



ADOPTED SEPTEMBER 2006 | LAST AMENDED APRIL 10<sup>TH</sup>, 2025

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# 1.0 Purpose and Introduction

## 1.1 INTENT

The provisions of this Zoning Ordinance shall be held to establish the minimum requirements adopted for purposes of:

1. Promoting the general public welfare, health, safety, comfort, and morals;
2. Providing for a plan so that adequate light, air, convenience of access, and safety from fire, flood and other danger is secured.
3. Ensuring attractiveness and convenience;
4. Lessening congestion;
5. Preserving historic landmarks, sites, districts and buildings in conjunction with the City of Fairmont Historic Landmarks Commission and the Historic Preservation Review Commission;
6. Regulating the use of land and designating specific land uses;
7. Authorizing flexible planning standards to create, redevelop, reuse, protect, and enhance the physical qualities of the community;
8. Designating historic districts and regulating the uses of land design goals and regulating the uses of land within the corridor overlay districts;
9. Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;
10. Establishing design standards and site plan approval procedures;
11. Dividing the land within the corporate limits of the City of Fairmont into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired, or any combination of both;
12. Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;
13. Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;
14. Authorizing a process and standards for factory-built homes: provided, that the process and standards for regulating factory-built homes is no more restrictive than the process and standards for site-built homes.
15. Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;
16. Regulating traffic flow and access, pedestrian flow and access, parking and loading;
17. Identifying flood prone areas subject to periodic flooding, and regulating with specific control the 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 hazard of persons and damage to property resulting from the accumulation of storm or flood waters; and
18. Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for such developments.

## 1.2 TERRITORIAL LIMITS OF REGULATIONS / APPLICABILITY

The rules, regulations, and requirements of this Zoning Ordinance shall be applicable within all territory or area that lies within the corporate limits of the City of Fairmont or hereafter annexed into same.

## 1.3 ANNEXED TERRITORY

Upon annexation of additional territory into the corporate limits of the City of Fairmont such annexed territory upon entry of the order of annexation shall be subject to the rules, regulations and requirements of this Zoning Ordinance and shall be subject to site review by the Planning Commission prior to any person undertaking development or re-development thereof until such time as zoning of same shall be undertaken by the governing body based upon a land use study prepared by the City Planner and upon the advice of the Planning Commission.

## 1.4 GUIDING PRINCIPLES

Existing patterns of urban development have seriously compromised sustainable growth, the quality of life, and economic viability of cities. The practices of land use segregation and auto dependent design criteria have resulted in wide- spread loss of open space and forest cover; increased traffic congestion and air pollution; environmental degradation with increased water runoff, soil erosion, and water supply contamination; increased housing and infrastructure costs; inadequate provision of schools and public services; and growing areas of declining property values, crime, and poverty. The resultant loss of community identity adds to these problems by discouraging citizen awareness of, and participation in, community affairs. Under this model, a majority of a municipality's time and money is spent replacing and extending infrastructure and mitigating the negative impacts of development. Assessed on a project-by-project basis the total effects and subsequent costs are hidden by immediate tax base increases and owner profits. However, if assessed at the community level, long term, all additional development of the model described above becomes a burden on a community. Low-density development increases the cost of living in order to finance, maintain, and replace infrastructure. Eventually, the increased cost of building and living in such areas prevents growth from continuing. This occurs long before an area reaches full economic potential and physical build out. A development model which addresses these

problems must treat a community as a highly complex entity, not merely as a collection of individual market segments or an opportunity for real estate speculation.

The most basic viable unit of our complex economic region is the neighborhood. Neighborhoods provide the daily essential needs of all its residents in an area that is easily definable and pedestrian friendly. Neighborhoods interconnect to form town centers. Traditionally, commercial development respected this neighborhood scale, and therefore integrated itself into the fabric of the neighborhood through appropriate building design and its center. This Code represents the return to traditional and sustainable planning. It differs from conventional planning because it focuses on physical change of the urban environment through the traditional design elements of town making; public space, infrastructure, buildings, and parks. It combines these elements to construct places beyond the autonomy of the individual project, interest, or property.

1. The City.

- A. The City of Fairmont is a finite place with specifically designated geographic boundaries. The City is comprised of multiple community centers, some with their own identifiable center and edges derived from topography and rivers or streams. These community centers should form a fundamental economic unit of the contemporary world. Governmental cooperation, public policy, physical planning, and economic strategies must foster and promote the development and redevelopment of these identifiable community centers.
- B. The City also has a necessary and fragile relationship with the outlying rural unincorporated areas of Marion County and the natural landscape. This relationship is environmental, economic, and cultural. Farmland and nature are as important to the City as the garden is to the house.
- C. Development and re-development patterns should not blur or eradicate the edges of the City. Infill development, re-development, reuse and preservation of green spaces within the City all conserve environmental resources, economic investment, and social fabric, while reclaiming, redeveloping and revitalizing marginal and abandoned areas. The City should develop strategies to encourage such infill development, re-development, reuse and preservation over peripheral expansion.
- D. Where appropriate, new development with the City should be organized as neighborhoods and districts, and be integrated with the existing urban pattern. Development and redevelopment should respect historical patterns, precedents, and boundaries.
- E. The City should bring into proximity a broad spectrum of public and private uses to support an economy that benefits people of all incomes.

Affordable housing should be distributed throughout the City to match job opportunities and to avoid concentrations of poverty.

- F. The physical organization of the City should be supported by a framework of transportation alternatives. Transit, pedestrian, and bicycle systems should maximize access and mobility throughout the City while reducing dependence upon the automobile.
  - G. Revenues and resources should be used to promote rational coordination of transportation, recreation, public services, housing, and community institutions throughout the City.
2. The Neighborhood, the District, and the Corridor.
- A. The neighborhood, the district, and the corridor are the essential elements of development and redevelopment in the City. They form identifiable areas that encourage citizens to take responsibility for their maintenance and evolution.
  - B. Neighborhoods should be compact, pedestrian-friendly, and mixed-use. Districts generally emphasize a special single use, and should follow the principles of neighborhood design when possible. Corridors are regional connectors of neighborhoods and districts; they range from boulevards and rail lines to rivers and parkways.
  - C. Many activities of daily living should occur within walking distance, allowing independence to those who do not drive especially the elderly and the young. Interconnected networks of streets should be designed to encourage walking, reduce the number and length of automobile trips, and conserve energy.
  - D. Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community.
  - E. Transit corridors, when properly planned and coordinated, can help organize municipal structure and revitalize the municipality's community centers. In contrast, highway corridors should not displace investment from the municipality's existing community centers.
  - F. Appropriate building densities and land uses should be within walking distance of transit stops, permitting public transit to become a viable alternative to the automobile.
  - G. Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes. Schools, when possible and economically feasible, should be sized and located to enable children to walk or bicycle to them.
  - H. The economic health and harmonious evolution of neighborhoods, districts and corridors can be improved through graphic urban design codes that serve as predictable guides for change.
  - I. A range of parks, green spaces and community gardens, should be distributed within

neighborhoods. When possible, open lands should be used to define and connect different neighborhoods and districts.

3. The Block, the Street, and the Building.
  - A. A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use.
  - B. Individual architectural projects should be seamlessly linked to their surroundings.
  - C. The revitalization of urban places depends on safety and security. The design of streets and buildings should reinforce safe environments, but not at the expense of accessibility and openness.
  - D. In the contemporary city, development must adequately accommodate automobiles. It should do so in ways that respect the pedestrian and the form of public space.
  - E. Streets and squares should be safe, comfortable, and interesting to the pedestrian. Properly configured, they encourage walking and enable neighbors to know each other and protect their communities.
  - F. Architecture and landscape design should grow from local climate, topography, history, and building practice.
  - G. Civic buildings and public gathering places require important sites to reinforce community identity and the culture of democracy. They deserve distinctive form because their role is different from that of other buildings and places that constitute the fabric of the city.
  - H. All buildings should provide their inhabitants with a clear sense of location, weather and time. Natural methods of heating and cooling can be more resource- efficient than mechanical systems.
  - I. Preservation and renewal of historic buildings, districts, and landscapes affirm the continuity and evolution of urban society.

To these ends, this Zoning Ordinance, districts, and the zoning map have been prepared with due consideration of future growth; the promotion of a coherent community scaled built environment, which respects local and regional architecture; the promotion of an integrated and balanced transportation system based on pedestrian, transit, and automobile use; the adequate provision of water and sewer infrastructure, schools, parks, and other public necessities; and for the preservation and enhancement of the natural environment through the protection and replenishment of trees and plantings and by further landscaping and supplemental plantings of the public realm.

Therefore, the purposes of this Zoning Ordinance include but are not limited to those that provide the minimum regulations necessary to facilitate safe and orderly growth; provide for the health, safety, and welfare of the community; ensure adequate light and air and to prevent the overcrowding of land; preserve and improve property values and to protect private and public investment; and aid in preserving ecological balance by contributing to air purification, oxygen regeneration, and energy

conservation, while reducing noise, glare, and heat. In addition to these purposes, this Zoning Ordinance ensures that growth forms an integral part of a community of functional neighborhoods and existing community centers within the City of Fairmont. This type of planning increases collective security and community identity by promoting civic awareness and responsibility and enhancing the quality of life for the entire town to ensure the greatest possible economic and social benefits for all residents.

#### 1.5 RELATIONSHIP TO OTHER ORDINANCES

It is not intended that this ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, vested rights or building permits previously adopted or issued pursuant to law and currently effective.

#### 1.6 SEVERABILITY

If any Section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

# 2.0 DEFINITIONS AND MEASUREMENTS

## 2.1 INTERPRETATION

### 1. Definitions

- A. Whenever a defined word appears in the Ordinance, its meaning is as set forth in this article. Words not defined in this Ordinance are interpreted in accord with their usual dictionary meaning and customary usage.
- B. Words used in the present tense include the future tense.
- C. Words used in the singular number include the plural, and words used in the plural number include the singular.
- D. Any word denoting gender includes the female and the male.
- E. The word "person" includes a firm, association, organization, limited liability company, limited partnership, corporation, trust, company, as well as a natural individual.
- F. The word "lot" includes the word, "plot" or "parcel" or "tract".
- G. The word "structure" shall include the word "building".
- H. The word "Map" or "Zoning Map" or "Zoning Map, City of Fairmont, West Virginia" shall mean the Official Land Development Map of Fairmont, West Virginia.
- I. The term "governing body" shall mean the City Council for the City of Fairmont, Marion County, West Virginia.
- J. The term "Planning Commission" shall mean the Planning Commission for the City of Fairmont, Marion County, West Virginia.
- K. The term "City Council" shall mean the City Council of the City of Fairmont, West Virginia.
- L. The term "City Planner" shall mean the City Planner for the City of Fairmont, Marion County, West Virginia, or his/her designee.
- M. The term "City Clerk" shall mean the City Clerk for the City of Fairmont, Marion County, West Virginia, or his/her designee.
- N. The term "planning department" shall mean the Planning Department for the City of Fairmont, Marion County, West Virginia.
- O. The term "Zoning Administrator" shall mean the Zoning Administrator of the City of Fairmont, West Virginia.
- P. The terms "ordinance", "code" shall be synonymous and refer to the City of Fairmont Zoning Ordinance.

### 2. Current Versions and Citations

All references to other regulations or manuals in this Ordinance refer to the most current version and citation for those regulations or manuals, unless expressly

indicated otherwise. When the referenced regulations or documents have been repealed and not replaced by other regulations or manuals, Ordinance requirements for compliance are no longer in effect.

### 3. Delegation of Authority

Whenever a provision requires the head of a department or another officer or employee of the City to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom he or she has authority.

### 4. Text and Graphics

Illustrations, diagrams, and flowcharts are included in this Ordinance to illustrate the intent and requirements of the text. In the case of a conflict between the text and any illustration, diagram, or flowchart, the text controls.

### 5. Lists and Examples

Unless otherwise expressly indicated, lists of items or examples that use "including," "such as," or similar terms are intended to provide examples only, and must not be construed as being limited to the items or examples listed.

### 6. Time

- A. When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be done, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be done.
- B. In computing any specified period of time from a specified event, the day on which the event happens is deemed the day from which an act is authorized or required to be done.
- C. If the period is of two days, Saturday, Sunday, or a public holiday is excluded if it is an intervening day between the day when an act is authorized or required to be done and the last day of the period.

### 7. Fractions

Unless otherwise stated within a particular section, any fraction greater than or equal to 0.5 will be rounded up to nearest whole number, and any fraction less than 0.5 will be rounded down to nearest whole number.

### 8. Mandatory, Prohibitory, and Permissive

- A. "Must," "will," and "shall" are mandatory terms that express a requirement or impose a duty.
- B. "Must not," "will not," "shall not," "may not," and "no... may" express a prohibition.
- C. "Should" expresses a suggestion or recommendation, and does not express a requirement or impose a duty.
- D. "May" is permissive.

### 9. Common Abbreviations

- A. AFF is an abbreviation of "above finished floor"
- B. DBH is an abbreviation for "diameter at breast height."

- C. FF is an abbreviation for "finished floor"
- D. GFA is an abbreviation for "gross floor area."
- E. LF is an abbreviation for "linear feet."
- F. MAX is an abbreviation for "maximum."
- G. MIN in an abbreviation for "minimum."
- H. MPH is an abbreviation for "miles per hour."
- I. N/A is an abbreviation for "not applicable."
- J. SF is an abbreviation for "square feet."
- K. VLR is an abbreviation for "visible light reflectance."

## 2.2 INTENT

For the purpose of interpreting this Zoning Ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Zoning Ordinance shall have their everyday meaning as determined by their dictionary definition.

### A

**Abandonment** - The relinquishment of property or the cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one (1) year.

**Accessory Building** - A building or structure that is clearly incidental to, customarily found in connection with, and located on the same lot as the principal use to which it is related. When an accessory building is attached to the main building in a substantial manner, such as a wall, roof, or breezeway, the accessory building shall be considered a part of the main building for setback purposes.

**Accessory Structure** - A structure subordinate or incidental to the principal use on a lot including but not limited to swimming pools, piers, and other water related structures, parking, fences, gazebo, satellite dishes, dog houses, and dog related structures.

**Accessory Use** - A use on the same lot with, and of a nature customarily incidental and subordinate to the principal use.

**Adjacent, Adjoining Lot or Land** - A lot or parcel of land that shares all or part of a common lot line or boundary with another lot or parcel of land or that is directly across a public street or right-of-way.

**Adult Day Care** - Any building used for non-sleeping purposes for less than twenty-four (24) hours per day to house one or more well, ambulatory, or semi ambulatory adults none of whom requires medical injections by staff personnel.

**Adult Entertainment -Adult Establishments and Entertainment** include the following and like uses:

**Adult Book Store** - An establishment having substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on

matter depicting, describing or related to "specified sexual activities" or "specified anatomical areas", as defined by this Code, or an establishment with a segment or section devoted to the sale or display of such material.

**Adult Business** - An adult book store, adult videotape store, adult motion picture thereafter, or adult entertainment establishment.

**Adult Entertainment Establishments** - An establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.

**Adult Motion Picture Theater** - An establishment used for presenting motion picture material distinguished or characterized by an emphasis on matter depicting describing or relating to "specified sexual activities" or "specified anatomical areas" as defined by this Code, for observation by patrons thereto.

**Adult Videotape Store** - An establishment having as a substantial or significant portion of its stock in trade, videotapes which are characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined by this Code, or an establishment with a segment or section devoted to the sale or display of such material.

**Agricultural Tourism** - Also known as Agritourism, a commercial enterprise that is incidental and accessory to an Urban Farm that links agricultural production and/or processing with tourism to attract visitors onto a farm, ranch, or other agricultural business for the purposes of entertaining or educating the visitors while generating income for the farm, ranch, or business owner. See also Urban Farm.

**Agriculture** - The raising and harvesting of trees, vines, seeds, plants and crops, as well as the keeping, grazing or feeding of animals (including fish) for animal products, animal propagation, or value increase. This does not include commercial logging and timber harvesting.

**Alcove** - A recess in a facade, which may enclose a bench, fountain, or sculpture.

**Alley** - A service roadway providing a secondary means of access to abutting property and not intended for general traffic circulation.

**Alteration** - Any change or expansion in the size, configuration, or location of a structure; or any change or expansion in the use of a structure or lot, from a previously approved or legally existing size, configuration, location, or use.

**Articulation** - The elements in the massing of a building, which establish character and visual interest.

Amendment, Text - A change to any text of the Planning and Zoning Code.

Amendment, Zoning Map - See Rezoning.

Apartment Buildings - A building containing three (3) or more residential dwelling units. Such units may be leased separately or developed as condominiums.

Animal Care Establishment - A business which provides care for domestic animals, including veterinary offices for the immunization, diagnosis, or treatment of animals, where animals may be boarded during their convalescence; pet grooming facilities; and pet boarding facilities, where animals are boarded during the day or for overnight stays.

Approved Development Plan - A Planned Development Area is an area under single ownership or control to be developed in conformance with an approved development plan. An approved development plan, at a minimum, shall consist of:

A map showing the development area and all proposed improvements to be included within the perimeter of the site;

A text which sets forth the uses and the development standards which must be satisfied; and

Exhibits setting forth any aspects of the development plan not fully described in the map and text.

The uses and standards expressed in the development plan constitute the use and development regulations for the Planned Development Area site in lieu of the regulations for the underlying district.

Arcade - A walkway adjacent to a building which is covered by a roof yet is not fully enclosed.

Assembly - A facility that has organized services, meetings, events, or programs to benefit, educate, entertain, or promote discourse in a public or private setting. Examples include community centers, places of worship, meeting or lecture halls, exhibition rooms, or auditoria. If an assembly use is ancillary to another principal use, and has a gross floor area of less than 5,000 square feet, it is considered part of that use and is not considered a separate principal use.

Attached Home - Buildings that share common sidewalls. Attached homes may be town homes or condominium units.'

Automotive and Other Vehicles Sales and Services - Any building or land used for the display, sale or rental of new or used motor vehicles in operable condition. Such use may also include the display, sale, or rental of motorcycles, mopeds, or other motorized two or three-wheeled vehicles. See also Retail and Services, Heavy.

Awning - A roof like structure often made of canvas, plastic or other material, that serves as a shelter placed over a storefront, window, door, or deck.

## **B**

Bars and Night Clubs - Structure or part of a structure serving as a business establishment selling primarily beer and /or alcoholic beverages for consumption on the premises.

