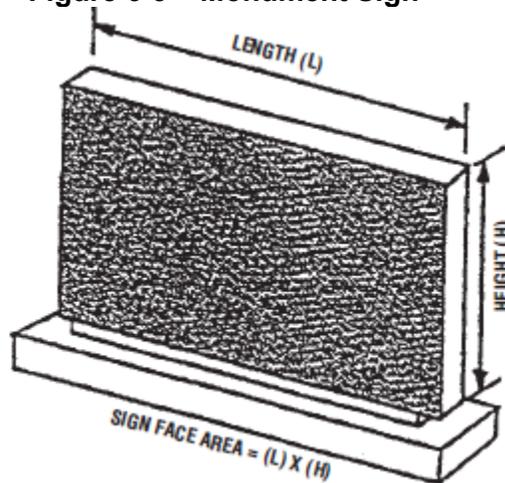


MONUMENT SIGN – A Ground-Mounted Sign that is mounted generally flush with the surrounding grade. It may not be attached to a Pole or Pylon, nor raised by mounting on a man-made berm, wall, or similar Structure (See Figure 6-3, Monument Sign).

OFF-PREMISE SIGN – A Sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said Sign is located. Off-Premise Signs are prohibited within the City.

ON-PREMISE SIGN – A Sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

Figure 6-3 – Monument Sign



OUTDOOR ADVERTISING (BILLBOARD) SIGNS – A permanently installed Sign identifying/advertising and/or directing the public to a business, or merchandise, or service, or institution, or residential area, or entertainment which is located, sold, rented, leased, produced, manufactured and/or furnished at a place other than the real property on which said Sign is located. Outdoor Advertising (Billboard) Signs are prohibited within the City.

PARAPET – A barrier that is an extension of the wall at the edge of a roof, terrace, balcony, walkway or other structure.

PANEL – The primary surface of a Sign that carries the identifying/advertising message.

PENNANT – Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind. Pennant Signs are prohibited within the City.

PERSONAL EXPRESSION SIGN – An On-Premise Sign that expresses an opinion, interest, position, or other non-commercial message.



PORTABLE SIGN – Any Sign designed or intended to be readily relocated whether or not it is permanently attached to a Building, Structure or on the ground. Portable Signs also include Signs on wheels or on portable Structures such as Trailers, tent Signs, A-Frame or T-Shaped Signs and normal advertising placed on motor Vehicles which are not used regularly and are placed in such a manner as to attract attention.

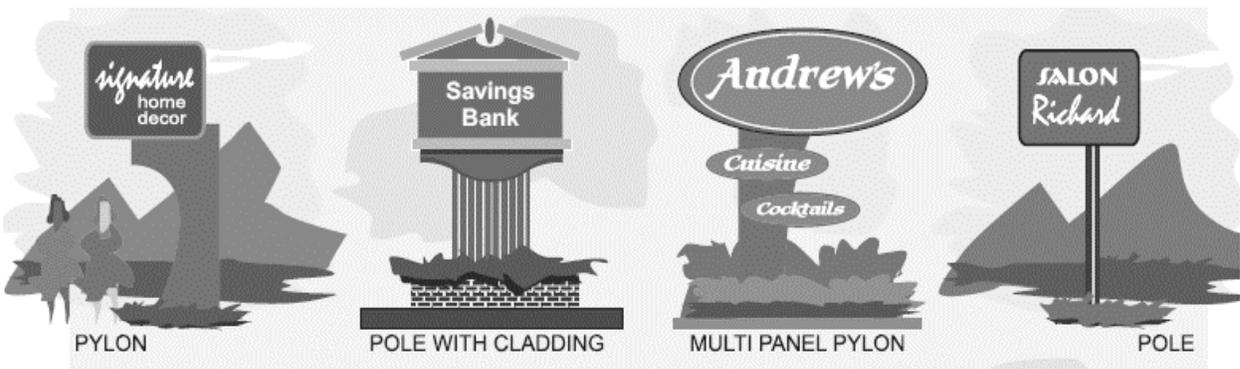
PROJECTING SIGN – A Sign which projects from a Building into a vehicular or pedestrian access way, more than one foot from the surface on which it is mounted, and is mounted usually, but not always, at right angles to the Building (See Figure 6-4, Projecting Sign).

Figure 6-4 – Projecting Sign



PYLON (POLE) SIGN – A Ground-Mounted Sign attached to one or more posts, whose base is greater than 24 inches above grade [See Figure 6-5, Pylon (Pole) Sign].