Bar, Neighborhood - A bar that shall not exceed two thousand and five hundred (2,500) square feet of floor area. See also Bar and Night Clubs.

Basement - A story having one half or more of its clear height below grade.

Base Flood Elevation - See Article 1765 Floodplain Regulations.

Bedroom Unit - A private room for sleeping quarters separated from other rooms, and accessible to a bathroom without crossing another bedroom.

Bed and Breakfast Inn - A use that takes place within a building that prior to such an establishment, was a single-family residence, that consists of renting one or more dwelling rooms on a daily basis to tourists, vacationers, and business people, where the provision of meals is limited only to guests. The homeowner shall reside on site.

Berm - A raised earth mound which is planted with ornamental vegetation.

Bicycle Parking Station - A structure designed for use as a long-term bicycle parking facility, and which may include ancillary uses, such as bicycle repairs and showers or lockers for bicycle commuters.

Block - A unit of land bounded by streets or by a combination of streets and public land, waterways, or any other barrier to the continuity of development.

Block Face - The aggregate of all the lots on one block side between two intersections.

Block Length - The length of one block side.

Block Perimeter - The aggregate of all block side lengths of a block.

Block Side - The edge of a block adjacent to a thoroughfare, water body, railroad right-of-way, or public park.

Blue Roof - A non-vegetated roof design that is intended to detain rainfall or snowmelt, typically to manage stormwater or store and reuse water.

Boarding Houses, Lodging Houses, and Congregate Living Facilities - A building or portion of a mixed-use building that provides sleeping accommodations for no more than 16 people on a permanent basis (more than 30 consecutive

days), without personal care services or separate cooking facilities for individual occupants. A college fraternity or sorority house used as a residence shall be considered a type of boarding house. The following restrictions shall apply:

1. A building that contains this use may not contain any other residential dwelling use or transient living facilities.
2. A boarding house shall not include a use that meets the definition of hotel, dormitory, motel, residential care facility, group residential home, group residential facilities, or nursing home.

**Brewpub** - A restaurant which includes the brewing of beer or the fermentation of wine or cider as an accessory use for sale at the same premises of not more than 5,000 barrels per year for either consumption on premises or sold directly to the consumer. A barrel is equivalent to 31 U.S. gallons.

**Buffer** - An area of land, open space, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen adjacent land uses or property, or to separate development from a stream or water body, or an area intended to preserve vegetation along a designated corridor, or to separate one use or property from another so as to visually shield or block noise, lights, or other nuisances.

**Build-To Line** - An imaginary line parallel to a right-of-way line, created when the minimum setback and maximum setback for building facades are the same.

**Build-To Zone** - An area of the lot bounded by interior side and/or corner side lot lines and two imaginary lines, which are parallel or radial to a right-of-way line and correspond to the minimum and maximum setback for the façade of a principal building.

**Buildable Area** - The area of a lot remaining after the minimum yard and open space requirements of this zoning code has been met.

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

**Building Area** - The aggregate of the maximum horizontal cross section area of the main building, on a lot, excluding cornices, eaves, gutters or chimneys projecting not more than three feet, steps, one story open porches, bay windows not extending through more than one story and not projecting more than four feet, balconies, and terraces.

**Building Footprint** - The land area on which a building is located or proposed for location.

**Building Height** - The vertical distance measured from the average elevation of the finished grade of the structure to

a point on the structure as determined by the regulations within Section 2.3.4 - Building Height.

**Building Mass** - The height, width, and depth of a structure.

**Building Permit** - A permit obtained from the City of Fairmont Building Department for the construction, repair, alteration, or addition to a structure, which provides for inspection and sets the construction techniques for a particular project and specified use in accordance with adopted building codes and other prevailing standards for construction, and includes any necessary zoning approval.

**Building, Principal** - A building in which is conducted the principal use of the lot on which it is located.

**Building Setback Line** - A line establishing the minimum allowable distance between the nearest part of any building, but excluding eaves and overhangs, bay windows, and patios, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto.

## C

**Caliper** - The size of a tree's trunk diameter as measured six (6) inches above the ground for trees four (4) inches or less, and as measured twelve (12) inches above the ground for trees larger than four inches.

**Carport** - A roofed accessory structure providing space for the parking of motor vehicles and enclosed on not more than two sides. Carports attached to the principal structure that are enclosed are considered an addition to the principal structure and must meet the building setback requirement for the district.

**Car Wash** - An area of land or structure with machine or hand operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles.

**Certificate of Appropriateness** - A certificate stating that work to be done on a structure within the City of Fairmont Downtown Historic District meets the criteria which maintains the structure as historic and a contributing structure to the District.

**Certificate of Occupancy (CO)** - A document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this Ordinance and all other applicable regulations.

**Certificate of Zoning Compliance** - A review of existing and proposed uses including Temporary Uses, change of uses permitted by right, and administrative interpretations of planning and zoning standards not requiring Board of Zoning Appeals approval.

**Change of Use** - Any use of a building or land that substantially differs from the previous use.

**City** - The City of Fairmont, Marion County, West Virginia.

City Engineer - The City Engineer or a duly designated representative.

Civic Uses - Uses intended to serve as public gathering places. Such uses include governmental offices, post offices, libraries, museums, and non-profit organizations dedicated to arts, culture, and education.

Clear-Cutting - The large-scale, indiscriminate removal of trees, shrubs, and undergrowth with the intention of preparing real property for nonagricultural development purposes.

Clear-Vision Area - See Corner Lot Vision Clearance in Measurements and Exceptions.

College / University - A post-secondary institution for higher learning that grants associate, bachelor, masters, or doctoral degrees, and theological schools. College/university includes related ancillary facilities, such as cafeterias, restaurants, retail sales, indoor or outdoor recreational facilities, research facilities, and similar uses.

Collegiate Club, Fraternity or Sorority House - Any structure occupied by a club, fraternity, or sorority which is recognized by a club, fraternity, or sorority of a college within the corporate limits of the City which can furnish documented proof of the college administration's approval of its site and activities as provided elsewhere in this Ordinance.

Commercial School - A school that teaches industrial, clerical, managerial, commercial, artistic, or other select skills; conducts a commercial enterprise, such as a driving school; or a privately operated school that does not offer a complete educational curriculum.

Common Wall - A common wall, also known as a party wall, is a dividing partition between two adjoining buildings.

Community Garden - A community garden shall mean privately or publicly owned land used for the cultivation of fruits, vegetables, plants, flowers, or herbs by multiple users. 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 group members.

Comprehensive Plan - The complete comprehensive survey and studies of existing conditions and probable future growth of the City which is approved by the Planning Commission and Council.

Conditional Use - A use subject to specific conditions and which requires the approval of the City of Fairmont Board of Zoning Appeals before the issuance of a conditional use permit for such use.

Condominium - A multi-unit dwelling, portions of which are designated for separate ownership and the remainder of

which is designated for common ownership solely by the unit owners.

Construction Documents - The drawings necessary to prepare a site for construction, guide the construction of improvements, and complete the site following construction of improvements. These plans may include an overall site plan, preliminary subdivision plat, grading plan, soil and erosion control plan, landscaping plan, lighting plan, site details, street cross sections, storm water detention details, etc.

Consumer Fireworks - Small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. (Code of Federal Regulations) Parts 1500 and 1507 (2014), and that are listed in American Pyrotechnics Association (APA) Standard 87-1. Consumer fireworks do not include sparking devices, novelties, toy caps or model rockets.

Consumer Fireworks Retail Sales Establishment - A retail sales establishment having as its primary function the supply of consumer fireworks to the end

consumer. Such sales constitute the "primary function" of the business when such sales equal at least sixty (60) percent of the gross sales of the business within a fiscal or calendar year.

Contiguous - Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.

Convenience Store - A use where certain retail goods and gasoline are sold at the retail level.

Council - The Council of the City.

Country Club - Land area and buildings containing recreational facilities, clubhouses and customary accessory uses which are open to members and their guests, or to the general public on a fee basis.

Craft Production Facility (Microbrewery / Microdistillery / Microcidery) - A facility in which beer, wine, or other alcoholic beverages are brewed, fermented, or distilled for distribution and consumption, and which possesses the appropriate license from the State of West Virginia. On premise production includes more than 500 barrels per year. Tasting rooms for the consumption of on-site produced beer, wine, or distilled products are permitted on premises as an accessory use. Retail sales are also permitted.

Crematorium - A facility where the deceased are incinerated in a furnace. Crematorium may include services related to cremation to include sale of urns or off-site placement of ashes of the deceased. A crematorium is also known as a crematory. See also Funeral Services.

Cul-de-sac - A street designed with a closed end and does not intersect with another street which is terminated by a vehicular turnaround.

## D

Day Care Center - A facility operated for the care of 13 or more children on a nonresidential basis as determined by and licensed by WV Department of Health and Human Resources.

Day Care Facility - Any facility which is used to provide nonresidential child care for compensation for seven (7) to twelve (12) children for four (4) or more hours per day, including children who are living in the household who are under six years of age as determined by and licensed by WV Department of Health and Human Resources. No more than four (4) of the total number of children may be under 24 months of age.

Day Care Home - A facility which is used to provide nonresidential child care for compensation in the provider's home. The provider may care for no more than six children, including children who are living in the household, who are under six years of age as determined by and licensed by WV Department of Health and Human Resources. No more than two of the total number of children may be under twenty-four months of age.

Deciduous - Shrubs and trees that lose their leaves annually.

Density, Gross - The number of dwelling units on the entire area of a tract or parcel of land.

Density, Net - The number of dwelling units on a tract or parcel of land minus the area of public rights-of-way, areas of flood hazard, lakes or water bodies, or wetlands under the jurisdiction of the U.S. Army Corps of Engineers.

Developer - The legal or beneficial owner or owners of a lot or of any land included in a proposed development, including the holder of an option or contract to purchase or other persons having enforceable proprietary interests in such land.

Development - The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; the removal of ground cover, and any use or extension of the use of land.

Development Review Committee - A committee comprised of City staff and employees charged with preliminary technical review of Subdivisions, Site Plans, and Construction Documents. The departments represented on the Committee include Planning, Building, Public Works, Engineering, Stormwater, Police, and Fire.

District - An area delineated on the Land Development or Zoning Map which sets forth standards and guidelines for all development within.

District, Overlay - A zoning district that encompasses one or more underlying zoning district and that imposes additional requirements above that required by the underlying zoning district.

Door - A hinged, sliding, or revolving barrier used as the entrance to a building or room. This shall not include entrances for loading berths, parking, or motorized vehicles or equipment,

Door, Garage - A large door that covers the opening through which a car, motorized vehicle, or motorized equipment enters and leaves a garage.

Doorway - See "Door".

Dormitory - A building with sleeping accommodations, without in-room cooking facilities, for residents affiliated with an educational, religious, or other institution.

Drip Line - An imaginary vertical line extending from the outer most portion of the tree canopy to the ground that defines the exterior limits of the tree canopy.

Drive-Through Window Facility - A facility designed to enable a person to transact business while remaining in a motor vehicle.

Driveway - A private roadway providing ingress and egress of vehicles from a street or thoroughfare to a property. Parking areas are separate from driveways, though the two maybe combined.

Duplex - A structure containing two dwelling units, totally separated from each other by an unpierced wall extending from the ground to the roof, each of which has direct access to the outside.

Dwelling or Dwelling Unit - A building, or any portion thereof, providing complete and permanent human living facilities. This term shall not apply to a hotel, motel, or other structures designed for transient residence.

Dwelling Type:

1. Accessory Dwelling Unit - A dwelling unit, also known as an ADU, that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. There are two types of ADUs:
  - A. Attached: An ADU that is within or attached to a single-family dwelling in which the ADU has its own exterior pedestrian entrance.
  - B. Detached - An ADU that is located in a detached structure on the same parcel as the principal dwelling unit.
2. Detached Dwelling - A dwelling unit which is designed for and occupied by not more than one-family and surrounded by open space or yards.
3. Attached Dwelling (Single-Family Duplex) - A structure containing two (2) dwelling units, totally separated

from each other by an unpierced wall or floor, each of which has direct access to the outside and surrounded by open space or yards.

4. Attached Townhouse Dwelling – Also known as a “Rowhouse.” A one-family dwelling unit, with private entrance, which is part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for access, light, and ventilation.
5. Mixed-Use Dwelling - A dwelling unit located within a Mixed-Use Building as permitted in the zoning district. Any number of these dwellings may be permitted within a Mixed-Use Building so long as all of requirements of that number of dwellings and other related standards are met.
6. Multi-Family Dwelling - Any building or structure having more than two dwelling units.

## E

Easement - A grant by the property owner of a strip of land for specified purposes and use by the public, a corporation, or persons, such as for utilities.

Eave - The projecting lower edges of a roof overhanging the wall of a building.

Edible Landscaping - The use of food-producing plants in the design of private and public outdoor spaces in residential, commercial, and mixed-use developments, attended to by an individual or business. End products are typically used for consumption.

Electric Vehicle, Battery - Any vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle’s batteries, and produces zero tailpipe emissions or pollution when stationary or operating.

Electric Vehicle Charging Station - A public or private parking space that is served by battery charging station equipment for the purpose of transferring electric energy to a battery or other energy storage device in an electric vehicle.

Electric Vehicle Parking Space - Any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle.

Emergency Shelter - A facility that provides temporary short-term housing for individuals displaced by reasons of abuse, domestic violence, weather, homelessness, or other factors.

Encroachments - Any portion of a structure or appurtenance extending beyond a designated zoning setback, easement, property line, or public right-of-way.

Entertainment Use - Any establishment which provides active recreational opportunities such as miniature golf, batting cages, arcades, carnival games, go-cart or other

motorized vehicle tracks, waterslides, or passive recreation such as movie theaters and other similar uses.

Entrance, Primary - The principal, functional doorway for public or direct-entry access into a building.

Essential Services - The erection, construction, alteration or maintenance by public utilities, municipal departments or commissions, or any governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution system, collection, communication, supply or disposal system, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, electrical substations, telephone exchange buildings, gas regulator stations, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of utility service by such public utilities, municipal departments, commissions or any governmental agencies, or for the public health, safety or welfare. For the purpose of this Ordinance, wireless communications towers and antennas or wind driven devices to generate power are not considered essential services.

Evergreen - Shrubs and trees that retain their foliage throughout the year.

Existing Use - The use of land, buildings or activity permitted or in existence prior to the adoption of this Zoning Ordinance or that at a minimum have established a vested right as of the effective date of this ordinance based on the following being satisfactorily proven to the Planning Department for the specific use, development or project in question:

1. Substantial expenditures of resources (time, labor, money) on the project;
2. Whether the landowner acted in good faith;
3. Whether the landowner had notice of the proposed Zoning Ordinance before starting the project at issue; and
4. Whether the expenditures could apply to other uses of the land.

Existing Lot (Lot of Record) - A lot which is part of a subdivision, a plat of which has been approved by the City of Fairmont and recorded in the Office of the Clerk of the County Commission of Marion County, West Virginia prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so approved recorded prior to the adoption of this ordinance.

## F

Facade - The exterior wall of a building. The elevation of a facade is the vertical surface area.

Facade, Corner Side - The exterior wall of a building that faces the corner side lot line.

Facade, Front - When facing a thoroughfare, the exterior wall of the building that faces the front lot line. When

facing a private right-of-way, parking lot, or common area, and not facing a thoroughfare, the exterior wall of the building that contains the main entrance from the private right-of-way, parking lot, or common area. For lots adjacent to the Monongahela River, the exterior walls of the building that face the front lot line and the water body. When facing only an alley or passage, the exterior wall of the building that faces the alley or passage. When set within a plaza, all exterior walls of the building that face the plaza.

Facade, Interior Side - The exterior wall of a building that faces the interior side lot line.

Facade, Rear - The exterior wall of a building that faces the rear lot line.

Facade, Waterside - An exterior wall of a building that faces a water body.

Facilities - In relation to institutions of higher learning shall include classrooms, laboratory, and research facilities, administration facilities, athletic centers and facilities, auditoriums, student centers, libraries, museums, cafeterias, dormitories, maintenance facilities, student infirmaries, campus police/security offices, and parking areas.

Factory Built Homes - A structure designed for long term residential use. For the purposes of these regulations, factory-built housing consists of 3 types: mobile home, modular, and manufactured homes.

Family, Functional And Factual Equivalent - A group of unrelated individuals living together and functioning together as a traditional family. See the Use Standards section for this defined use for more information. See also Group Residential Home and Family/Household Unit.

Family/Household Unit - All persons living in the same household who are related by birth, marriage, or adoption. Additionally, family refers to the following:

1. An individual, or two (2) or more persons related by blood, marriage, adoption, or foster relationship, living together in a dwelling unit.
2. A group of not more than four (4) unrelated people living together as a single housekeeping unit in a dwelling unit sharing common facilities as considered reasonably appropriate for a family related by blood, marriage, or adoption. For a Group Residential Home, a single staff person may reside on the premises and shall not be included in the total number of occupants. Any additional staff shall be included in the total number of occupants. See also Family, Functional and Factually Equivalent; Group Residential Home; and Group Residential Facility.

Family Care Home - See Residential Care Home.

FEMA (Federal Emergency Management Authority) - The agency responsible for the promulgation and maintenance

of official Flood Hazard Boundary Map and/or Flood Insurance Rate Maps.

Fence - Any artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

Fence, Open - A fence constructed so that more than 50% of the fence surface consists of regularly distributed openings that permit unobstructed line-of-sight through the fence.

Fence, Solid - A fence that conceals all materials stored and operations conducted behind it from view on adjoining lots or rights-of-way. A chain link fence with slats is not considered a solid fence.

Fenestration - The openings in a structure, including windows and doors, but not including loading berths and entries for parking. Fenestration includes frames, mullions, muntins, vents, and other elements integral to a window or door unit.

Final Approval - The official action of the Planning Commission on a plat and application meeting all the requirements, conditions and engineering considerations required by these Regulations and Zoning Ordinance.

Final Plat - The final map of the subdivision on which the subdivider's plan of subdivision is presented to the Planning Commission for approval, and which, if approved, will be submitted to the County Clerk for recording.

Floor Area, Gross - The sum of the gross horizontal floor area of a building excluding areas used for accessory garage purposes and such basement areas as are devoted exclusively to uses accessory to the operation of the building. All horizontal dimensions shall be taken from the exterior faces of the walls, including walls or other enclosures of enclosed porches.