Figure 6-5 – Pylon (Pole) Sign

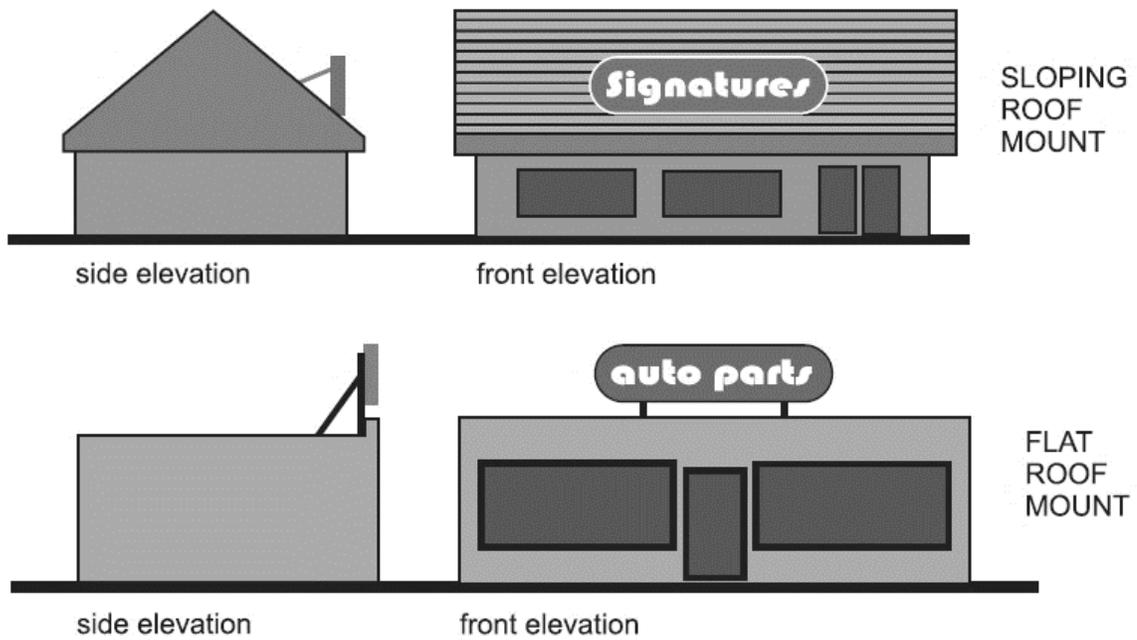


ROOF SIGN – Any Sign erected, constructed, and/or painted wholly or partially on or above the roof of a Building. Signs which are mounted flush against a Parapet roof and do not extend above the roofline are permitted in accordance with the regulations for Wall Signs (See Figure 6-6, Roof Sign). Roof Signs are prohibited within the City.



SIGN – Any temporary or permanent identification, description, animation, illustration, or device, illuminated or non-illuminated, which is visible from any right-of-way, situated indoors or outdoors, and which directs attention to any realty, product, service, place, activity, person, institution, performance, commodity, firm, business or solicitation, or any emblem, painting, banner, poster, bulletin board, pennant, placard or temporary Sign designed to identify or convey information. Signs do not include displays located inside buildings, courts, lobbies, stadiums, or other structures that are not positioned in such a manner so as to be intended to be seen from the exterior of the building or structure.

Figure 6-6 – Roof Sign



SUSPENDED SIGN – See Projecting Sign.

TEMPORARY SIGN – A Sign advertising a special event and not intended to be displayed on a permanent basis.

WALL SIGN – A Sign that is in any manner affixed to any exterior wall of a Building or Structure and that projects not more than eighteen (18) inches from the Building or Structure wall. Also includes signs affixed to architectural projections that project from a building provided the Copy area of such signs remains on a parallel plane to the face of the Building facade or to the face or faces of the architectural projection to which it is affixed (See Figure 6-7A, Wall Sign and Figure 6-7B, Wall/Fascia Sign).

WAYFINDING SIGN – A Sign, frequently off-premise, specifically designed to provide directional or destination information. See also, Off-Premise Sign.



WINDOW SIGN – A Sign which is applied to the Building glass area located such that the identifying/advertising message, symbol, insignia, visual representation, logotype or any other form which communicates information can be read from off-premise.