Frontage - The area of a lot between a building facade and a right-of-way line inclusive of its built and landscape components.

Frontage Line - A lot line that coincides with a right-of-way line or waterfront setback line that defines the public realm.

Funeral Services - A facility where the deceased are prepared for burial display and for rituals before burial or cremation. Such facilities may include chapels, crematoriums, and showrooms for the display and sale of caskets, vaults, urns, and other items related to burial services. Crematoriums must meet the requirements of Article 4 - Use Standards. See also Crematorium.

## G

Gallery - A covered pedestrian area abutting the side of a building on the ground floor which may provide access along one or more sides of a building.

Garage Bay - An area within a structure that is at minimum 8 feet by 16 and in which the 8 feet long side is adjacent to the interior face of the garage door. The 16 feet length is measured perpendicular from the garage door.

Garage Sales - This term is used to broadly define temporary sales events of common household items located at a residential home. The term includes but is not limited to sale events referred to as garage, yard, porch, or apartment sales.

Gazebo - A freestanding, roofed, open sided structure providing a shady resting place.

Glare - Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility

Government Offices. Offices owned, operated, or occupied by a government agency, including government officials and departments, social service facilities, public works facilities, and courthouses. See also Civic Uses.

Grade - Ground level, or the elevation at any given point.

Green Infrastructure - The multifunctional, interconnected network of open space and natural features such as greenways, wetlands, parks, forest preserves, and areas of native plant vegetation, that naturally manages stormwater, reduces flooding risk, and improves water quality. The term green infrastructure is often adapted to refer to products, technologies, and practices that use natural systems, or engineered systems that mimic natural processes.

Green Roof - A vegetated roof design that is explicitly designed to absorb rainfall or snowmelt, typically to manage stormwater, mitigate the heat island effect, provide habitat for urban wildlife, or offer leisure and recreational space for building occupants.

Greenhouse, Commercial – A building used for the growing of plants, all or part of which are sold at retail or wholesale.

Greenhouse, Non-commercial – An accessory building or accessory structure constructed chiefly of glass, glasslike or translucent material, cloth, or lath, which is devoted to the protection or cultivation of flowers or other weather sensitive plants.

Gross Leasable Area - Specifically, gross leasable area is defined as the total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors.

Ground Cover - A prostrate plant grown less than 2 feet in height at maturity which is grown for ornamental purposes. Ground covers are used as an alternative to grasses. On slopes, ground covers control erosion while eliminating the maintenance of mowing hillsides. Many groundcovers survive in poor soils, shade and other adverse conditions.

Ground Floor - The story of a building closest to the curb level.

Gross Floor Area - The sum of the gross horizontal areas of all the floors of a building, measured from the exterior faces of exterior walls, or from the centerline of party walls separating two buildings. Gross floor area does not include unoccupiable space, within a basement or attic, per the State of West Virginia Building Code.

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.

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 in this article. See also Family/Household Unit and Group Residential Facility.

## H

Halfway House - See Group Residential Home.

Hardship - An unusual situation, not self-created or economic in nature that prevents the full utilization of the property, or denies the right to use property, as others may do within the same zone.

Heliport - A designated landing area for discharging and picking up passengers or goods by helicopter or similar vertical lift aircraft, including terminal facilities for passengers, aircraft servicing, or storage or basing of aircraft.

High Technology Industries - In the Technology District shall include the following:

1. Information management technology, research, development, testing and evaluation;

2. Research, development, testing and evaluation, excluding chemical, biological and metallurgical technologies;
3. Storage and retrieval of information; and
4. Educational, scientific and research organizations.

Highway - A public right-of-way that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any public right-of-way which is or becomes a part of the National Highway System.

Hillside Development/Subdivision - A hillside development is defined as one in which the percent slope of the land within the subdivision or minor land division is fifteen percent (15%).

Historic Landmark - A site, building, structure or object designated as a landmark either on a national, state or local registry

Historic Structure - Any structure designated or eligible for designation on the National Register for Historic Places.

Historical District - A district or zone designated by a local authority or state or federal government within which the buildings, structures, appurtenances, and places are of basic and vital importance because of their association with history; or because of their unique architectural style and scale, including color, proportion, form and architectural detail; or because of their being a part of or related to a square, park, or area the design or general arrangement of which should be preserved and/or developed according to a fixed plan based on cultural, historical, or architectural motives or purposes.

Home Garden - A home garden shall mean the property of a single-family or multifamily residence used for the cultivation of fruits, vegetables, plants, flowers, or herbs by the residents of the property, guests of the property owner, or a gardening business hired by the property owner.

Home Occupation - A home occupation is an occupation or business activity which results in a product or service and is conducted in whole or in part in the dwelling unit, and is clearly subordinate to the residential use of the dwelling unit See Section 4.17 for restrictions.

Hospital - A building or portion thereof used for the treatment of sick, injured, or infirmed persons and accredited by the American Hospital Association.

Hotel/Hostel/Motel/Inn - A building facility containing sleeping rooms offering transient lodging accommodations to the general public for rental or occupancy and providing additional services, such as restaurants, meeting rooms, entertainment, and recreational facilities.

1. Hourly rate lodging is not permitted.
2. Guest stays are limited to 30 consecutive days.

**I**  
Impound Facility - A place of secured temporary motor vehicle storage, exclusive of mini storage facilities, where vehicles in operable condition, or capable of being returned to operable condition, are commercially stored for not more than thirty days.

Industrial Uses and Development - Any non- residential use that requires an NPDES permit for an industrial or storm water discharge or involves the use or storage of any hazardous materials or substances or that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Industry, Heavy - A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in the storage of, or manufacturing processes that potentially involve, hazardous or commonly recognized offensive conditions.

Industry, Light - A use engaged in the basic processing and manufacture, predominantly from previously prepared, materials of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

Infill Development - To fill in vacant or underused land in existing communities with new development which blends in with its surroundings.

Infiltration - The process of percolating stormwater into the subsoil.

Intersection - The area contained within the grid created by extending the curblines of two or more rights-of-way at the point at which they cross each other.

Interstate Highway - A controlled access highway, which is part of the Federal Interstate Highway System.

Island, Landscape - In parking lot design, built-up structures, usually curbed, placed at the end or middle of parking rows as a guide to traffic and for landscaping, signage, or lighting.

**J**  
Junk - Any worn out or cast off or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use.

Junkyard or Salvage Centers - Land or buildings used for one of the following operations:

1. The purchase, sale, exchange, storage, baling, packaging, disassembly, or handing of waste, used materials, or secondhand materials including, but not limited to, batteries, scrap iron and other old scrap ferrous or non-ferrous materials, metals, paper, rubber tires, tires, debris or waste, electronic parts, and bottles;

2. The dismantling or wrecking of motor vehicles or trailers, or the storage, sale or dumping of dismantled, or partially dismantled, obsolete, or wrecked vehicles or their parts;
3. The storage, keeping, buying or selling of wrecked, scrapped or dismantled motor vehicles or motor parts. The presence on any lot or parcel of land of two or more motor vehicles, which, for a period exceeding 30 days, have not been capable of operating under their own power and from which parts have been removed for reuse or sale, shall constitute a vehicle or automotive wrecking or salvage yard; or
4. A service that provides towing or conveyance of a wrecked, inoperable, disabled, or illegally parked motor vehicle in conjunction with one of the above services.

## K

*Reserved*

## L

Lamp - A generic term for a source of light, often called a bulb or tube. Examples include incandescent, fluorescent, neon, high-intensity discharge (HID), and low pressure sodium (LPS) lamps, as well as light-emitting diode (LED) modules and arrays.

Landfill - Any solid waste facility for the disposal of solid waste on land as defined by West Virginia Code §22-16-1 et seq., or other applicable solid waste disposal statute or rule.

Landscape - Open areas of the private or public realms, which are composed primarily of living vegetation.

Landscaping Plan - The Site Plan Application prescribed by this Ordinance which details pre- construction protection of existing vegetation and post construction supplemental plantings.

Lane - A narrow, slow movement thoroughfare, typically containing one travel lane.

Laundry and Dry Cleaning Pick-Up - An establishment providing dry cleaning and laundry pickup services, but where no dry cleaning and laundering are done on the premises. See also Retail and Services.

Light Pollution - Any adverse effect of artificial light including, but not limited to, glare, light trespass, skyglow, energy waste, compromised safety and security, and impacts on the nocturnal environment.

Light Trespass - Light that falls beyond the property that it is intended to illuminate.

Lighting Zone - A system corresponding to neighborhood, district, and corridor zones, establishing legal limits for lighting.

Livestock - Domestic animals ordinarily raised or used on a farm or other agricultural land use including but not limited to cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine species.

Live-Work Unit - See Mixed-Use Building.

Loading Area - An area in which goods and products are moved on and off a vehicle, including the berth, apron, and maneuvering area.

Loading Berth - A space within a loading area that is used for the temporary parking of a commercial vehicle for the loading or unloading of goods or materials.

Lodge or Private Club - A facility for the use of a membership organization or association with elected officers and directors, pursuant to a charter or bylaws, that excludes the general public from its premises and holds property for the common benefit of its members.

1. A lodge or private club may not charge a temporary membership fee in order to allow non-members to enter or use the premises.
2. A lodge or private club may serve meals and alcohol on the premises for members and their guests only.

Lot - A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title which is occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Lot Types:

1. Corner Lot - A lot located at the intersection of 2 or more streets.
2. Interior Lot - A lot other than a corner lot with only one frontage on a street.
3. Flag Lot - A large lot not meeting minimum frontage requirements and where access to the public road is by a narrow, private right-of-way or driveway.
4. Through Lot (Also Double Frontage, Reverse Frontage) - Lot other than a corner lot with frontage on more than one street. Through lots abutting 2 streets may be referred to as double frontage lots.
5. Single-Tier Lot - A lot which backs up to a limited access highway, a railroad, a water body, a physical barrier, or another type of land use and to which access from the rear is usually prohibited.
6. Waterfront Lot - A lot that abuts a water body

Lot Lines - Lines bounding a lot as defined herein.

1. Side means any lot line other than a front or rear lot line.

2. Front means in the case of an interior lot, the lot line that abuts a thoroughfare. In the case of a corner lot, the lot line that abuts the principal thoroughfare. In the case of a through lot, both lot lines that abut a thoroughfare. In the case of an interior lot that abuts an alley or passage, but does not abut a thoroughfare, the lot line that abuts the alley or passage.
3. Rear means a lot line which is opposite and more distant from the front lot line, and in the case of an irregular lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Low Impact Development (LID) - An approach to land development that uses various land planning and design practices and technologies to simultaneously conserve and protect natural resources systems and reduce infrastructure costs. LID allows land to be developed, but in a cost-effective manner that helps mitigate potential environmental impacts.

Lumen - The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from watt, a measure of power consumption).

Luminaire - The complete lighting unit (fixture), consisting of a lamp, or lamps and ballasts, when applicable, together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

Luminaire, Fully Shielded - A luminaire constructed and installed in such a manner that all light emitted by the luminaire, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal plane through the luminaire's lowest light-emitting part.

Luminaire Mounting Height - The height of the center of a luminaire above ground level.

Luminaire, Partially Shielded - A luminaire with opaque top and translucent or perforated sides, designed to emit most light downward.

Luminaire, Shielded Directional - A luminaire that includes an adjustable mounting device allowing aiming in any direction and contains a shield, louver, or baffle to reduce direct view of the lamp.

Luminaire, Unshielded - A luminaire capable of emitting light in any direction.

## **M**

Main Arterial Road - The primary function of an arterial road is to deliver traffic from collector roads to freeways, and between urban centers at the highest level of service possible.

Major Plat Revisions - All revisions to approved preliminary plats that are not considered minor revisions. These

typically include revisions that are determined by the City Planner to constitute a public interest.

Major Site Plan Review - A review of construction documents to include site plan, floor plans, and all building elevations by the Planning Commission. Major site plan review allows for discretionary review of the site configuration and architectural design of projects which, due to their magnitude, are more likely to have significant impacts on their surroundings.

Major Subdivision. All subdivisions not classified as minor subdivisions, any subdivision involving more than two acres, or any size subdivision requiring any new street or extension of the local government facilities, or the creation of any public improvements.

Manufactured Home Park - A parcel or subdivision of land to accommodate manufactured housing per the provisions of this ordinance.

Manufactured Home Sales and Services - A retail and service business with permanent outdoor display, service, and storage areas related to manufactured homes, mobile homes, and similar pre-fabricated dwelling units.

Manufactured Housing/Manufactured Single Family Dwelling - Factory-built, single-family structures that meet the Federal Manufactured Home Construction and Safety Standards effective the 15th day of June, 1976, (42 U.S.C. Sec.5401) also known as the HUD Code.

Manufacturing, Heavy - The processing, manufacturing, or compounding of materials, products, or energy, or any industrial activities which because of their scale or method of operation regularly produce noise, heat, glare, dust, smoke, fumes, odors, vibration, or other external impacts detectable beyond the lot lines of the property. Heavy industrial uses may regularly employ hazardous material or procedures or produce hazardous by-products, include outdoor storage areas, and may have activities that take place outside of structures.

Manufacturing, Light - The processing or manufacturing of finished products or parts from previously prepared materials including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution of such products, provided that all manufacturing processes are contained entirely within a fully enclosed building. Any heat, glare, dust, smoke, fumes, odors, or vibration are confined to the building. A light industrial use may include a showroom or ancillary sales of products related to the items manufactured on-site. This shall not include uses that constitute "heavy" manufacturing", resource extraction, or recycling and salvage operations.

Manufacturing and Sales, Artisan - The manufacturing, processing, fabrication, packaging, or assembly of products within a fully enclosed structure which includes retail sales for the products produced within the same

structure. Retail sales may include products produced offsite. No processes or equipment may be used that creates heat, glare, dust, smoke, fumes, odors, or vibration beyond its lot line. The retail space must be at the primary entrance of the structure. These uses are subject to the same Use Standards and size limitations as Retail and Services uses.

Marina - A site used for docking and storage of pleasure boats or services for pleasure boaters, including minor repair of boats while in the water, sale of fuel and supplies, or provision of food, beverages, and entertainment. See Water Related Structure, Pier.

Market Farm - Small- to medium-scale production of food-producing plants, ornamental plants, or bees located on public or private property, and designed and managed for commercial purposes using a variety of growing techniques including in-soil, container, hydroponic, and aquaponic growing systems. End products are typically sold on- or off-site at a stand, market, or store. See also Greenhouse, Commercial or Urban Farm.

Mass Transit - A public common carrier transportation system for people having established routes and fixed schedules.

Master Development Plan - A scaled site-specific drawing of a proposed development that includes a subdivision of land and proposed buildings and/or improvements.

Mechanical Equipment - All HVAC (heating, ventilation, and air-conditioning) equipment located on the roof of a building or outside a home or building.

Medical Clinic - A facility for physicians, dentists, chiropractors, physical therapists, alternative medical practitioners, or other licensed healthcare practitioners to examine and treat persons on an outpatient basis.

Medical Institution - Medical and care related uses such as hospitals, assisted living facilities, hospices, and other long term medical care facilities with inpatient services.

Minor Boundary Adjustment - Any boundary adjustment which is the result of a survey of an existing tract or parcel of land when such survey differs from a previous survey by virtue of inaccuracy of such previous survey or any adjustment in lot lines which does not result in the creation of a new lot or parcel and does not reduce the area of any existing parcel below the required lot size within the district it is located in or any other applicable lot size requirements within the Zoning Code 6,000 square feet.

Minor Plat Revisions - Insignificant shifts in street and open space locations, minor changes to lot size, minor changes to unit size and distribution of intensity; minor shifts in lot lines; and other changes, which do not alter the general layout and intensity of the approved Preliminary Plat or have a significant impact on proposed

or existing infrastructure as determined by the City Planner.

Minor Subdivision - The Director of Planning will classify the application as a minor subdivision where each of the following criteria is met:

1. The proposed division, consolidation, or alteration of lot boundaries complies with the lot standards of this Ordinance, the lot standards of the district(s) in which they are located in, and will not result in split zoning classifications.
2. The proposed division, consolidation, or alteration of lot boundaries involves the following:
  - A. Less than one-half acre of land in all residential districts, NMU, CC, and MCC districts, excluding the R and E districts.
  - B. Less than two acres of land in all other districts.
  - C. Exception: The proposed division of lot boundaries in all residential districts involving less than two acres of land that results in the creation of no more than four lots and meets all other requirements to be classified as a minor subdivision.
3. The proposed division, consolidation, or alteration of lot boundaries involves less than two acres of land in all other districts.
4. All lots within the proposed division, consolidation, or other alteration of lot boundaries front on an existing public right-of-way, are served by existing municipal facilities, and do not involve the dedication of land for public rights-of-way, parks, or other public purposes.

Mixed Use - The presence of residential and nonresidential complementary uses within the same complex or same building. Mixed use can also refer to different categories of nonresidential uses such as institutional, retail, and office within the same complex of building. The advantage of mixed uses is the promotion of architectural compatibility and pedestrian scaled environments.

Mixed-Use Building - Small commercial enterprises with the ground floor occupied by commercial uses and a residential unit above. Commercial space may be a home-based business or may be leased independently.

Mobile Home - A residential dwelling that was fabricated in an off-site manufacturing facility designed to be a permanent residence, built prior to enactment of the Federal Manufactured Home Construction and Safety Standards Act also known as the HUD Code.

Mobile Home Park - A lot used, designed or intended to be used for the purpose of supplying parking space for four or more occupied mobile homes and which include buildings, structures, motor vehicles or enclosures used or intended

to be used as part of the operation of the mobile home park.

Mobile Vending - This term is used to describe various mobile retail businesses including but not limited to the following:

1. Mobile Vending Cart: A movable push cart that is operated by a vendor standing on the sidewalk.
2. Mobile Vending Trailer: A mobile trailer operated by a vendor standing on or within the frame of the trailer on the public right of way or within a public or private parking lot.
3. Mobile Vending Vehicle: A motorized vehicle operated by a vendor standing on or within the frame of the vehicle on the public right of way or within a public or private parking lot.

Modular Home - A dwelling unit which is constructed in compliance with the West Virginia State Building Code and composed of components substantially assembled in an offsite manufacturing plant and transported to the building site for final assembly on a permanent foundation.

Motel - See Hotel.