Figure 6-7A – Wall Sign

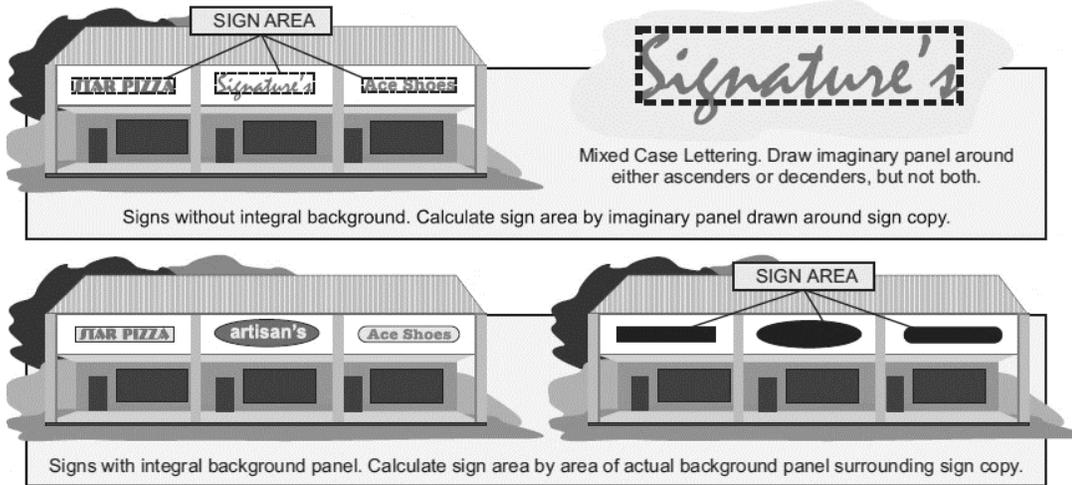
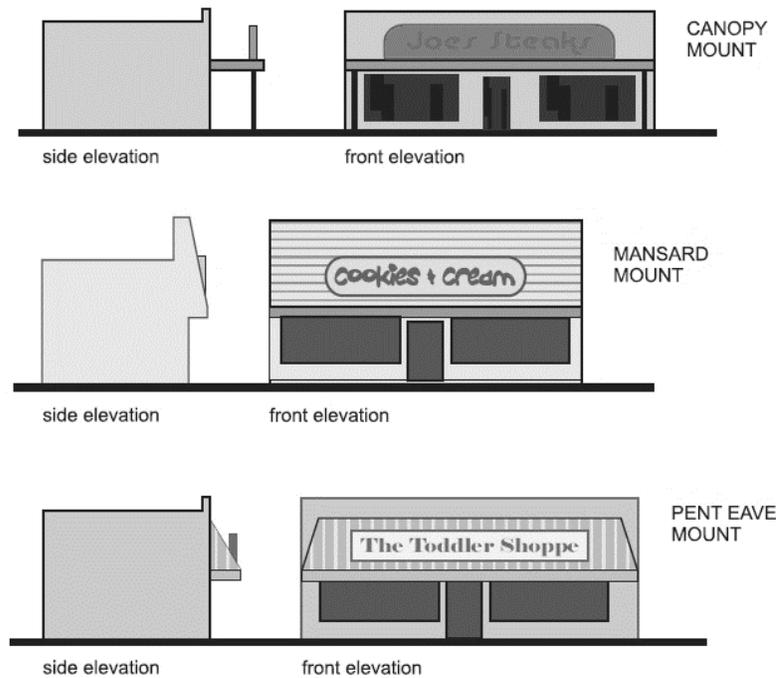


Figure 6-7B – Wall / Fascia Sign





Section 6.03 Sign Permits

(A) General Permit Procedures. The following procedures shall govern the application for, and issuance of, all Sign Permits under this Ordinance:

1. If a Sign type requires a Sign Permit, as specified in Section 6.06, the Owner of the subject property shall obtain a Sign Permit through the City prior to the placement, construction, erection or modification of a Sign.
2. No Sign Permit may be obtained unless a fully completed Sign Permit application is submitted to the City and, following review of the same, the City Engineer/Planning Director or designee determines that the Sign and applicable Signage Plan comply with the requirements of this Article.
3. Applications. All applications for Sign Permits of any kind and for approval of a Signage Plan shall be submitted to the City Planning Department on an application form published by the Planning Department.
4. Fees. Each application for a Sign Permit or for approval of a Signage Plan shall be accompanied by the applicable fees, which shall be established by City Council from time to time by resolution and set forth in the City fee schedule.
5. Action on Permit. Within thirty (30) business days of the submission of a complete application for a Sign Permit, the City Engineer/Planning Director or designee shall either:
 - a. Issue the Sign Permit if the Sign(s) that is the subject of the application conforms in every respect with the requirements of this Article; or
 - b. Reject the Sign Permit if the Sign(s) that is the subject of the application fails in any way to conform with the requirements of this Article. In case of a rejection, the City Engineer/Planning Director or designee shall specify in the rejection the section or sections of the Ordinance or applicable plan with which the Sign(s) is inconsistent. If the application is rejected because it is incomplete, the City Engineer/Planning Director or designee shall set forth the specific deficiencies in the rejection.
6. Within thirty (30) days of receipt of a rejection by the City Engineer/Planning Director or designee of an application for a Sign Permit the applicant may file an Appeal of said rejection to the Board of Zoning Appeals per the procedures set forth in this Zoning Ordinance.