Motor Vehicle - Includes any automobile, truck, tractor, truck-tractor, trailer, semi-trailer, motorbus, taxi cab, and any self-propelling motor driven vehicle or any combination thereof used for the purposes of transporting persons or property.

Mullion - A vertical element that forms a division between units of a window or door.

Muntin - A bar or rigid supporting strip between adjacent panes of glass.

## N

Nanobrewery - A facility in which beer is brewed, fermented, and produced in quantities not to exceed 500 barrels per year and which meet the requirements of the zoning district and possess the appropriate license from the State of West Virginia. Tasting rooms for the consumption of on-site produced beer, wine, or distilled products are permitted on premises as an accessory use. Retail sales are also permitted in hand-capped or sealed containers in quantities up to one-half barrel or 15.5 gallons sold directly to the consumer.

Neighborhood Commercial Use - Commercial activities which include retail sales establishments, office uses (i.e., medical, financial), service industry uses (i.e.: restaurants, inns), and convenience stores which are designed and/or operated to service the daily needs of the residents of the surrounding neighborhood.

Nightclub - See Bars and Nightclubs

Nonconforming Lot - A legally created lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the Zoning Ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Nonconforming Structure or Building - A structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to the Zoning Ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Non-Conforming Uses - Any actual and active use lawfully being made of any land, building, or structure not otherwise abandoned, which exists on the effective date of this Ordinance or on the effective date of any amendment thereto, and renders such existing use illegal within a district, or which does not comply in any fashion with any of the rules, requirements and regulations of this ordinance or any amendments thereto.

*(Image Needs Replaced)*

Non-Residential Development - All development other than one- or two-family residential development, agriculture and silviculture.

Nuisance - An act or omission or use of property which is of itself harmful to health, tranquility or morals of the community

## O

Office Use - Professional, service, and governmental occupations within a building or buildings which do not generally involve the on-site sale of goods to customers.

Official Map - The map established by Council showing the streets, highways and parks theretofore laid out, adopted and established by ordinance and any amendments thereto adopted by Council.

Off-Street Parking - Parking which occurs on a lot and not on a street or other public right of way.

On Site, Off Site - Located on the lot relative to a use, or structure; or located off the lot relative to a use, or structure.

One-Family Home - See Single Family Residential or Dwelling Unit

Open Decks and Patios - Permanent uncovered accessory structures that project from an existing principal use.

Open Space - Any area which does not consist of streets, right of ways, parking, or easements, and serves as a passive or active recreational area, as conservation land for important vistas and topographic features, or as pervious cover for watershed requirements. This area provides, or has the potential to provide, environmental,

social and/ or economic benefits to the community whether direct or indirect.

Ordinance - A document of regulations enforceable as municipal law.

Ornamental Tree, Shrub - A deciduous or evergreen tree or shrub planted primarily for its ornamental value or for screening purposes.

Outdoor Kennel - The containment of animals outside a permanently constructed building for an extended period of time. This does not include fenced areas for brief animal exercise.

Outdoor Sales/Display - The sale or display of products outside of a permanently constructed building or structure, including but not limited to vehicles, garden supplies, gas, tires and motor oil, food and beverages, boats and aircraft, farm equipment, motor homes, burial monuments, building and landscape materials, and lumber yards. This does not include occasional "sidewalk" sales or promotions.

Outdoor Storage - The storage of goods, products, or vehicles as an ancillary use by their owner or on a commercial basis outside of a permanently constructed building.

Out Parcel - A parcel of land associated with and located within a shopping center or multi-tenant nonresidential development, which is designated on an approved site plan as a location for a structure with an intended commercial use.

Overlay District - A set of regulations which add an additional layer of design provisions to an underlying zoning district.

Owner - Any individual, firm, association, syndicate, estate, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivided the same under the Subdivision Regulations.

## **P**

Parapet - That portion of a building wall or false front that extends above the roof line.

Parcel - A contiguous lot or tract of land owned and recorded as the property of the same persons or controlled by a single entity.

Park - Land owned by the City of Fairmont or another unit of government, which is used or intended for use for active or passive public recreation.

Park and Ride Facility - A parking lot designed for drivers to leave their cars and use mass transit facilities beginning, terminating, or stopping within immediate walking distance of the park and ride facility

Parking Area or Parking Lot - All the area in square footage of land designated for the storage of cars. The parking area also includes all areas for storage and trash facilities. Any public or private area, under or outside of a building or structure, designed and used for parking or storing motor vehicles including parking lots, garages, private driveways, and legally designated areas of public streets.

Parking Lot, Commercial - A non-accessory parking lot made available to the general public in exchange for a fee.

Parking Space - A space which is designed for the parking or temporary storage of an automobile as prescribed by this ordinance.

Parking Structure - A structure of one or more levels, whether underground, at ground level, or above ground level, in which more than 50% of the gross floor area is used for parking vehicles.

Party Wall - A common shared wall between two separate structures, buildings or dwelling units and lacking cross access between structures without exiting each structure.

Paved - Any surface area covered by concrete, asphalt, brick or stone pavers, or similar material in durability, appearance, and permeability.

Performance Guarantee - Any security or bond that may be accepted or required by the City to assure that improvements required as part of an application for development will be satisfactorily completed.

Permanent Open Space - Permanent open space shall be categorized as one of two types:

1. Improved Open Space - Parks, playgrounds, swimming pools, ball fields, plazas, landscaped green spaces, and other areas that are created or modified by man. At least thirty (30) percent of the total permanent open space in any given Planned Development Area shall be of the Improved Open Space type.
2. Natural Open Space - Areas of natural vegetation, water bodies, or other landforms that are to be left undisturbed. Creation of a graded and surfaced walking trail for pedestrian and biking use only through areas of Natural Open Space shall constitute natural open space for purposes of this Chapter in area equivalent in are to the length of the walking or biking trail multiplied by its width.
3. Neither definition of open space shall include schools, community centers or other similar areas in public ownership.

Permitted Use - Any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

Person - An individual, firm, partnership, association, corporation, syndicate, trust, estate or other legal entity acting as a unit.

Pervious Surface - Any material that permits full or partial absorption of storm water into previously unimproved land.

Pier and Pier Facility - A water-related structure extending into the water from the shore, whether floating or fixed to the lake bottom, for use as a boat landing place or promenade, constructed of pylons and decking for mooring and access to a boat or watercraft.

Plan - A written description for the development of land.

Planning Commission - The City of Fairmont Planning Commission.

Plat - A map of the land development.

Plat, Final - A map of all or a portion of a subdivision that is the legal instrument for recordation. Final plats for Major Subdivisions or Master Plans shall be consistent with the approved Preliminary Plat and be recorded following Construction Document approval.

Plat, Preliminary - A map indicating the layout of a subdivision, typically submitted and approved with Construction Drawings for a Major Subdivision or Master Plan.

Platted Lot - A lot surveyed and of record in the Office of the Clerk of the County Commission of Marion County, West Virginia.

Playground - An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

Porch - A projection from the outside wall of a dwelling covered by a roof which can project beyond a setback. Roofed open areas may be screened, attached to or part of and with direct access to or from a building.

Portable Storage Containers - Containers transported to a designated location for storage purposes (typically known as PODS, MODS, etc.). If such a container remains on a site for longer than 30 days it shall be considered an Accessory Building and must obtain a building permit and adhere to all requirements of this Code including setbacks, placement, and architectural standards.

Portico - An open porch or walkway covered by a roof and typically leading to the building entrance.

Poultry - Domestic fowl, including but not limited to chickens, turkeys, ducks, and geese.

Preferred Development - A geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

Preliminary Plat - The preliminary map, drawing or chart indicating the proposed layout of the subdivision to be submitted to the City Planner or duly designated representative for preliminary approval.

Premises - All of a parcel of real property with a separate and distinct number and designation shown on a recorded plat, survey, parcel map, subdivision map, or a parcel legally created or established pursuant to this Ordinance. Out parcels of shopping centers shall be considered on the premises of the shopping center for the purpose of these regulations.

Primary / Secondary School - A public, private, or parochial institution offering instruction at the elementary through high school levels with a full range of curricular programs.

Principal Building - A building in which the principal use of the premises is conducted.

Private Driveway - A privately maintained roadway serving 2 or fewer lots, building sites or other division of land and not intended to be public ingress or egress.

Private Garden - Private food-producing gardens located on their own parcel attended to by an individual. End products are typically used for personal consumption. See also Home Garden.

Private Street - An undedicated private right-of-way or easement which affords access to abutting properties.

Professional Offices - A facility for the processing, manipulation, or application of business information or professional expertise, and which may or may not offer services to the public. An office is not materially involved in fabricating, assembling, or warehousing of physical products for the retail or wholesale market, or engaged in the repair of products or retail services. Professional offices do not include government offices.

Property - Real property and fixtures subject to the provisions of this Ordinance.

Public Hearing - A meeting open to the public advertised in advance in the local printed media, or as otherwise required by statute, concerning proposed ordinances, amendments or other official City business which require public participation and input.

Public Sites - Land dedicated or reserved for public use other than streets and alleys.

Public Space - Any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by the City of Fairmont, any other governing body or unit of government.

Public Street - Any public right of way used for vehicular traffic that is maintained by the City of Fairmont or State of West Virginia and which is open to all traffic.

Public Utilities - Above ground or underground publicly licensed utilities including water, sanitary sewer collection and distribution line, natural gas, cable television, storm water drainage, transit or transportation, or electrical services and any associated structures such as pumping stations, treatment plants, transformer stations for providing to the public a utility service deemed necessary for the public health, safety, and welfare. Utility service to the public has been defined broadly to mean all consumers industrial, commercial, or residential.

## Q

*Reserved*

## R

Recreation, Active - Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or field.

Recreation, Passive - Activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, chess, checkers, and similar table games.

Recreational Facilities - An area of land or combination of land and water resources for public use that is developed for active and/or passive recreational pursuits with various manmade features that accommodates such activities. Such areas shall be designed in the form of playgrounds, parks, squares, greenbelts, and parkways.

Recreational Vehicle - A vehicular-type portable structure without permanent foundation that can be towed, hauled or driven and primarily designed as a temporary living accommodation for recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

Recycling - Any process by which goods and materials are collected and / or converted for reuse.

Required Building Line (RBL) – See Built-To Line.

Reservation - The setting aside of parcels of land for a specific purpose including the future development of streets, parks, and civic buildings.

Residential Care Facility - A licensed care facility that provides 24-hour medical or non-medical care to persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. Residential care facilities include nursing homes, independent living, assisted living, continuum of care, and hospice facilities.

Residential Development - Buildings for residential use such as attached and detached single-family dwellings, apartment buildings, condominiums, townhouses,

cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.

Residential Use Only Structure - Any building which contains only dwelling units and their related accessory uses. Examples include but are not limited to single-family dwelling units, duplexes, townhouses, multi-family dwelling units, and accessory dwelling units.

Restaurant - An establishment with an equipped kitchen whose primary business is the preparation of food items for meals for sale and consumption on the premises and does not include the sale of alcohol.

Restaurant with Alcohol Sales - An establishment with an equipped kitchen whose primary business is the preparation of meals for sale and consumption on the premises and which upon proper licensing and subject to the requirements in Section 4.32 may serve beer and/or alcoholic beverages incidental to the sale of food.

"An equipped kitchen" means a kitchen containing at least one range with an oven and no fewer than two burners; one sink with hot and cold running water; one cold storage unit or refrigerator at least seventeen cubic feet in size; and cooking utensils and pots and pans sufficient for preparation of the required meals.

"Meals" means food consisting of one item or any combination of items. Examples of items which, by themselves, do not qualify as adequate are such items as: packaged potato chips and similar products; packaged crackers; packaged nuts; packaged desserts (fruit pies, cakes, cookies, etc.); and bar sausages and similar products. The key word in the definition of meals is "preparation".

Restaurant, Drive In - An establishment that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.

Restaurant, Fast Food - An establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready to consume individual servings, for consumption either within the restaurant building or for carry out, and where either:

1. Foods, frozen desserts, or beverages are usually served in paper plastic or other disposable containers, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed; or
2. The establishment includes a drive up or drive through service facility or offers curb service.

Retail and Service - A business that provides goods or services directly to the consumer, and where such goods

or services are available for immediate purchase on the premises by the purchaser.

Retail and Service, Heavy - A retail and service business with permanent outdoor display, service, and storage areas, such as vendors of lumber and building supplies, landscaping supplies and equipment, industrial equipment, commercial and recreational vehicles, watercraft, and outdoor structures such as prefabricated sheds, decks and patios, swimming pools, and play equipment.

Rezoning, Standard - An amendment to the official zoning map of the City of Fairmont which affects the classification of property.

Right-of-Way (R-O-W)- A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another special use. The usage of the term "right-of-way" for land-platting purposes means that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right of way and not included within the dimensions or areas of such lots or parcels. Rights of way intended for streets, crossways, water mains, sanitary sewers, storm drains, shade trees, or any other use involving maintenance by a public agency shall be dedicated to public use by the maker of the plat on which such right-of-way is established.

Roofline - The highest point of a flat roof and the lowest point of a pitched or mansard roof. Cupolas, chimneys, towers or other minor projections above the roofline are excluded.

## **S**

Salvage - Old or scrap brass, copper, iron, steel, or other ferrous or non-ferrous 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.

Salvage Yard - Any place which is maintained, operated or used for the storing or keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: provided, however, that no salvage yard shall accept, store or process more than one hundred waste tires unless it has all permits necessary to operate a monofil, waste tire processing facility or solid waste facility. Any salvage yard which currently on its premises more than one hundred waste tires not on a vehicle must establish a plan in conjunction with the Division of Environmental Protection for the proper disposal of the waste tires.

Satellite Dish Antenna - Any antenna including any supporting structure designed to receive or transmit visual

and/or verbal signals via orbiting satellites or similar sources, excluding microwave antennae.

Self-Storage Facility - A business that leases individual storage units for the storage of personal property, and that may include ancillary retail sales of packing, moving, and storage supplies.

Senior Citizen Housing - A multi-family dwelling exclusively for senior citizens, handicapped persons, or as may be defined by State and Federal regulations.

Setback - See Building Setback Line

Shrub - Vegetation that is planted for ornamental or screening purposes.

Sign - Unless a contrary meaning is indicated from the context of a specific provision of Section 5.3 for the purpose of Section 5.3, certain terms and words are defined as follows:

1. Awning - An architectural feature or projection that provides weather protection, identity, or decoration and is wholly supported by the building to which it is attached. An awning is comprised of a light weight rigid skeleton structure over which a rigid covering is attached.
2. Banner Sign - Any sign intended to be hung, with or without frames, possessing characters, letters, illustrations or ornamentations applied to paper, plastic or fabric of any kind.
3. Barber Pole - A sign which is specifically painted or striped to advertise a barbershop.
4. Canopy - An architectural projection that provides weather protection, identity, or decoration and is supported by the building to which it is attached and at the outer end by not less than two stanchions. A canopy is comprised of a rigid structure over which a rigid covering is attached.
5. Changeable Letter Freestanding Sign - A sign designed to be temporary and portable in nature which may or may not be illuminated with electrical lights and which has letters which may be changed to advertise events, business openings, and sales, among other things.
6. Changeable Copy Sign - A permanent sign which may or may not be illuminated with electrical lights and which has letters which may change to advertise events, business openings, and sales, among other things.
7. Commercial Sign - Any sign advertising a business or a good being offered by another party.
8. Community Facilities - Any public building or service focused upon serving particular neighborhoods or areas.

9. Construction Sign - Any sign erected or affixed to a building used to announce the names of the architect, engineer, contractors, or financiers of a building under construction, alteration, or repair to a building where such construction is occurring.
10. Door Sign - Any sign painted or lettered directly on the surface of any window or door of a building or other structure.
11. Dynamic Sign - Any sign designed for outdoor use that is capable of displaying a video signal, including, but not limited to, cathode-ray tubes (CRT), light-emitting diode (LED) displays, plasma displays, liquid-crystal displays (LCD), or other technologies used in commercially available televisions or computer monitors.
12. Electronic Changing Message Sign - An electronically activated sign whose message content, either in whole or in part, may be changed by means of electronics or digital programming.
13. Emergency Non-Advertising Sign - Any emergency non-advertising sign which is approved by the Director of Public Works or the City Building Inspector.
14. Ground Sign - Any sign supported by structures or supports in or upon the ground and independent of support from any building.
15. Hours of Operation Sign - A sign which contains no moving parts and which exclusively advertises, indicates or states the business hours of an establishment or entity.
16. Illuminated Sign - Any sign lit in any manner by an artificial light source.
17. Interior Sign - Any sign placed in the inside of a building and not visible from outside the building.
18. Imbedded Building Sign - Any sign which is imbedded or set into a building and which is so constructed and erected as to become an integral and permanent part of the building.
19. Kiosks - A small standalone sign used to advertise events or other onsite activities.
20. Marquee - A permanent roofed structure including attached objects or decorations, attached to and supported by the building.
21. Marquee Sign - Any sign attached to and made part of any marquee, canopy, awning or port- cochere which is defined as a permanent roof- like structure projecting beyond a building wall and designed to provide protection against the weather.
22. Monument Sign - Any sign which is supported by a base of at least 75% of the sign width and is independent from any building.
23. Multi-Tenant Sign - Any sign which designates a multi-tenant development whether designated as a business park, business center, strip mall, shopping center, whether professional, retail, industrial or otherwise, which consists of one large sign that advertises or designates the business park, center, or mall and incorporates or provides a location for the individual signs of the members or individual establishments within said business park, center or mall.
24. Noncommercial Sign - Any sign expressing opinions or commentary related to ideas and values and refrains from conveying any message soliciting goods or services.
25. Off-Site Advertising Sign or Billboard - Any sign the subject matter of which relates to products, accommodations, goods, services, or activities which are sold or offered from a site, parcel of real estate, location or premises other than that upon which the sign is located.
26. Off-Site Directional Sign - Any sign which identifies or advertises the existence or location of any entity or establishment and which sign is located on a site, parcel of real estate, location, or premises other than that upon which the entity or establishment is located.
27. On-Site Directional Sign - Any sign which identifies the entrance or exit to an entity, establishment, business, or other site or which may be necessary for the convenience and safety of vehicles and pedestrians utilizing the site.
28. Pole Sign - Any sign erected on a single or multi-post or column placed in the ground.
29. Political Sign - Any sign which identifies or is indicative of any candidate seeking nomination or election to any national, state, or local office.
30. Political Subdivision - Local governments created by the state to help fulfill their obligations
31. Portable Sign - Any sign that is capable of being moved by one person without machinery from one location to another for the purpose of advertisement or announcement for business or other purposes.
32. Projecting Sign - Any on-premise sign that is wholly or partly dependent upon a building for support and projects in whole or in part a determined distance beyond the surface of the building to which the sign is attached.
33. Public Bulletin Board - Any sign which identifies a governmental, charitable, non-profit or religious institution and which is located on the premises of such institution.