(B) Permits to Construct or Modify Signs. Signs requiring a Sign Permit, as specified in Section 6.06, shall be erected, installed, or created only in accordance with a duly issued and valid Sign Construction Permit from the City Engineer/Planning Director or designee. Such permits shall be issued only in accordance with the following requirements and procedures:

1. Permit for New Sign or for Sign Modification. An application for construction, creation, or installation of a new Sign or for modification of an existing Sign shall be accompanied by detailed drawings to show the dimensions, design, Structure,



and location of each particular Sign. One application and permit may include multiple Signs on the same Lot; and

2. Inspections. Upon expiration of the time permitted for construction, creation, or installation of a Sign in an issued Sign Construction Permit, the City Engineer/Planning Director or designee shall cause an inspection of the Sign for compliance with the application for such permit and supporting materials with this Ordinance and all other City Ordinances. If the construction is not substantially complete at the time of inspection, the permit shall remain lapsed. If the construction is substantially complete but not in full compliance with the application for such permit and supporting materials, this Ordinance, and all other City Ordinances, the City Engineer/Planning Director or designee shall give the Owner or applicant notice of the deficiencies and extend the Sign Construction Permit an additional thirty (30) days from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse. If a Sign Construction Permit has lapsed, no work shall be performed upon the Sign unless and until a new Sign Construction Permit is obtained.
- (C) Time of Compliance, Nonconforming Signs and Signs Without Permits. Except as otherwise provided herein, the Owner of any Lot or other premises on which exists a Sign for which there is no current and valid Sign Permit, shall be obligated to remove such Sign or, in the case of a nonconforming Sign, bring it into conformity with the requirements of this Ordinance within one (1) year of the Effective Date of this Ordinance.

Section 6.04 Sign Area Computations

The following principles shall control the computation of Sign area and height:

- (A) Computation of Area of Single-faced Signs. The area of a Sign face shall be computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the Sign from the backdrop or Structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets Zoning Ordinance regulations and is clearly incidental to the display itself.
- (B) Computation of Area of Multi-faced Signs. The Sign area for a Sign with more than one face shall be computed by adding together the area of all Sign faces visible from any one point. When two identical Sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and when such Sign faces are part of the same Sign structure and not more than 42 inches apart, the Sign area shall be computed by the measurement of one of the faces, whichever has the greater area.
- (C) Computation of Height. The height of a Sign shall be computed as the distance from the base of the Sign at normal grade to the top of the highest attached component of the Sign. Normal grade shall be construed to be either the (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the Sign. In cases in which the normal grade cannot reasonably be determined, Sign height shall be computed on the assumption that the elevation of the normal grade at the base of the Sign is equal to the



elevation of the nearest point of the crown of a public Street or the grade of the land at the principal entrance to the Principal Structure on the Lot, whichever is lower.

- (D) Maximum Size of Sign Types. Table 6.01 summarizes the Sign Type and Design Standards for Signs requiring a permit. Section 6.07 stipulates the maximum sizes for Signs not requiring a permit.
- (E) Maximum Height of Sign Types. Table 6.01 summarizes the Sign Type and Design Standards for Signs requiring a permit. Section 6.07 stipulates the maximum sizes for Signs not requiring a permit.

Section 6.05 Design, Construction, and Maintenance

All Signs shall be designed, constructed, and maintained in accordance with the following standards:

- (A) All new Signs shall comply with applicable provisions of the City’s building and electrical codes;
- (B) No Signs shall be erected in the public right-of-way, or within five (5) feet of the public right-of-way, except as otherwise permitted herein;
- (C) Except for Flags, and Window Signs, all Signs shall be constructed of permanent materials and shall be permanently attached to the ground, a Building, or another Structure by direct attachment to a rigid wall, frame, or Structure;
- (D) All Signs shall be maintained in good repair, structural condition, in compliance with all building and electrical codes, and in conformance with this Ordinance;
- (E) No Sign shall be permitted that is an imitation of, or which resembles, an official traffic control device, railroad Sign, or which hides from view or interferes with the effectiveness of an official traffic control device or any railroad Sign, signal, or traffic sight lines. Illuminated Signs shall be so constructed as to avoid glare or reflection on any portion of an adjacent highway or residential Buildings;
- (F) No Sign shall be permitted that contains statements, words, or pictures of an obscene, indecent, or immoral character, which may offend public morals or decency; and
- (G) No Sign shall be placed on rocks, trees, or on poles maintained by public utilities.



Table 6.01 – Sign Type and Design Standards for Signs Requiring a Permit

SIGN TYPE AND DESIGN STANDARDS	ZONING DISTRICT						MAXIMUM AREA	PLACEMENT				MAX HEIGHT
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical-Institutional		Max. No. of Signs per Parcel or Frontage	Min. Clearance Height	Max. Projection from Wall	Distance from Curb	
SIGN TYPE	UR	SR	DT	MUR	MUC	MIN						
On-Premise Ground-Mounted Signs												
Low Profile Ground Mounted Sign	P ⁷			P	P	P	12 sq. ft.	1 (or a maximum of 3 when used in conjunction with a single Ground Mounted Sign placed in the Frontage)	n/a	n/a	n/a	5 ft.
Medium Profile Ground Mounted Sign					P	P	72 sq. ft.	1	n/a	n/a	5 ft.	10 ft.
High Profile Ground Mounted Sign Type 1					P	P	100 sq. ft.	1	n/a	n/a	n/a	30 ft.
High Profile Ground Mounted Sign Type 2 [for commercial uses located not more than four hundred (400) feet from the center line of the Interstate 81 right-of-way]							200 sq. ft.	1	n/a	n/a	n/a	75 ft.
A-Frame Sign	P		P	P	P	P	6 sq. ft.	1	See Article 5(D), Encroachments		4 ft.	

⁷ Permitted for Civic and Institutional Uses only.



SIGN TYPE AND DESIGN STANDARDS	ZONING DISTRICT						MAXIMUM AREA	PLACEMENT				MAX HEIGHT
	Urban Residential	Suburban Residential	Downtown	Mixed Use Residential	Mixed Use Commercial	Medical-Institutional		Max. No. of Signs per Business or Frontage	Min. Clearance Height	Max. Projection from Wall	Distance from Curb	
SIGN TYPE	UR	SR	DT	MUR	MUC	MIN						
Building Signs												
Wall Sign	P	P	P	P	P	P	Residential – 9 sq. ft. maximum; Non-residential – 2 sq. ft. per linear foot of each bldg. wall facing a public street. Maximum 200 sq. ft.	1 per bldg. wall	See Section 6.06(B).			
Projecting/Suspended Sign	P		P	P	P	P	6 sq. ft. maximum	1	8 ft.	24 in.	n/a	n/a
Canopy/Awning, Gallery, Marquee Signs			P	P	P	P	2 sq. ft. per linear foot of each bldg. wall facing a public street, 200 sq. ft. maximum	1	8 ft.	n/a	n/a	n/a

P = Permitted | Blank Cell = Not Permitted



Section 6.06 Signs Requiring a Permit

This Section shall govern regulations for Signs permanently installed on a Site and which are required to obtain a Sign Permit in accordance with this Article.

(A) On-Premise Ground Mounted Signs. The maximum permitted Sign area, location, characteristics, and number of On-Premise Ground-Mounted Signs shall be determined in accordance with Table 6.01 and this Article. The following additional regulations shall apply to On-Premise Ground-Mounted Signs:

1. Base Landscaping for Ground-Mounted Signs. All Ground-Mounted Signs located within parking or vehicular use areas, and not in Yard areas, shall stand in a bed of landscaping at least thirty (30) square feet in area. This area shall contain low growing materials such as ground covers, perennials, and shrubs, and shall be bordered by acceptable curbing materials as specified in the Subdivision and Land Development Ordinance.
2. Distance Requirements from Existing Ground Signs. No proposed Ground-Mounted Sign shall be placed within fifty (50) feet of an existing Ground-Mounted Sign.
3. Ground-Mounted Signs for Combined Developments. All Uses within a Combined Development (includes more than one establishment or business on a common parcel) shall share the permitted Ground-Mounted Sign(s) that is (are) permitted for a Combined Development in accordance with Table 6.01 and this Article. Outparcels shall not be considered part of a Combined Development for purposes of this Subsection (A).
4. Changeable Copy. Changeable Copy or “reader board” area and Electronic Message Board area are permitted as On-Premise Ground-Mounted Signs provided that the Changeable Copy or Electronic Message Board area does not exceed fifty percent (50%) of the total area of the Sign. Electronic Message Board area is included in the calculation of the total Sign area unless the board displays only time and temperature information, in which case the message area is allowed in addition to the maximum area of the Sign.
5. Drive-Through Menu Signs. Drive-through menu Signs shall be limited to a maximum size of thirty-two (32) square feet.
6. Additional Ground Signs. Lots with more than one Street Frontage shall be allowed to erect one Ground-Mounted Sign per Frontage, provided that each Frontage is at least one hundred (100) feet in width at the Street right-of-way. No two Ground-Mounted Signs shall be placed on the same Street Frontage.