34. Real Estate Sign - Any sign which advertises the sale, rental or leasing of existing commercial or residential buildings or structures or any portion thereof and which is located on the premises being offered for sale, lease or rent.
35. Roof Sign - Any sign erected or constructed upon the top portion of a roof and supported solely by the roof structure.
36. Sandwich Board Sign - A two-part sign which is hinged at the top and connected at the sides and is designed to be free standing portable and temporary in nature.
37. Scrolling Message Sign - A sign using a mode of message transition on an electronic message sign where the message appears to move vertically or horizontally across the display surface.
38. Seasonal Sign - Any sign that is temporarily displayed in correlation with a current season or occasion.
39. Tablet - Any sign constructed of bronze, brass, stone, or other incombustible, permanent material which shall be permanently affixed or attached to the walls of a building or other structure and which bears the name of the owner, the name of the building, the date of erection of the building or contains reading matter commemorating a person or an event.
40. Temporary Nonprofit Event Sign - Any sign that advertises a onetime non-profit, charitable, religious, or government sponsored event.
41. Temporary Sign - Any sign that has plastic film, paper, cloth or similar material and its associated message area that is designed to be fastened to a building or displayed behind a window and visible from outside a business building for a limited period of time.
42. Traffic Sign - Any sign which has been designated, established, and or erected by the federal, state or local government which directs, controls, or regulates the flow of vehicular or pedestrian traffic or identifies or locates, highways, streets, alleys, or any other public rights of way.
43. Vehicle Sign - Any sign that is attached to a vehicle.
44. Wall Sign - Any sign painted or attached parallel to the face of the building wall and confined therein and supported by such wall and displaying only one advertising surface.
45. Warning Sign - Any sign which warns of or indicates a dangerous, perilous or hazardous condition.
46. Window Sign - Any sign placed inside or upon a window facing the outside.
47. Yard Sale Sign - Any sign advertising the temporary sales of household items. Also known as garage or moving sales

Single Family Residential - Any development where:

1. No building contains more than one dwelling unit;
2. Every dwelling unit is on a separate lot; and
3. Where no lot contains more than one dwelling unit.

Also see the definition for Dwelling Unit.

Site Plan - A scaled site-specific drawing prepared by a registered architect, licensed landscape architect, licensed land surveyor, licensed engineer, or professional planner showing the development plan for a project and containing all information required of site plans.

Site Survey - A map done by a surveyor accurately depicting the scale distances and measurements of all planned structures on a lot which may include topographical information and existing naturally occurring and constructed elements or structures, such as streams, wetlands, rock outcroppings, etc.

Specified Sexual Activities - Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or breast. (See Also Adult Entertainment/Establishments)

Specified Anatomical Areas - Less than completely and opaquely covered: human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernible turgid state, even if completely and opaquely covered.

Stable/Riding Center - A structure or land used, designed, and arranged for the care and shelter of equines, or for rentals, riding, shows, or training, which may include horses not boarded on-site.

Story - That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above that is habitable. Mezzanine in the front portion of the building is considered a habitable story for the purposes of this Code. Further, for Mixed Use Buildings, the habitable floor area of the second story shall be approximately equal to the habitable floor area of the first story.

Story Above Grade - Any story having its finished floor surface entirely above grade except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is:

1. More than six feet above grade plane;
2. More than six feet above the finished ground level for more than fifty percent of the total building perimeter; or
3. More than twelve feet above the finished ground level at any point.

Street - A dedicated and accepted public right-of- way for vehicular and pedestrian traffic, whether designated as a

street, highway, thoroughfare, parkway; throughway, road, avenue, boulevard, land place or however otherwise designated.

1. Alley - A minor way used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.
2. Arterial Street - A street used primarily for through traffic connecting major portions of the City.
3. Collector Streets - Those streets which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.
4. Dead-End Street or Cul-de-sac - A street whose entrance and exit are the same and which is used primarily for access to abutting properties.
5. Hillside Street - Any street where the average grade of land of the property to be subdivided is more than fifteen percent (15%).
6. Marginal Access Streets - Those streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.
7. Minor Streets - Those streets used primarily for access to abutting properties.

Street, Private - A street, alley or way that has not been accepted by the municipality or other governmental entity for public maintenance.

Street Tree - A tree planted along the street within the right-of-way except along an alley.

Structure - Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Subdivider - Any individual, firm, association, syndicate, partnership, corporation, or any other legal entity commencing proceedings under the Subdivision Regulations to affect a subdivision of land hereunder for themselves or for another.

Subdivision or Partition - All divisions of a lot or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale, lease, or building development (whether immediate or future) in accordance with Chapter 5 Subdivision Regulations of this Code Subdivision or the recombination of existing lots, tracts or parcels.

Subdivision Regulations or "these Regulations" Section 7 of this Ordinance, as amended.

Substantial Improvement - Any repair, reconstruction, rehabilitation, addition or other improvement of a

structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred "substantial damage", as defined herein, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

## T

Temporary Structures - Buildings placed on a lot for a specific purpose which are to be removed within a specified time period and are placed on a non-permanent foundation.

Thoroughfare - See Street.

Top of Bank - The landward edge of the stream channel during high water, bank full conditions at the point where water begins to overflow onto the floodplain.

Tract - All contiguous land and water bodies under single or diverse ownership being developed as a unit consisting of one or more parcels or lots.

Transitional Yard - The area of a property running along the side or rear yard of a nonresidential lot when it abuts a residential lot used as a buffer. Transitional yards are planted with trees and landscaping to reduce noise, and other impacts on less intense property uses.

Tree, Canopy - A tree with a height at maturity greater than 30 feet and which produces significant shade due to the shape of the canopy tree.

Tree, Small - A tree with an expected height at maturity no greater than 30 feet.

Two-Family Home - See Attached Dwelling Duplex. Also see the definition for Dwelling Unit

## U

Unit of Government - Any federal, state, regional, county, or municipal government or governmental agency

Underpinning - The skirting around the base of a manufactured home or temporary structure which forms a continuous wall around the structure from the foundation or grade level, to the base, or bottom floor level, of the structure. Underpinning material is prescribed by this ordinance.

Urban Farm - Typically larger than market farms and include larger-scale production of food-producing plants, ornamental plants, vines, seeds, bees, fish, poultry, or small to medium-sized livestock for commercial purposes using a variety of horizontal and vertical growing techniques including in-soil, container, hydroponic, and aquaponic growing systems, as well as the keeping, grazing or feeding of animals (including fish) for animal products, animal propagation, or value increase when located in an urbanized (developed) area. An urban farm may be owned by an individual, group or organization and may include intensive agriculture, typical large-scale farm equipment, and animal husbandry. End products are typically sold on- or off-site at a stand, market, or store. Urban Farms may also include Agritourism.

Utility - A public or private distribution service to the public that it is regulated by the Public Service Commission of West Virginia.

Use - The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

Uses Permitted with Conditions - This Ordinance lists all allowable uses by District. The allowable uses are split into 2 categories; uses permitted by right and uses permitted with conditions. The latter are provided with criteria that must be met in order for the use to be allowed within the district.

## V

Vehicle Repair, Major - A business that offers repair services such as engine rebuilding; major reconditioning of worn or damaged motor vehicles or trailers; towing and collision service, including body, frame, or fender straightening or repair; painting of motor vehicles; or repair to commercial vehicles, recreational vehicles, or watercraft.

1. Any repair and service operations must be performed within a fully enclosed building. Bay doors may be open during hours of operation.

Vehicle Repair, Minor - A business that offers minor repairs to motor vehicles, including, but not limited to, repair or replacement of cooling, electrical, fuel, and exhaust systems; brake adjustments, relining, and repairs; wheel servicing, alignment, and balancing; repair and replacement of shock absorbers; detailing; and replacement or adjustment of muffler systems, hoses, belts, fuses, windshield wipers, and the like. Minor vehicle repair also includes repairs to two-wheeled and three-wheeled motor vehicles, and may include incidental, ancillary towing and collision service.

1. Any repair and service operations must be performed within a fully enclosed building. Bay doors may be open during hours of operation.

2. A minor vehicle repair use may not include vehicle dismantling.
3. No partially dismantled, wrecked, or unregistered vehicle may be stored on-site.

Vehicle Rental or Sales - A business that sells, leases, or rents automobiles, vans, motorcycles, scooters, or other powered personal transportation or conveyance, and which may include on-site facilities for the repair and service of vehicles sold, leased, or rented. This does not include the sale, lease, or rental of recreational vehicles, commercial vehicles, or watercraft, which is considered a heavy retail and service use.

Vested Property Right - A right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the Planning Commission and is only applicable under the terms and conditions of the approved land development plan and plat specified in West Va. Code 8A-5-12 as amended. (Ord. 1510. Passed 12-14-10.)

Vested Right - The right to undertake and complete a development or use of property under the terms and conditions of an approved Site Plan or land development plan currently in effect or as otherwise allowed by law.

## W

Wall Plate - A horizontal element in or on a wall used as a support for a girder, rafter, or joist.

Wall, Garden - A retaining wall equal to or less than 2 feet in height to hold back soil for gardening or decorative landscaping.

Wall, Retaining - A wall that holds back soil and is not part of the structural components of a building, such as a foundation wall or basement wall.

Warehouse or Distribution - The operation of a facility for the principal use of storing of goods, materials, trailers, cars not currently for sale, or boats or for the distribution of goods and materials to another location. This shall include structures or buildings associated with the operation of such principal use but does not include manufacturing, or industrial incidental storage of raw materials used by the business on-site or finished product of the business made on-site.

Wholesale Establishment - The sale of commodities to retailers or jobbers and shall include the sale of commodities for the purpose of carrying on any trade or business even if the said trade or business is the consumer or end user of the commodity.

Wholesale Establishment, Consumer Fireworks - A wholesale establishment that sells consumer fireworks to a retailer or any other persons for resale and any establishment selling articles of pyrotechnics, display

fireworks, and special effects to a person licensed to possess and use those devices.

## **X**

*Reserved*

## **Y**

Yard - Open space that lays between the principal building or buildings and the nearest lot line. The minimum required yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this ordinance. Yards are further classified as front, rear, and side.

*(Image Needs Replaced)*

Yard, Front - A space extending the full width of the lot between the architectural front of a building and the front lot line or the fronting street right-of-way measured perpendicular to the building at the closest point to the front lot line.

Yard, Rear - A space extending across the full width of the lot between the architectural rear of the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line. Rear yards extend from the back of a building to a property line.

Yard, Required - The open space between a lot line and the yard line and the facade of a building within which no structure may be located except as permitted in this Ordinance.

Yard, Side - A space extending from the front yard to the rear yard between the principal building facade and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building facade.

## **Z**

Zoning District - See District.

Zoning - The division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

Zoning Map - A map that geographically illustrates all zoning neighborhoods, districts and corridors, and other designations within the City of Fairmont as described within the Zoning Ordinance and which is certified as the official land use map of the City of Fairmont, West Virginia.

Zoning Ordinance or this Ordinance - This Ordinance, passed May 28, 2015 and any amendments thereto.

Zoning Permit - A permit issued by the Planning and Development Department of the City of Fairmont for particular uses or structures, to include accessory structures. All construction which does not require a building permit, as determined by the Building Official, shall require a zoning permit.

## 2.3 MEASUREMENTS AND EXCEPTIONS

The purpose of this section is to provide the definitions and standards to which most elements within this code are measured. In addition, this section also establishes which elements may be exempted from certain measured requirements, in addition those also established within the zoning districts and Article 4, Use Standards.

### 1. Lot Dimensions

- A. Lot Area. Lot area is measured as the total area contained within the boundary lines of a lot, excluding any right-of-ways.
- B. Lot Width. Lot width is measured as the horizontal distance between side lot lines along the front lot line, with the following exception:
  - i. On a lot which is on a cul-de-sac or which has a curved front lot line, the setback line is used to measure lot width.
  - ii. On a corner lot, the lot width is measured on front yard property line that is parallel to the front façade. If there is no principal structure, the lot width is measured along the front lot line along the principal right-of-way.
  - iii. Flag lots shall measure the lot width only on the larger portion of the lot referred to as the flag portion.
- C. Lot Depth. Lot depth is measured as the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line of a lot, with the following exceptions:
  - i. Corner Lots. Corner lots measure the lot depth as follows:
    - a. If there is no principal structure, the lot depth is measured perpendicular to front lot line along the principal right-of-way.
    - b. If there is a principal structure, the lot depth is measured perpendicular to the front lot line parallel to the front façade of the principal structure.
  - ii. Flag Lots. On a flag lot, only the flag portion, the larger area of the lot at the end of a narrow strip that begins at the front lot line, is used to measure depth.
  - iii. On a lot accessed by an access easement, the easement is not used to measure the lot depth.

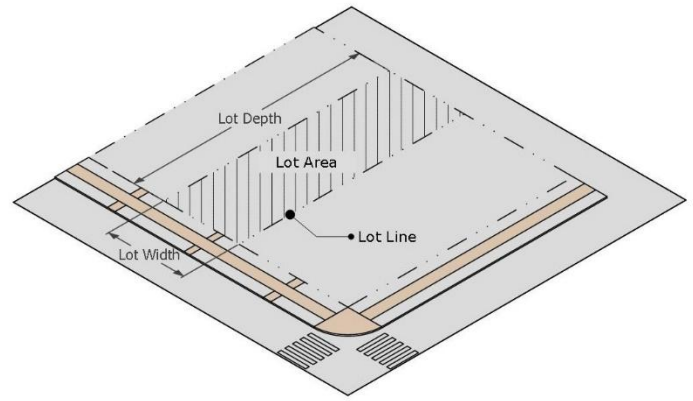


Figure 2.3.A: Example of a lot and lot measurements

### 2. Lot Coverage

- A. Building Coverage. Building coverage is measured by dividing the total area of building footprints of all principal and accessory structures by the total lot area.
- B. Impervious Surface. Impervious surface is measured by dividing the total area of the building footprints of all principal and accessory structures and all paved surfaces of the site, by the total lot area, with the following exceptions:
  - i. When semi-pervious paving is used, it is calculated at a reduced percentage of impervious coverage, as follows:
    - a. Pervious concrete and open grid paving systems are calculated as 50% impervious surface, provided that no barrier to infiltration is installed beneath the material. Open grid pavers must be installed on a sand base, without an impervious liner, to qualify.
    - b. Other types of pervious surfaces, such as permeable pavers, porous asphalt, or gravel-crete, are credited based upon field performance data and coefficients of permeability provided by the manufacturer.
  - ii. When a green or blue roof is installed, the area of the building that includes the green or blue roof is calculated as 50% impervious surface.
- C. Lot Coverage. The percentage of a lot that is covered by buildings, roofed areas, or impervious surfaces, excluding the following:
  - i. Balconies in accordance with Section 2.3.3.A.ii
  - ii. Eaves in accordance with Section 2.3.3.A.ii
  - iii. Similar features as determined by the Planner

### 3. Building Setbacks

4. Building setbacks are the required minimum horizontal distance between the building line and the related front, side, or rear property line. This section

outlines most of the key information needed to determine setbacks and exceptions.

A. Required Yards. A required yard is the area of a lot that must be maintained clear of permanent structures, with the exception of the following permitted encroachments:

- i. Accessory Structures. Accessory structures, unless stated within the zoning code, may encroach upon required side and rear yards up to five (5) feet from the property line with the following exceptions:
  - a. Garages must be setback five (5) feet from all property lines and be located in the rear yard unless site features such as topography or other barriers prevent access. In the event that a garage cannot be located in the rear yard, it may be located in the side yard.
  - b. Garages must be setback a minimum of twenty (20) feet from the property line the garage doors face.
  - c. Carports located in the side yard or within five (5) feet of the property from which the driveway enters the property must remain open or transparent from ground level up to six (6) feet in height.
- ii. Building Features. Certain building features may encroach upon the required yards up to three (3) feet from any property line as follows:
  - a. An accessibility ramp may encroach upon any required yards to the extent necessary to perform its proper function.
  - b. A balcony may encroach on any yard up to eight (8) feet.
  - c. A bay window or turret that is less than ten feet wide may encroach up to three (3) feet into a required yard.
  - d. An awning or canopy may encroach up to eight (8) feet upon any required yard with the following exceptions:
    - 1. Commercial structures may have awnings or canopies that extend up to the property line.
    - 2. Commercial structures may have awnings or canopies that extend onto the public right-of-way with approval from Director of Public Works and the Planner.
  - e. A chimney, flue, or smokestack may encroach up to four (4) feet.
  - f. A porch or stoop may encroach up to eight (8) feet upon any required yard, with the following exceptions:
    - 1. A stoop of less than eighteen (18) square feet may encroach upon any required yard as long as it

remains at least one (1) foot from all property lines and is constructed entirely of non-combustible materials.

- g. A porte-cochere (coach door) may encroach upon any side or rear yard.
- h. Architectural features such as sills, cornices, eaves, roofs, overhangs, or similar features may encroach up to four (4) feet into any yard.
- i. Site features such as ornamental lighting, lamp posts, flag poles, and lawn decorations, such as benches, statues, birdbaths, sculptures, or similar elements approved by the Planner.
- iii. Fences and Walls. Fences and walls may encroach upon required yards in accordance with Article 5.
- iv. Pedestrian and Cyclist Facilities. Pedestrian or cyclist facilities, such as sidewalks, multi-use paths, and bicycle parking, may encroach upon required yards up to the property line.
- v. Signs. Signs may encroach upon required yards in accordance with Article 5.
- vi. Vehicle Parking. Vehicles parking, including driveways and drive aisles, may encroach upon any required yard in accordance with Article 5 and the provisions within each district.