(B) Wall Signs. The maximum permitted Sign area, location, characteristics, and number of Wall Signs shall be determined in accordance with Table 6.01 and this Article. The following additional regulations shall apply to On-Premise Wall Signs:

1. Signs on Building Walls. The permitted Wall Sign may be placed on a wall that faces a public Street. The maximum allowable size for a Sign on one wall is not transferable to a wall with less length.



2. *Additional Wall Sign Permitted on Corner or Double Frontage Lots.* Lots with more than one Street Frontage shall be allowed to erect one additional Wall Sign on the secondary Street Frontage, provided that the secondary Frontage is at least one hundred (100) feet in width at the Street right-of-way. The secondary Wall Sign may not be placed on the same Building wall as the primary Sign.
 3. *Additional Wall Sign Permitted to Face Side or Rear Parking Lot.* Lots with parking to the side or rear of a Building shall be allowed to erect one additional Wall Sign facing the parking lot, provided that at least fifty percent (50%) of the required parking for the establishment is located to the side or rear of the Building and an entrance to the establishment faces the parking lot. The secondary Wall Sign may not be placed on the same Building wall as the primary Sign.
 4. *Location Requirements for Wall Signs.*
 - a. No portion of a wall Sign may extend above the roof line of a building with a Parapet wall.
 - b. No wall Sign may extend above the lower eave line of a building with a pitched roof.
 5. *Wall Mounted Signs for Combined Developments.* All establishments within Combined Developments shall use as individual identification Signs, exclusively, Canopy/Awning or Wall Signs. No mixing of Sign types within a Combined Development shall be permitted, except that Canopies containing no Sign copy may be used in combination with Wall Signs.
 6. *Wall Signs on Historic Buildings.* Wall Signs on historic Buildings shall be placed within the Sign frieze, or distinct place within which a Wall Sign was intended to be located, if the Building was designed for such. No Wall Sign shall extend beyond such space. If there is no Sign frieze, the Wall Sign shall be placed below the typical second floor window area. The design and coloration of such Signs shall be compatible with the character of the Building.
 7. *Changeable Copy.* Changeable Copy or “reader board” area and Electronic Message Board area are not permitted as Wall Signs.
- (C) *Canopy/Awning Signs.* The maximum permitted Sign area, location, characteristics, and number of Canopy/Awning Signs shall be determined in accordance with Table 6.01 and this Article. The following additional regulations shall apply to Canopy/Awning Signs:
1. *Valance and Copy Size for Canopy/Awning Signs.* The Valance, or apron, for any Canopy shall in no case exceed 12 inches in height. Individual letters or symbols on these Valances shall not exceed nine inches in height. This provision shall apply only to Valances to which Sign copy is affixed;
 2. *Illumination for Canopy/Awning Signs.* Canopy/Awning Signs that may be illuminated shall have no bare bulbs present on or around the Sign face;
 3. *Clearance Requirements for Canopy/Awning Signs and Suspended Canopy Signs.* All Canopy/Awning Signs attached to the underside of a Canopy shall maintain the minimum clearance above the ground level of any Sidewalk or



vehicular access area as specified in the most recent edition of the City Building Code; and

- 4. Canopy/Awning Signs for Combined Developments. All establishments within Combined Developments shall use as individual identification signs, exclusively, Canopy/Awning or Wall Signs. No mixing of Sign types within a Combined Development shall be permitted, except that Canopies containing no advertising copy, may be used in combination with Wall Signs.

(D) Projecting or Suspended Signs. The maximum permitted Sign area, location, characteristics, and number of Projecting or Suspended Signs shall be determined in accordance with Tables 6.01 and this Article. The following additional regulations shall apply to Projecting or Suspended Signs:

- 1. Encouraged Location. Projecting Signs are strongly encouraged in the Downtown T-5 Zoning District.
- 2. A Projecting or Suspended Sign shall only include the name and may include the address of the occupant;
- 3. A Projecting or Suspended Sign shall be erected in such a manner that no portion of the sign or its support shall extend more than twenty-four (24) inches over a public or private walkway and shall have a minimum clearance of ten (10) feet; and
- 4. A Projecting or Suspended Sign shall not extend over an adjoining property line without permission of the adjoining owner. However, in no case shall a Projecting or Suspended Sign be permitted to encroach over a motorized Vehicle travel way such as a public or private Street, Alley, or Driveway. If such a Sign at the time of the effective date of this Ordinance is suspended or projects above a public right-of-way, the issuance and continuation of a Sign Permit shall be conditioned on the Sign Owner obtaining, and maintaining in force, liability insurance in an amount of not less than \$500,000 per occurrence per Sign.