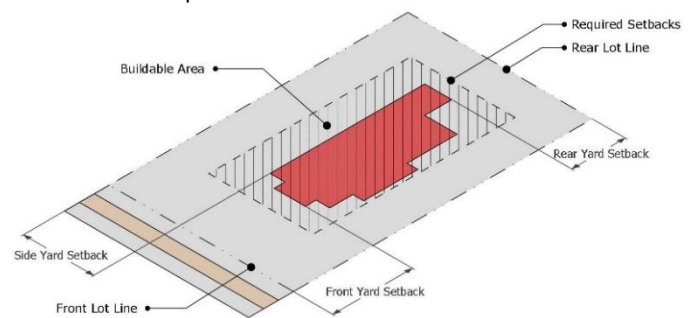


Figure 2.3.B: Example of setbacks and buildable area

B. Corner Lots. A setback area equal to the minimum front yard setback shall be provided along all portions of a corner lot abutting any public street with the following exceptions:

- i. Residential Structures. Where the applicant proves to the satisfaction of the Planning Director that the provisions of a smaller setback of a different yard for a residential building will conform with the clearly prevailing yard pattern on numerous existing developed adjoining lots fronting on the same street. The yard directly opposite the front door of the house shall be the designated rear yard.

- C. Prevailing Front Yard Setback Line. The prevailing front yard setback line is the mean front yard line of all principal buildings along a block face and which are located in the same zone, except as follows:
  - i. Where less than 25% of the combined lot widths along a block face consist of lots that are improved with principal buildings, the prevailing front yard line will be determined by the Planner.
  - ii. Where one or more adjacent properties, located on the same block face as the subject property, vary from the mean front yard setback line by at least 10 feet, the prevailing front yard line will be determined by the Planner.
  - iii. When determining the prevailing front yard line, the Planner must consider the following criteria:
    - a. The prevailing front yard line is consistent with the intended development pattern of the zone.
    - b. The prevailing front yard line is harmonious with adjacent development.
    - c. The prevailing front yard line allows for adequate light and air for the subject property and adjacent properties.
    - d. The recommended setback for a residential use only structure is a minimum setback of 20% of the lot depth and a maximum setback of 30% of the lot depth.
- D. Corner Lot Vision Clearance
  - i. A triangular area as described in this Section shall be graded and shall be kept free of sight obstructions between a height of three (3) feet and eight (8) feet above the established street grade, including structures, non-transparent fences, vegetation and signs, but not including sign posts of less than one foot in width or utility posts or the trunks of trees.
  - ii. This sight distance shall be shown on development plans submitted to the City and be shown on any plan required to be recorded. Such triangle shall serve as a permanent setback line for all such visual obstructions and shall be binding upon present and future owners of the land.
  - iii. The sight triangle shall be measured at the intersection of the right-of-way lines, and the triangular space is determined by a diagonal line connecting two points measured fifteen (15) feet along each of the street right-of-way lines. This requirement may be reduced to ten (10) feet in commercial zones.
- E. Side and Rear Yard Exceptions. The required side or rear yard setbacks may be reduced by the following exceptions:
  - i. One-half of an alley abutting a side or rear yard may be included in required setbacks.
- F. Prevailing Side Yard Setback Line. The prevailing side yard setback line is the mean side yard line of all principal buildings along a block face and which are located in the same zone.
  - i. The required side yard may be reduced where the applicant proves to the satisfaction of the Planning Director that the provision of a smaller side yard setback will conform to the prevailing side yard pattern of the developed lots fronting the same street. In no event shall the required side yard be reduced to less than three (3) feet unless permitted by the district.
- G. Build-To and Façade Measurements
  - i. Build-To Percentage. The build-to percentage specifies the percentage of the width of the building façade, measured along the adjacent right-of-way line, which must be located within a build-to zone or along a build-to line. The following are exceptions to the build-to percentage:
    - a. An arcade, forecourt, or plaza frontage is counted as meeting the required build-to percentage.
    - b. An alcove, entry door recess, or recessed upper-story balcony not wider than 16 feet in width is counted as meeting the build-to percentage.
    - c. A chamfered corner or beveled edge of a building, designed to achieve corner visibility on a corner lot or driveway entrance, is counted as meeting the build-to percentage as long as it is not more than sixteen (16) feet measured along each of the street right-of-way lines.
  - ii. Build-To Zone. A build-to zone is an area of the lot bounded by two imaginary lines, which are parallel to a right-of-way line and correspond to the minimum setback and maximum setback for the façade of a principal building.

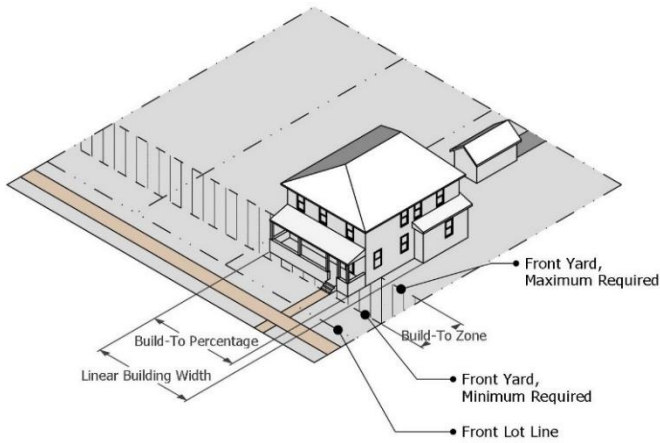


Figure 2.3.C: Example of a build-to zone

- iii. **Build-To Line.** A build-to line is an imaginary line parallel to a right-of-way line, created when the minimum setback and maximum setback for the building facades are the same number.



Figure 2.3.D: Example of a chamfered corner

- a. Façade articulation, such as window or wall recesses or projections, is counted as meeting the required build-to percentage, so long as the variation goes not exceed 18 inches of depth or projection.
- b. An outdoor dining area is counted as meeting the required build-to percentage, so long as the outdoor dining area is created by the recess of only the ground floor of the building façade, and the recess is no greater than twelve feet in depth from the building façade.

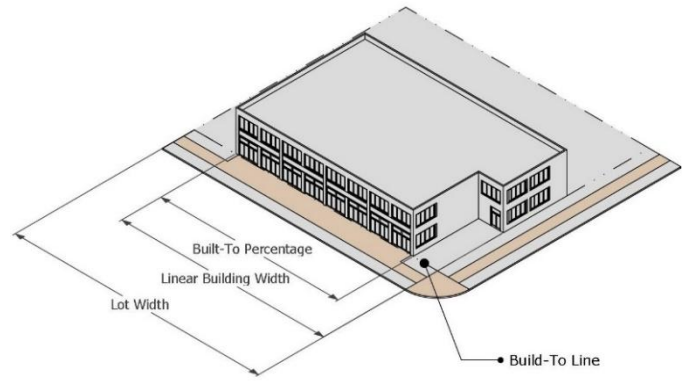


Figure 2.3.E: Example of a commercial structure with a built-to line and percentage

- iv. **Façade Bay Width.** Façade bay width is the area of a building's façade divided into architecturally distinct vertical sections with similar proportions. Features that divide a building façade into bays are elements such as pilasters, columns, and or changes in wall depths or floor and roof levels. The bays shall be in harmony with each other in terms of scale, proportion, detailing, and design.

5. **Building Height**

- A. **Building Height, Feet.** When Building height is measured by linear feet, building height is measured as the vertical distance from average ground level to:
  - i. The peak of a flat roof.
  - ii. The peak of a gambrel or mansard roof.
  - iii. The midpoint between the eaves and the ridge in the case of a pitched roof (gable, hip, or shed roof).
- B. **Building Height, Stories.** When building height is measured by number of stories, building height is measured as follows:
  - i. The first story of a structure is measured from the finished ground floor level to the surface of the second floor or, in the case of a one-story building, from the finished ground floor level to the surface of the roof. Each upper story of a structure is measured from the surface of the floor to the surface of the floor above it or, if there is no floor above, from the surface of the floor to the surface of the roof above it.
  - ii. When building height allows for half-stories, the half-story is calculated as the space under a sloping roof where the line of intersection of roof decking and exterior wall face is no more than five feet above the top floor level.
  - iii. When a lot slopes downward from the front lot line, additional stories are permitted in addition to the maximum number allowed only on the lower rear portion of the lot.

C. Building Height Exceptions. The following are exempt from the minimum and maximum building height requirements:

- i. Accessory structures, which are governed by the zoning district in which they are located in.
- ii. Chimneys, fire escapes, flues, ventilators, and smokestacks.
- iii. Cooling towers, grain elevators, gantry cranes, derricks, conveyors, essential mechanical appurtenances, air ducts, or other structures used for a manufacturing or transshipment process.
- iv. Cupolas, domes, bell towers, minarets, monuments, spires, steeples, belfries, and ornamental towers, so long as they are not intended for occupancy.
- v. Bulkheads, elevator enclosures, penthouses for elevators and stairways, skylights, scenery lofts, and water tanks, so long as these structures occupy no more than 25% of the total area of the roof.
- vi. Green roofs and other facilities used to manage stormwater.
- vii. Parapet walls, limited to a height of five (5) feet.
- viii. Utilities.
- ix. Wireless communication towers, antennas, and ancillary structures, subject to Section 4.34. Wireless Communications or similar appurtenances mounted on a buildings may not exceed the maximum building height by twenty-five (25) feet.
- x. Train cars, shipping containers, and similar structures when repurposed for permanent use and occupancy. This exception applies only to the minimum height requirement in feet but does not exempt a structure from the minimum number of stories required. The maximum building height still applies.

D. Finished Ground Floor Height. Finished ground floor height is the vertical distance between the average ground level at the primary entrance and the finished floor height of the building. The following exception shall apply:

- i. If the structure is located in a designated floodplain area, the structure may be exempted from Finished Ground Floor Height requirements in order to meet the requirements for structures located in a floodplain.
- ii. If the structure is located in a hillside development or on a slope which is greater than 1/4 rise over run, the Director of Planning may permit for the finished ground floor height to be up to two (2)

additional feet higher than the district permits.

E. Story Separation. Story separation is the architectural distinction between the ground floor and the upper stories of the building by doing one of the following on the façade:

- i. A horizontal band such as a cornice or soldier course at the top of the first story.
- ii. Change of wall material at the top of the first story.
- iii. Change of the color of masonry used at the top of the first story.

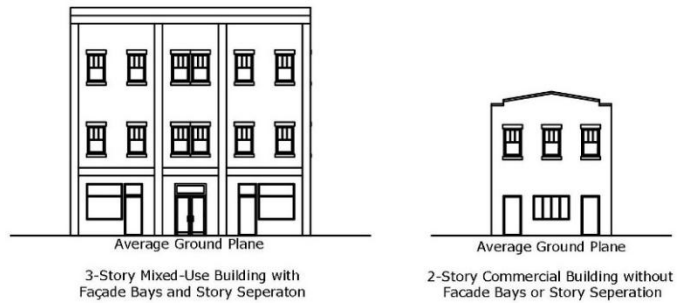


Figure 2.3.I: Façade and story separation

6. Transparency

A. Transparency is the required area of a building's façade to be occupied by fenestrations, also known as windows and doors. Transparency is measured as follows:

- i. In All Neighborhood Commercial Districts and for all residential use only structures in all districts, ground floor transparency is calculated based on the total façade area located between two (2) feet and eight (8) feet above finished ground floor level. A list of district types may be found in Article 3.1.

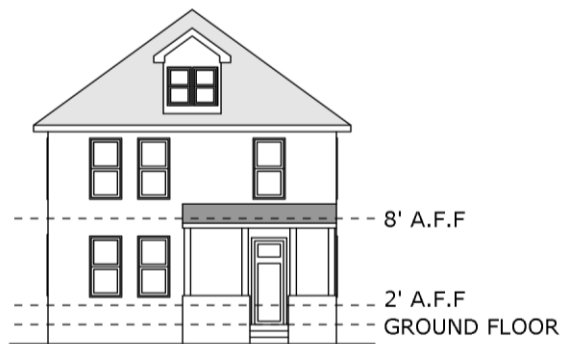


Figure 2.3.J - Example of Residential Use Only Structure Façade Transparency Area



Figure 2.3.K - Example of Neighborhood Commercial District Structure Facade Transparency Area

- ii. All Other Districts. Ground floor transparency is calculated based on the total façade area located between ground floor finished floor height and ceiling height. If there is no finished ceiling, then height is measured to the top of the wall plate.



Figure 2.3.L: Example of Commercial Structure Transparency Area

- iii. Upper floor transparency is calculated based on the total façade area located between the surface of any floor to surface of the floor above it or, if there is no floor above, from the surface of the floor to the top of the wall plate or bottom of roof at the exterior facade being calculated.
- iv. Window Transparency Area. The entirety of a window, to the outer extent of the frame, may be used to calculate transparency area with the following exceptions:
  - a. A mullion or other opaque element between sashes or fixed panes, greater than eight (8) inches in width shall not count for the transparent area of a window. This shall include the separation between transom windows and other windows below them.
- v. Door Transparency Area. The entire area of the door, not to include the casing or frame, may be used to calculate transparency area. A transom window above a door shall be included in the area of the door with the following exception:
  - a. The separation between the transom window above the door and the door itself is not greater than eight (8) inches, to include the casing and

mullion. If the separation is greater than eight (8) inches, the opaque area between the transom and the door is not included in the calculated transparency area.

- vi. Storefront and Curtain Wall Transparency Area. The entire area of a storefront and curtain wall, a non-loadbearing wall that is primarily glass with typically aluminum or wood mullions separating doors and panes of glass, may be used to calculate transparency area with the following exceptions:
  - a. A mullion or other opaque element greater than eight (8) inches within such a wall system shall not count for the transparent area of a storefront or curtain wall.
  - b. If mullions or other opaque elements account for twenty (20) percent or more of the total area of a storefront or curtain wall, the transparency shall be measured based upon the area of each pane of glass not covered by an opaque element and the area of the door itself.

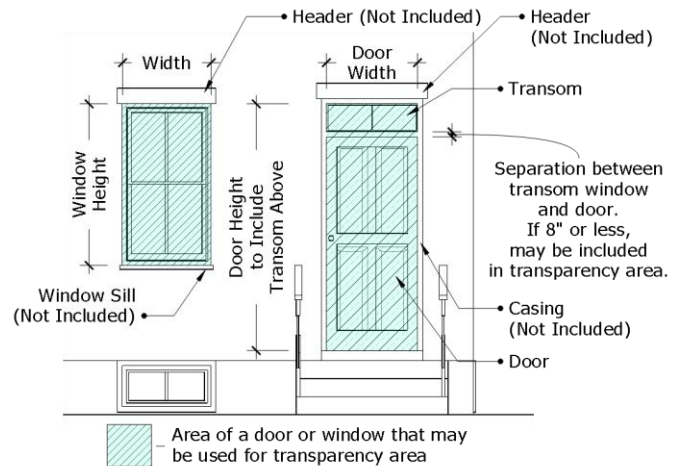


Figure 2.3.M: Area of a Window and Door That May be Used to Calculate Transparency

- B. Window Qualifications. For any windows to be included in the transparency calculation, the glazing must meet the following criteria:
  - i. For ground floor glazing, the glazing must have a minimum 60% Visible Light Transmittance (VLT) and no more than 15% Visible Light Reflectance (VLR).
  - ii. For upper floor glazing, the glazing must have a minimum of 40% VLT and no more than 15% VLR.
  - iii. No interior obstructions are permitted to restrict the view to the interior with the exception of displayed merchandise and signs in compliance with Article 1345.

- Blinds, curtains, or similar window treatments that are easily adjusted to control glare or privacy, as determined by the Planner, do not count as obstructions.
- iv. Windows used in bathrooms, restrooms, dressing rooms, locker rooms, or similar spaces as determined by the Planner may have tempered glass, laminated glass, or similar treatments to provide for adequate privacy for those spaces while still allowing for the transmission of light.
- C. Door Qualifications. For any door to be included in the transparency calculation, the door must be part of a main entrance, open to and operable by customers or occupants during business hours in the case of a non-residential use, or operable at any time by occupants in the case of residential use.
- D. Ground Floor Blank Wall Width. The ground floor blank wall width is measured as any linear dimension of contiguous building wall on the ground floor that does not contain any fenestration.
- E. Front Façade. The front façade is the street right-of-way facing façade for a structure. If there are multiple façades that face a street, the front façade will be determined by the Planner based on the following criteria:
  - i. Which façade faces a more primary street
  - ii. Where the primary entrance is located
  - iii. Where hierarchical forms of the building are located to signify a more primary entrance if there are multiple, such as a large canopy covered walkway extending to the street or a large vertical extension of a parapet to signify where the entrance is.
- F. Corner Side Façade. The corner side façade is a street right-of-way facing façade on a corner lot that is not the front façade.
- G. Chamfered Corner or Beveled Edge on Buildings. A chamfered corner or beveled edge of a building, designed to achieve corner visibility on a corner lot or driveway entrance, shall be measured as follows:
  - i. If located on the corner of a lot where two right-of-ways intersect, the wall can be measured one of two ways. If the wall contains an entrance that is only for uses and spaces on the upper floor, the wall will be counted as a Corner Side Façade. If the wall contains an entrance that is for ground level uses or spaces, the wall will be counted as a Front Façade.
- H. All fenestrations on the street facing facades must remain transparent to the interior. Windows and doors may not be covered unless for construction with an issued permit, or if the building is vacant and for a period of time until

the building is no longer vacant. The covering of windows and doors shall be in compliance with the requirements of the City Code and the Building Department.

- I. Transparency Exceptions. Exceptions for transparency are as follows:
  - i. Common Walls. The portion of a structure that is a common wall is exempt from any transparency requirements.
  - ii. Residential Garage Doors. For single-family dwelling units and two-family dwelling units, the width of a garage door shall not count toward the total area of a building's façade for that floor when determining the transparency requirements.