Section 6.07 Signs Not Requiring a Permit

No permit is required for the following Signs, provided they comply with the conditions set forth. Signs permissible in this Section 6.07 shall not be considered in determining the total Sign area. However, if a Sign exceeds the size or in any other way does not comply with these limitations, it shall be considered as a prohibited Sign and/or shall be subject to all other provisions of this Ordinance. Nothing in this Section shall be deemed to authorize or permit any Sign prohibited under Section 6.08, or otherwise by applicable law:

- (A) Building Marker Signs. A Building marker Sign may include only the building name, date of construction, or historical data on Historic Buildings or Sites; and shall be cut or etched into masonry, bronze, or similar material.
- (B) Special Event Signs for Public, Quasi-Public or Non-Profit organizations. A Sign may be erected by public, quasi-public, or non-profit organizations such as schools and Churches for promoting the following events. Such Signs shall not be illuminated, and their maximum size is thirty (30) square feet. Such Signs shall not be located within a Street right-of-way or required Sight Triangle:



1. Scheduled sales events such as rummage and bake sales. Such Signs shall remain in place no more than seventy-two (72) hours. Additionally, such Signs shall be limited to one On-Premise Sign per Street Frontage;
 2. Public events such as charity benefits, fairs, fund drives, revivals and sporting events. Such Signs shall be displayed for a maximum period of thirty (30) days and shall be allowed on-premise; and
 3. Special seasonal events, such as parades, fairs and festivals. Such Signs shall be erected (on- or off-premise) within fourteen (14) days of the event and shall be removed seventy-two (72) hours after the end of an event;
- (C) Construction/Contractor and Subdivision Project Signs. Such Signs shall be non-illuminated and may be located in any Zoning District to identify future tenants, home builders, contractors, lenders, and architectural or engineering designers during the period of construction. Such Signs may only be installed after receiving Site Plan approval from the City and shall only be located on site. These Signs shall be removed no later than seven (7) days after the completion of a project. Maximum size is thirty-two (32) square feet.
- (D) Flags.
1. Flags and flagpoles shall not be located within any right-of-way. Height. Flags shall have a maximum height of 30 ft.
 2. No more than two (2) flags per lot in UR, SR, and MUR Zoning Districts, no more than three (3) flags per lot in all other Zoning Districts.
- (E) Governmental Signs. Signs posted by various local, state, and federal agencies such as regulatory signs, welcome signs, and traffic control signs.
- (F) Incidental Signs. Signs indicating vehicular entrances and exits, parking areas, one-way traffic, no trespassing, dumping, loitering, etc. Such Signs shall not exceed three (3) feet in height, shall not obstruct any vehicular sight triangle, and shall be located no farther than fifteen (15) feet away from the edge of the entrance or exit which it delineates. No more than two Signs per entrance or exit shall be permitted. Such Signs may be illuminated and shall contain no Sign copy other than directional information. Maximum size is four (4) square feet.
- (G) Occupant/Street Number Signs. Non-illuminated Signs affixed to Structures, mailboxes, decorative light posts, Driveway entrances, etc., which serve to identify the address of the Structure or occupant. All such Signs are required to be placed in such a manner as to be visible from the Street.
- (H) Off-Premise Directional Signs for Churches. Non-illuminated Ground-Mounted Signs located outside of the Street right-of-way. A maximum of two (2) directional Signs per Church shall be permitted within the City's corporate limits. Maximum size is six (6) square feet.



- (I) Personal Expression Signs of any Sign type, including Flags, provided that they do not exceed three (3) square feet in area per side, are non-commercial in nature, and not illuminated.
- (J) Public Service Signs. Signs displayed for the convenience of the general public, such as Signs for public rest rooms, automobile inspection, hours of operation, freight entrances, etc. Such Signs may be illuminated and shall contain no Sign copy other than service information and trade names and/or logos for the business. Maximum size is four (4) square feet.
- (K) Real Estate Signs – Residential Property (Off-Premise). Off-Premise Signs which advertise the sale or lease of residential property. Such Signs shall not be illuminated or located within a sight triangle or public right-of-way. Such Signs may only be displayed on weekends and shall not be erected before 5:00 p.m. on Friday and shall be removed by 7:00 a.m. on Monday. Off-Premise real estate Signs may also be displayed on legal holidays. Maximum size is six (6) square feet.
- (L) Real Estate Signs – Residential Properties (On-Premise). Signs which advertise the sale or lease of the property on which said Sign is located. Such Signs may not be illuminated or located within a sight triangle or public right-of-way and shall be removed no later than seven (7) days after the sale or lease of the property. Such Signs are limited to one per Street Frontage. Maximum size is ten (10) square feet.
- (M) Real Estate Signs – Non-Residential Properties (On-Premise). Signs which advertise the sale or lease of non-residential property on which said Sign is located. Such Signs may not be illuminated or located within a sight triangle or public right-of-way and shall be removed no later than seven (7) days after the sale or lease of the property. Such Signs are limited to one per Street Frontage. Maximum size is thirty-two (32) square feet.
- (N) Signs that are a permanent architectural feature of a building or structure, existing at the time of adoption of this Ordinance.
- (O) Signs or emblems of a religious, civil, philanthropic, historical or educational organization that do not to exceed four (4) sq. ft. in area.
- (P) Window Signs. Signs placed or painted on the interior or exterior of glass windows or doors provided that such Signs cover no more than thirty percent (30%) of the glass area of the entire storefront. Window Signs that cover more than thirty percent (30%) of the glass area shall be classified as a Wall Sign and shall meet the requirements for Wall Signs.
- (Q) Yard/Garage Sale Signs. Such Signs may be placed on- or off-premise provided they are not located in a sight triangle or Street right-of-way nor placed on any tree, street Sign, or utility pole. Such Signs may not be illuminated and may remain in place for seventy-two (72) hours in any thirty (30) day period. Maximum size is six (6) square feet.
- (R) For-profit Temporary Signs. Businesses advertising special sales, special events and promotions may display one Temporary Sign or Banner per establishment in addition to the permitted Signs, provided that such Temporary Sign or Banner is not illuminated. Such Temporary Sign or Banner must be maintained in good condition and may not be displayed for more than thirty (30) consecutive calendar days. The Temporary Sign or Banner must be located on the property of the business for which it is advertising and may