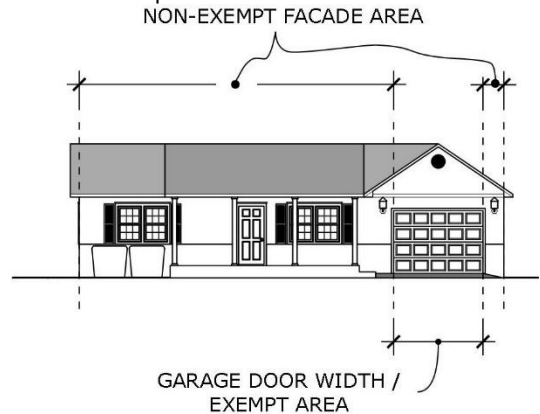


Figure 2.3-N: Garage Width Exemption Example

- 7. Building Orientation and Pedestrian Access
  - A. Main Entrance. A main entrance is a principal point of access for pedestrians into a building, prominently visible from the adjacent right-of-way or avenue of approach. To be considered a main entrance, a door must be open to and operable by the general public, for both entering and exiting, during business hours in the case of a non-residential use, or operable at any time by occupants in the case of a residential use. An emergency exit, service door, or similar entryways are not considered a main entrance.
  - B. Residential Structures. All residential structures shall be required to have a front door facing the street unless the applicant proves to the satisfaction of the Planner that the prevailing condition of the developed lots fronting the same street would warrant a different orientation. The following are exceptions to residential use only structures:
    - i. Duplexes and Multi-family dwelling units may have additional entrances on the other facades so long as the front façade main entrance remains in compliance with the main entrance section and definition, and if the front façade main entrance has an architectural hierarchy of greater importance compared to the other

entrances. For an example of hierarchy, a building with three dwelling units has two entrances on the front façade for different units that are accessible via a covered

porch stretching the front of the dwelling unit while a third entrance for the third unit on the side façade is accessible via a covered stoop.

# 3.0 ZONING DISTRICTS

## 3.1 DISTRICTS ESTABLISHED

For the purpose of this Ordinance, the City of Fairmont is hereby divided into the following districts:

### Residential Districts

GR	General Residential
NR	Neighborhood Residential
MHN	Manufactured Home Neighborhood
MHP	Mobile Home Park
E	Education
R	Recreation

### Neighborhood Commercial Districts

NMU	Neighborhood Mixed Use
CC	City Center
MCC	Main Corridor Commercial

### Commercial Districts

HC	Highway Commercial
T	Technology
I	Industrial

### Special Use or Overlay Districts

Downtown Historic Overlay
Planned Development Area

### 3.2 PERMITTED USES

1. Determination. The Planner shall make the determination if a proposed use is permitted, a conditional use, or a prohibited use under the provisions of this section.
2. Substantially Similar Land Use Determinations. The Planner may determine that a proposed use is substantially similar to a use that is permitted or a conditional use established in Table 3.A based on the proposed use activities, character of the business, similarity to existing uses within the city, or information on the use as may be available from third-party land use resources such as documentation from the American Planning Association, Urban Land Institute, or similar organizations. If the Planner finds that the proposed use is substantially similar to a use established in Table 3.A, the application shall be processed in the same manner as the similar use.
  - A. In finding that a proposed use is similar to a use established in Table 3.A, the Planner shall make a note of the similar use in the approved application form.
  - B. If the Planner makes the determination that a use is prohibited, the application shall not be processed.
3. Uses not Expressly Permitted or Conditional. It is recognized that new types or forms of land use will develop within the City of Fairmont that are not anticipated by this Zoning Ordinance. In order to provide for such changes and contingencies, the classification of any new or unlisted land use shall be made by the Planning Commission to determine if the use can reasonably be interpreted to fit into a similar use category described in the ordinance. The Planning Commission may make such a determination after conducting a public hearing. It is also recognized that certain allowed uses of land may pose significant impacts to adjacent properties, surrounding neighborhoods, and regional infrastructure. In order to provide for the appropriate review and approval of such uses, the Planning Director may designate, in her discretion, that any such uses be processed as conditional uses in accordance with the provisions set forth in Article 4 of this Code, upon a determination of their potential for adverse impact. Unless a use is allowed as a "permitted use by right", "use permitted with conditions", "conditional use", "nonconforming use", or "temporary use", then such use is prohibited.
4. If the applicant disagrees with the Planner's determination regarding the proposed use, the applicant may choose to take one of the following actions:
  - A. The applicant may appeal the determination of the Planner to the BZA; or
  - B. The applicant may petition for a text amendment to the Zoning Code as outline within the zoning code.
5. Multiple Permitted Uses in a Principal Structure.
  - A. Any principal building may contain more than one use and organization. Each use must be permitted or an approved conditional use within the zoning district where it is located.
  - B. Exceptions. This does not permit a structure or parcel to exceed the maximum number of dwellings units permitted. For example, if a district allows both Duplexes and Detached Single-Family uses, this does not mean a principal structure may contain three dwelling units, rather it may not exceed the limit of two dwelling units permitted within a Duplex.
6. Reading the Permitted Use Charts
  - A. The tables within this section identify the uses permitted within each district, with cross references to use specific standards that may apply. The key for the tables is as follows:
    - i. Permitted (●) indicates that the use is permitted by right in the district.
    - ii. Conditional Use (○) indicates that the use requires a Conditional Use approval from the Board of Zoning Appeals.
    - iii. If the cell is blank, this indicates that the use is prohibited within the district.

Table 3.A Permitted Principal Uses														
	GR	NR	MHN	MHP	NMU	CC	MCC	HC	I	T	E	R	Reserved	Use Standards
<b>Residential</b>														
Accessory Dwelling Units (ADUs)		●	●		●	●	●	●	●					<a href="#">4.25</a>
Detached Dwelling	●	●	●	●	●	●	●		●					
Attached Dwelling (Single-Family Duplex)		●	●		●	●	●		●					
Attached Townhouse Dwelling		○			●	●	●	●	●					
Accessory Dwelling Units (ADUs)		●	●		●	●	●	●	●					
<b>Other Dwellings</b>														
Boarding Houses, Lodging Houses, and Congregate Facilities		○			●	●	●		●					<a href="#">4.18</a>
Dormitory		○			●	●	●				●			<a href="#">4.37</a>
Group Residential Facilities	●	●			●	●	●	●	●					
Group Residential Homes	●	●	●	●	●	●	●	●	●					
Mobile Home Parks				●										<a href="#">4.23</a>
Multi-Family Dwelling		○			○	●	●	●	●					
Residential Care Facility	●	●			●	●	●	●	●					
<b>Residential Based Businesses</b>														
Day Care Home	○	●	●	●	●	●	●	●	●					<a href="#">4.7</a>
Home Occupations, Minor	●	●	●	●	●	●	●	●	●	●	●	●		<a href="#">4.17</a>
Home Occupations, Major		●	●	●	●	●	●	●	●	●	●	●		<a href="#">4.17</a>
Live-Work Units					●	●	●	●	●					<a href="#">4.22</a>
<b>Lodging</b>														
Bed & Breakfast Inns		●			●	●	●	●	●					<a href="#">4.5</a>
Hotel						○	○	●	●	○		○		<a href="#">4.14</a>
Inns							○							<a href="#">4.14</a>
Motels							○							<a href="#">4.14</a>
<b>Civic</b>														
Assembly					●	●	●	●	●	●	●			
Cemetery	○	○	○		○		○					○		<a href="#">4.6</a>
Civic Uses	○	○			●	●	●	●	●	●	●	●		<a href="#">4.9 &amp; 4.19</a>
College / University					●	●	●	●	●	●	●			<a href="#">4.9</a>
Emergency Shelter					○	○	●	○						<a href="#">4.41</a>
Medical Institution					○	○	○	○	○	○				<a href="#">4.14</a>
Primary / Secondary School	○	○			○	○	○				○			<a href="#">4.9</a>
Religious Uses	○	○	○	○	●	●	●	●	●		○			<a href="#">4.8</a>
<b>Commercial</b>														
Accessory Structures (as a Principal Use)											●			<a href="#">4.16</a>
Adult Entertainment									○					<a href="#">4.2</a>
Animal Boarding Establishment								●	●					<a href="#">4.44</a>
Animal Care Establishment					●	○	●	●	●					<a href="#">4.44</a>
Bars and Nightclubs						○	○	○						<a href="#">4.4</a>
Bars, Neighborhood					○	●	●	●	○					

Table 3.A Permitted Principal Uses														
	GR	NR	MHN	MHP	NMU	CC	MCC	HC	I	T	E	R	Reserved	Use Standards
Brewpub						●	●	●	●					
Car Wash							○	●	●					<a href="#">4.38</a>
Child Care Center					●	●	●	●	●	●				<a href="#">4.7</a>
Child Care Facility		○	○	○	○	●	●	●	●	●				<a href="#">4.7</a>
Commercial School					○	●	●	●	●	●	○			
Consumer Fireworks Retail Sales Establishment							●	●	●					<a href="#">4.35</a>
Convenience Store (with Fuel Sales)							○	●	●					<a href="#">4.11</a> & <a href="#">4.3</a>
Craft Production Facility (Microbrewery / Microdistillery / Microcidery )						○	○	●	●					
Crematorium							○	●	●					<a href="#">4.51</a>
Drive-through Facilities						○	○	●	●					<a href="#">4.13</a>
Dry Cleaning Establishments									●					
Entertainment Uses						○	○	●	●					
Funeral Services					○	○	●	●	●					<a href="#">4.51</a>
Limited Video Lottery						○		○						<a href="#">4.21</a>
Manufacturing and Sale, Artisan					●	●	●	●	●					<a href="#">4.27</a>
Medical Clinic					○	●	●	●	●	●				
Mixed-Use Buildings					●	●	●	●	●					<a href="#">4.22</a>
Mobile Vending (Vehicle, Street, Sidewalk)						●	●	●	●			●		<a href="#">4.24</a>
Nanobrewery						●	●	●	●					
Office Use, not to exceed 2,500 sq ft					●	●	●	●	●	●				<a href="#">4.27</a>
Office Use, not to exceed 5,000 sq ft					○	●	●	●	●	●				<a href="#">4.27</a>
Office Use, not to exceed 15,000 sq ft						●	●	●	●	●				<a href="#">4.27</a>
Office Use, 15,000 sq ft to 30,000 sq ft						●	○	●	●	●				<a href="#">4.27</a>
Office Use, exceeding 30,000 sq ft						○		○	○	●				<a href="#">4.10</a> & <a href="#">4.27</a>
Recreational Facilities	○	●	○	○	●	○	○	●	●	●		●		<a href="#">4.30</a>
Restaurants					●	●	●	●	●	●				
Restaurant with Alcohol Sales					○	●	●	●	●	○				<a href="#">4.31</a>
Retail and Service use, not to exceed 2,500 sq ft					●	●	●	●	●					<a href="#">4.27</a>
Retail and Service use, not to exceed 5,000 sq ft					○	●	●	●	●					<a href="#">4.27</a>
Retail and Service use, not to exceed 15,000 sq ft						●	●	●	●					<a href="#">4.27</a>
Retail and Service use, 15,000 sq ft to 30,000 sq ft						●	○	●	●					<a href="#">4.27</a>
Retail and Service use, exceeding 30,000 sq ft						○		○	○					<a href="#">4.10</a> & <a href="#">4.27</a>
Retail and Services, Heavy								○	●					<a href="#">4.3</a>
Temporary Uses					●	●	●	●	●					<a href="#">4.35</a>
Vehicle Repair, Major								○	●					<a href="#">4.42</a>
Vehicle Repair, Minor							○	●	●					<a href="#">4.42</a>
Vehicle Rental or Sales								●	●					<a href="#">4.43</a>
<b>Industrial</b>														
Manufactured Home Sales and Service								○	○					<a href="#">4.3</a> & <a href="#">4.32</a>

Table 3.A Permitted Principal Uses														
	GR	NR	MHN	MHP	NMU	CC	MCC	HC	I	T	E	R	Reserved	Use Standards
Manufacturing, Heavy									○					
Manufacturing, Light								○	●	●				<a href="#">4.20</a> & <a href="#">4.33</a>
Outdoor Storage									○					<a href="#">4.28</a>
Outdoor Storage, as an accessory use								○	●					<a href="#">4.28</a>
Recycling, Indoor									○					
Self-Storage Facility									●					
Towing Services									●					<a href="#">4.38</a>
Warehouse or Distribution								○	●					
Wholesale Establishment								●	●					
Wholesale Establishment, Consumer Fireworks									●					
<b>Agriculture</b>														
Agricultural Tourism	○													<a href="#">4.50</a>
Commercial Greenhouse					●	●	●	●	●					<a href="#">4.47</a>
Community Garden	●	●	●	●	●							●		
Market Farm	●	○	○	○	●		●	●						<a href="#">4.48</a>
Private Garden	●	●	●	●	●									<a href="#">4.49</a>
Urban Farm	○													<a href="#">4.50</a>
<b>Infrastructure</b>														
Essential Services	●	●	●	●	●	●	●	●	●	●	●	●		
Solar Farm								●	●	●	●			
Wind Farm									●	●		○		<a href="#">4.45</a>
Wireless Communications	○	○	○	○	○	○	○	●	●	●				<a href="#">4.34</a>
<b>Transportation</b>														
Bicycle Parking Station					●	●	●	●	●	●	●	●		
Bus Shelters	●	●	●	●	●	●	●	●	●	●	●	●		
Heliport							○	○	○	○	○			
Parking Lot, Commercial						○	●	●	●	●	●			
Parking Structure						●	●	●	●	●	●			
Passenger Terminal					●	●	●	●	●	●				
Marina, Recreational						●	●	●	●			●		
Pedestrian or Bicycle Path	●	●	●	●	●	●	●	●	●	●	●	●		
Railway Facilities							●	●	●	●				

## 3.3 GR - General Residential

### 1. INTENT

The General Residential district is coded to permit the development of lower density housing. Such development has traditionally been found in conventional subdivisions.

### 2. DEVELOPMENT STANDARDS

	Detached Single-Family	Civic Uses
<b>Lot</b>		
Lot area (min)	3,600 SF	N/A
Lot width (min)	40'	N/A
Lot coverage (max)	60%	80%
Building coverage (max)	40%	70%
<b>Setbacks</b>		
Front yard (min/max)	Prevailing Setback (min & max) See 2.3.3.C or 20' / -	Prevailing Setback (min & max) See 2.3.3.C, or 20' / -
Built-to percentage, front façade (min)	50% but no greater than a 40' min	N/A
Side yards (min total/min each side)	20% of lot width / 8'	20% of lot width / 10'
Rear yard (min)	25'	25'
<b>Building Height</b>		
Building height, principal uses (max)	3 stories / 40'	3 stories / 40'
Building height, accessory buildings (max)	15'	Shall not exceed the height of the principal structure.
Finished ground floor height (min/max)	0'/4'	0'/5'
Roof Slope (min)	4/12	N/A
<b>Transparency<sup>1</sup></b>		
Ground floor transparency, front and corner side facades (min)	20%	20%
Upper floors transparency, front and corner side facades (min)	15%	15%
<b>Building Orientation and Pedestrian Access</b>		
Main entrance location (required)	Front facade	

1. Transparency is measured according to Article 2.3.5

### 3. SUPPLEMENTAL REGULATIONS

#### 1. Residential Use Only Structures.

- A. Entrance. Primary entrance shall be architecturally and functionally designed on the front façade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the fronting facade.
- B. Front Facade. The front facade of the building shall extend parallel to the frontage line.

#### 2. Garages, Detached or Attached.

- A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.

- B. All garages with more than two bays shall be turned such that the bay are not visible from the street.

#### 3. Exterior Lighting. See [Article 5.1](#).

#### 4. Architectural Requirements. See [Article 5.2](#)

#### 5. Signs. See [Article 5.3](#).

#### 6. Parking. See [Article 5.4](#).

- A. Parking areas, driveways, and garage aprons shall not exceed 40% of the front yard area.
- B. Parking for Civic Uses shall be located in the side or rear yard to the maximum extent feasible.

#### 7. Accessory Buildings and Structures. See [Article 5.10](#)

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# 3.4 NR - Neighborhood Residential

## 1. INTENT

The Neighborhood Residential district is coded to preserve the traditional building pattern of mixed residential development, which historically has been integrated to form a vibrant, active, and cohesive neighborhood unit.

## 2. DEVELOPMENT STANDARDS

	Detached Single-Family	Duplex	Townhouses	Multi-Family Dwellings	Civic Uses
<b>Lot</b>					
Lot area (min)	2,400 SF	3,200 SF	1,600 SF	3,200 SF	N/A
Lot width (min/max)	30' / 120'	40' / 120'	15' / 40'	40' / 160'	N/A
Lot coverage (max)	70%	70%	70%	80%	80%
Building coverage (max)	60%	60%	60%	60%	70%
<b>Setbacks</b>					
Front yard (min/max)	10' / 25', or Prevailing Setback (min & max) <sup>1</sup>	10' / 25', or Prevailing Setback (min & max) <sup>1</sup>	10' / 25', or Prevailing Setback / Prevailing Setback + 10' <sup>1</sup>	10' / 25', or Prevailing Setback (min & max) <sup>1</sup>	10' / 25'
Built-to percentage, front façade (min)	50% but no greater than a 40' min	60%	50%	60%	N/A
Side yards (min total/min each side)	20% of lot width / 5' <sup>2</sup>	20% of lot width / 5' <sup>2</sup>	20% of lot width / 5'; common walls have a setback of 0'	20% of lot width / 5' <sup>2</sup>	20% of lot width / 5' <sup>2</sup>
Rear yard (min)	25'				
<b>Building Height</b>					
Building height, principal uses (max)	3 stories / 40'	3 stories / 40'	3 stories / 40'	3 stories / 40'	3 stories / 40'
Building height, accessory buildings (max)	15'	15'	15'	15'	Shall not exceed the height of the principal structure.
Finished ground floor height (min/max)	0'/4'	0'/4'	0'/4'	0'/4'	0'/5'
Roof Slope (min)	4/12	4/12	4/12	4/12	N/A
<b>Transparency<sup>3</sup></b>					
Ground floor transparency, front facade (min)	20%			20%	20%
Ground floor transparency, corner side facade (min)	20%			20%	20%
Upper floors transparency, front facade (min)	15%			20%	20%
Upper floors transparency, corner side facade (min)	15%			15%	20%
Transparency, all other ground floor and above facades (min)	15%		15% exempt for Common Walls	15%	15%

Building Orientation and Pedestrian Access	
Main entrance location (required)	Front facade

1. See Section 2.3.3.C for Prevailing Front Yard Setback. 2. See Section 2.3.3.F for Prevailing Side Yard Setback. 3. Transparency is measured according to Article 2.3.5

### 3. SUPPLEMENTAL REGULATIONS

#### 1. Residential Use Only Structures

- A. Entrance. Primary entrance shall be architecturally and functionally designed on the front façade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the front facade.
- B. Front Facade. The front facade of the building shall extend parallel to the front lot line.
- C. Pedestrian Pathways. All residential only structures shall have a sidewalk which extends from the primary entrance to the edge of curb, edge of asphalt, or edge of sidewalk within the principal street. If there are site features which make this not feasible, the Planner may approve for a sidewalk to instead be constructed from the principal entrance to the secondary street.