not be located in any public right-of-way or sight triangle. Maximum size is twenty-four (24) square feet.

1. Businesses with more than three hundred (300) feet of Street Frontage on a designated major thoroughfare may have one (1) additional Banner for every three hundred (300) feet of Street Frontage.
 2. Combined Developments are permitted to have one Temporary Sign per establishment/tenant as stated in this Section; however, the Sign(s) must be mounted flush against the Building wall of the advertised business.
 3. Use of Portable Signs as Temporary Signs is not permitted.
- (S) *Itinerant Merchants.* Itinerant merchants may erect one Temporary Sign or Banner per establishment for the period of operation provided such Sign is not located within a Street right-of-way or required sight triangle and is not illuminated. Maximum size is twenty-four (24) square feet.
- (T) Signs containing or consisting of Pennants, ribbons, Streamers, Festoon Lighting, Balloons (or Inflatable Signs), Feather Flags, or Spinners. Such signs are only permitted in the MUC District and only permitted for business grand opening / re-opening events for a maximum of 30 calendar days.

Section 6.08 Prohibited Signs

The following Signs are prohibited within the City:

- (A) *Signs Constituting a Traffic Hazard.* No Sign shall be placed, displayed, or illuminated so as to obstruct or impair driver vision and traffic flow. A Sign shall not obstruct the view of any official traffic Sign, traffic signal, or traffic marking. Signs that, by reason of their location, shape, size, or color, approximate official highway signs, warning signs, or regulatory devices are prohibited;
- (B) Animated Signs, except for permitted Changeable Copy and Electronic Message Boards as permitted in Section 6.06.
- (C) Portable Signs, not including A-Frame Signs.
- (D) “Wrap-around” Signs or other continuous Wall Signs that extend around Building corners or radii.
- (E) Off-Premise Signs.
- (F) *Outdoor Advertising (Billboard) Signs.* No new Outdoor Advertising (Billboard) Signs shall be permitted to be constructed in the City.
- (G) Facsimile Signs.
- (H) Signs placed within any required sight triangle.



- (I) Signs attached to or painted on utility poles, trees, parking meters, bridges and overpasses, rocks, other Signs, benches, and refuse containers, except the latter two may contain an officially recognized logotype.
- (J) Roof Signs.
- (K) Pavement markings for purposes other than traffic control, including creative applications to increase awareness and safety of traffic-flow and movement.
- (L) Signs placed within or extending into the right-of-way of City and state-maintained Streets and roads, except those Signs erected by a duly constituted government body.
- (M) Signs that exhibit statements, words, or pictures of obscene or pornographic subjects as determined by the City.
- (N) Signs that advertise an activity or business no longer conducted on the property after a continuous period of sixty (60) days on which the Sign is located.
- (O) Indirect Illumination, such as floodlights, erected in such a manner as to cause glare that impairs driver vision on Streets or roadways or that causes a Nuisance to adjoining property.
- (P) Beacons, spotlights, searchlights, and projectors. Signs which use beacons, spotlights, searchlights or projectors visible from public rights-of-way are prohibited.
- (Q) Signs that obstruct fire escapes, windows, doors, or other openings used as a means of egress or as required legal ventilation.
- (R) Signs that in the purview of the City Engineer/Planning Director or designee do not conform to the provisions of these regulations.