#### 2. Garages, Detached or Attached

- A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
- B. All garages with more than two bays shall be turned such that the bay are not visible from the street.

#### 3. Exterior Lighting. See [Article 5.1](#).

#### 4. Architectural Requirements. See [Article 5.2](#)

#### 5. Signs. See [Article 5.3](#).

#### 6. Parking. See [Article 5.4](#).

- A. Location. Off-street parking shall only be permitted in the side or rear yards with the following exceptions:
  - i. If the side and rear yard are inaccessible due to topography or permanent natural water feature, then parking may be permitted in the front yard.
  - ii. Parking on a garage apron or driveway in the front yard shall be permitted.
  - iii. Parking areas, driveways, and garage aprons shall not exceed 40% of the front yard area.
- B. Townhouse Parking Area Exception. Townhouses located on lots where the rear yards are not feasibly accessible due to topography or other natural features may have a maximum of 50% parking area coverage in the front yard and for the driveway to encroach upon the required five (5) foot setback from the interior lot line so long

as no individual driveway or sidewalk is closer than two and a half (2 1/2) feet to the interior lot lines dividing the townhouses or the centerline of the common wall of townhouses on the same lot. The sidewalk to the frontage element must be separated from the driveway either by a raised curb or a landscaped area except for an optional maximum five (5) foot wide, mostly perpendicular, connection.

- i. If Townhouses have a garage on the front façade, frontage elements on Townhouses must extend beyond the portion of the front façade closest to the front lot line into the front yard a minimum of four feet.

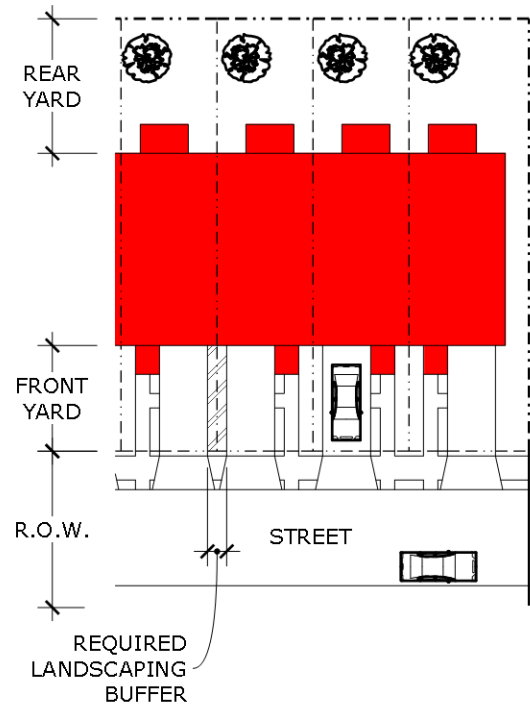


Figure 3.4.A Townhouse Front Yard Parking

- C. Access. Vehicle access to off-street parking areas on lots with an improved alley access shall be from such alley to the maximum extent practicable.

#### 7. Accessory Buildings and Structures. See [Article 5.10](#).

# 3.5 NMU - Neighborhood Mixed Use

## 1. INTENT

The Neighborhood Mixed Use district is coded to provide pedestrian-scaled higher density residential homes and opportunities for limited scale commercial activities in existing mixed-use areas and at the functional center of new neighborhoods. The architectural guidelines detailed in Section 5.2 are enumerated to permit the construction of various building types in close proximity to each other.

## 2. DEVELOPMENT STANDARDS

	Commercial or Mixed-Use	Multi-Family Dwellings	All Other Residential Use Only Structures	Civic Uses
<b>Lot</b>				
Lot area (min)	2,400 SF	2,400 SF		N/A
Lot width (min/max)	30' / 160'	40' / 160'		N/A
Lot coverage (max)	70%	80%	See Section 3.4.2	80%
Building coverage (max)	60%	60%		60%
<b>Setbacks</b>				
Front yard (min/max)	10' / 25', or Prevailing Setback (min & max) <sup>1</sup>	10' / 25', or Prevailing Setback (min & max) <sup>1</sup>	See Section 3.4.2	10' / 25', See also Section 4.9
Built-to percentage, front façade (min)	60%	60%		N/A
Side yards (min total/min each side)	- / 5' <sup>2</sup>	20% of lot width / 5' <sup>2</sup>		20% of lot width / 5' <sup>2</sup>
Rear yard (min)	5'	25'		25'
<b>Building Height</b>				
Building height, principal uses (max)	3 stories / 40'	3 stories / 40'	See Section 3.4.2	3 stories / 40'
Building height, accessory buildings (max)	15'	15'		Shall not exceed the height of the principal structure.
Finished ground floor height (min/max)	0'/4'	0'/4'		0'/5'
Roof Slope (min)	N/A	4/12		N/A
<b>Transparency<sup>3</sup></b>				
Ground floor transparency, front facade (min)	60%	20%	See Section 3.4.2	40%
Ground floor transparency, corner side facade (min)	50%	20%		40%
Upper floors transparency, front facade (min)	20%	20%		20%
Upper floors transparency, corner side facade (min)	20%	15%		20%
Transparency, all other ground or upper floor facades (min)	10%	15%		15%
Ground floor blank wall width	8' front façade; 20' corner side facade	8' front façade; 20' corner side facade		N/A
<b>Building Orientation and Pedestrian Access</b>				
Main entrance location (required)	Front facade			

1. See Section 2.3.3.C for Prevailing Front Yard Setback. 2. See Section 2.3.3.F for Prevailing Side Yard Setback. 3. Transparency is measured according to Article 2.3.5

### 3. SUPPLEMENTAL REGULATIONS

1. Existing Residential Structures. In order to preserve the architectural heritage of the City of Fairmont, existing residential structures proposed for mixed use in these areas shall be preserved and adapted for re-use in lieu of new construction.
2. Residential Use Only Structures
  - A. Entrance. Primary entrance shall be architecturally and functionally designed on the front façade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the fronting facade.
  - B. Front Facade. The front facade of the building shall extend parallel to the frontage line.
3. Garages, Detached or Attached
  - A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
  - B. All garages with more than two bays shall be turned such that the bay are not visible from the street.
4. Exterior Lighting. See [Article 5.1](#).
5. Architectural Requirements. See [Article 5.2](#)
6. Signs. See [Article 5.3](#).
7. Parking. See [Article 5.4](#).
  - A. Location. Off-street parking shall only be permitted in the side or rear yards with the following exception:
    - i. For non-commercial uses, parking on a garage apron or driveway the front yard shall be permitted.
    - ii. For non-commercial uses, parking areas, driveways, and garage aprons shall not exceed 40% of the front yard area.
  - B. Access. Vehicle access to off-street parking areas on lots with an improved alley access shall be from such alley to the maximum extent practicable unless the access to the alley from the property frontage is greater than 400 feet measured along the right-of-way lines.
8. Landscaping. See [Article 5.5](#).
9. Accessory Buildings or Structures. See [Article 5.10](#)

## 3.6 CC - City Center

### 1. INTENT

The City Center district is coded to encourage the development and expansion of the City's traditional central business district and downtown historic district. This center is intended to serve as the civic, cultural, and governmental hub of activity for the entire City of Fairmont. The population density within walking distance of the City Center should be much higher than in other areas of the City. Minimum building heights are established along main corridors to ensure proper spatial definition and encourage strong pedestrian spaces. Transitions from Neighborhood Residential areas should be accomplished through architectural design and streetscape treatment. Individual buildings are encouraged to be mixed vertically with street level commercial and upper level residential. This area is supported by the continued development of a coherent street network constructed to support the traffic demands of both the auto and the pedestrian.

### 2. DEVELOPMENT STANDARDS

	Commercial or Mixed-Use	Multi-Family Dwellings	All Other Residential Use Only Structures	Civic Uses
<b>Lot</b>				
Lot area (min)	2,000 SF	2,400 SF	See Section 3.4.2	N/A
Lot width (min/max)	30' / 200'	30' / 160'		N/A
Lot coverage (max)	100%	100%		100%
Building coverage (max)	90%	90%		90%
<b>Setbacks</b>				
Front yard (min/max)	0' / 10'	0' / 10'	See Section 3.4.2	0' / 50'
Built-to percentage, front façade (min)	75%	75%		N/A
Side yards (min)	0'	0'		0'
Rear yard (min)	15' or 0' when adjacent to an alley	15' or 0' when adjacent to an alley		15' or 0' when adjacent to an alley
<b>Building Height</b>				
Building height, principal uses (min/max)	26' or 2 stories / 8 stories	26' or 2 stories / 8 stories	See Section 3.4.2	26' or 2 stories / 8 stories
Building height, accessory buildings (max)	May not exceed the height of the principal structure	May not exceed the height of the principal structure		May not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'	0'/4'		0'/5'
<b>Transparency<sup>1</sup></b>				
Ground floor transparency, front facade (min)	70%	20%	See Section 3.4.2	40%
Ground floor transparency, corner side facade (min)	50%	20%		40%
Upper floors transparency, front facade (min)	20%	20%		20%
Upper floors transparency, corner side facade (min)	20%	15%		20%
Ground floor blank wall width	8' front façade; 20' corner side facade	8' front façade; 20' corner side facade		15%
<b>Building Orientation and Pedestrian Access</b>				
Main entrance location (required)	Front facade			

1. Transparency is measured according to Article 2.3.5

### 3. SUPPLEMENTAL REGULATIONS

- A. Frontage Build-To Percentage
  - i. Exception. The build-to percentage may be accomplished with a minimum build-out of 50% with the remaining frontage line occupied by a wall or hedge not to exceed 4 feet in height as long there is no vehicle parking within the first 30% of the lot depth directly behind the wall or hedge.
- B. Residential Use Only Structures
  - i. Entrance. Primary entrance shall be architecturally and functionally designed on the front façade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the fronting facade.
  - ii. Residential Use Only Structures and their accessory structures shall conform to all applicable Supplemental Regulations within the Neighborhood Residential district.
- C. Residential Garages, Detached or Attached
  - i. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
  - ii. A garage door shall only face the side or rear yard line unless the garage door is on the facade of an accessory structure within the rear yard.
- D. Exterior Lighting. See [Article 5.1](#).
- E. Architectural Requirements. See [Article 5.2](#).
- F. Signs. See [Article 5.3](#).
- G. Parking. See [Article 5.4](#).
  - i. Location. Off-street parking shall only be permitted in the side or rear yards with the following exception:
    - a. For non-commercial uses, parking on a garage apron or driveway the front yard shall be permitted.
  - ii. Access. Vehicle access to off-street parking areas on lots with an improved alley access shall be from such alley to the maximum extent practicable.
  - iii. Off-Street Requirements. Uses within the CityCenter District are exempt from the Minimum Off-Street Parking Requirements in Table 5.4.2.A.
- H. Landscaping. See [Article 5.5](#).
- I. Accessory Buildings or Structures. See [Article 5.10](#).

# 3.7 MCC - Main Corridor Commercial

## 1. INTENT

The Main Corridor Commercial district is coded to encourage the development of large-scale mixed-use districts that complement the surrounding neighborhoods and are supported by existing and planned transportation networks constructed to support the traffic demands of both the auto and the pedestrian. Main Corridor Commercial districts traditionally form near the convergence of large, coherent neighborhoods. The pedestrian can therefore walk to services and shopping within one of the Main Corridor Commercial centers within 10-15 minutes. Minimum building heights are established to ensure proper spatial definition, encourage strong pedestrian spaces, and promote mixed use within buildings. The Main Corridor Commercial center provides for the sale of general merchandise and limited office employment with neighborhood service areas of two to five miles. Higher densities of residential development are encouraged.

## 2. DEVELOPMENT STANDARDS

	Commercial or Mixed-Use	Civic Uses	Multi-Family Dwellings	All Other Residential Use Only Structures
<b>Lot</b>				
Lot area (min)	3,000 SF	3,000 SF	3,000 SF	See Section 3.4.2
Lot width (min/max)	30' / 200'	30' / -	30' / 160'	
Lot coverage (max)	90%	80%	80%	
Building coverage (max)	80%	60%	75%	
<b>Setbacks</b>				
Front yard (min/max)	0' / 90'	0' / 90'	10' / 45'	See Section 3.4.2
Built-to percentage, front façade (min)	60%	N/A	60%	
Side yards (min)	5', or 25' along an adjacent residential district <sup>2</sup>	0'	5'	
Rear yard (min)	8', or 25' along an adjacent residential district <sup>2</sup>			
<b>Building Height</b>				
Building height, principal uses (min/max)	26' or 2 stories / 40' or 3 stories	26' or 2 stories / 40' or 3 stories	26' or 2 stories / 40' or 3 stories	See Section 3.4.2
Building height, accessory buildings (max)	May not exceed the height of the principal structure			
Finished ground floor height (min/max)	0'/4'	0'/5'	0'/4'	
<b>Transparency<sup>1</sup></b>				
Ground floor transparency, front facade (min)	70%	40%	20%	See Section 3.4.2
Ground floor transparency, corner side facade (min)	50%	40%	20%	
Upper floors transparency, front facade (min)	20%	20%	20%	
Upper floors transparency, corner side facade (min)	20%	20%	15%	
Transparency, all other ground or upper floor facades (min)	10%	15%	15%	
Ground floor blank wall width	8' front façade; 20' corner side facade	N/A	8' front façade; 20' corner side facade	
<b>Building Orientation and Pedestrian Access</b>				
Main entrance location (required)	Front facade			

1. Transparency is measured according to Article 2.3.5.

2. Adjacent shall include being directly across an alley. See Section 2.3.3.E for exceptions.

### 3. SUPPLEMENTAL REGULATIONS

- A. Frontage Build-To Percentage.
  - i. Exception. The build-to percentage may be accomplished with a minimum build-out of 50% with the remaining frontage line occupied by a wall or hedge not to exceed 4 feet in height as long there is no vehicle parking within the first 30% of the lot depth directly behind the wall or hedge.
- B. Maximum Building Height. Buildings may exceed the maximum permitted height with a Conditional Use Permit.
- C. Residential Use Only Structures. Residential Use Only Structures and their accessory structures shall conform to all applicable Supplemental Regulations within the Neighborhood Residential district.
- D. Garages, Detached or Attached
  - i. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
  - ii. All garages with more than two bays shall be turned such that the bay are not visible from the street.
- E. Exterior Lighting. See [Article 5.1](#).
- F. Architectural Requirements. See [Article 5.2](#)
- G. Signs. See [Article 5.3](#).

- H. Parking. See [Article 5.4](#).

The following standards shall apply to all commercial buildings and developments.

- i. Parking shall only be permitted in the side and rear yards if the lot has a frontage of less than eighty (80) feet.
- ii. Parking may be permitted within the front yard if the lot has a frontage of eighty (80) feet or more.
- iii. Front Yard Parking Orientation. Front yard shall be orientated so that the drive lane between parking stalls is parallel to the front yard line.
- iv. Front Yard Parking Access. All parking in the front yard shall be limited to one curb cut along each street frontage. Access to parking should be permitted from the alley to the maximum extent feasible.
- v. Secondary Street Access. Where a corner lot zoned MCC abuts a residential district and that residential district is accessible via the MCC parcel's secondary street, vehicular access to the MCC parcel should be from the primary street to the maximum extent feasible to reduce traffic impacts on the residential district.
- I. Landscaping. See [Article 5.5](#)
- J. Accessory Buildings or Structures. See [Article 5.10](#)

# 3.8 HC - Highway Commercial

## 1. INTENT

The Highway Commercial district is coded to provide for the location of auto-oriented and auto-dependent uses and/or those uses which have a definable market area which extends beyond the scale of the Neighborhood Commercial districts as listed in Article 3.1. The intent of these provisions is to facilitate convenient access, minimize traffic congestion, and reduce visual clutter along certain designated areas in close proximity to Interstate 79.

## 2. DEVELOPMENT STANDARDS

	Commercial or Mixed-Use	All Other Residential Use Only Structures	Civic Uses
<b>Lot</b>			
Lot area (min)	6,000 SF	See Section 3.4.2	N/A
Lot width (min)	40'		N/A
Lot coverage (max)	90%		80%
Building coverage (max)	80%		60%
<b>Setbacks</b>			
Front yard (min/max)	25' / 100'	See Section 3.4.2	25' / 100'
Built-to percentage, front façade (min)	40%		N/A
Side yards (min)	0'		20'
Rear yard (min)	20'		20'
<b>Building Height</b>			
Building height, principal uses (max)	40 feet or 3 stories	See Section 3.4.2	40 feet or 3 stories
Building height, accessory buildings (max)	May not exceed the height of the principal structure		May not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'		0'/5'
<b>Transparency<sup>1</sup></b>			
Ground floor transparency, front facade (min)	70%	See Section 3.4.2	40%
Ground floor transparency, corner side facade (min)	40%		40%
Upper floors transparency, front facade (min)	30%		20%
Upper floors transparency, corner side facade (min)	30%		20%
Ground floor blank wall width	10' front façade; 30' corner side facade		15%
Ground floor window sill height, front and corner side facades (max)	2.5'		N/A
<b>Building Orientation and Pedestrian Access</b>			
Main entrance location (required)	Front facade		

1. Transparency is measured according to Article 2.3.5.

### 3. SUPPLEMENTAL REGULATIONS

- A. Storage.
  - i. All outdoor storage areas shall have a minimum setback of twenty (20) feet from all property lines.
  - ii. Outdoor storage areas in the side or rear yard must be screened by a Type B Buffer Yard or greater.
- B. Maximum Building Height. Buildings may exceed the maximum permitted height with a Conditional Use Permit.
- C. Garages. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces. Garages facing the front yard line shall have a minimum setback of forty (40) feet.
- D. Exterior Lighting. See [Article 5.1](#).
- E. Architectural Requirements. See [Article 5.2](#).
- F. Signs. See [Article 5.3](#).
- G. Parking. See [Article 5.4](#).
  - i. The following standards shall apply to all commercial buildings and developments:
    - a. Shared Lot Access. It is encouraged that adjacent lots have access to similar adjacent developments permitting sidewalks and drive aisles to cross side and rear lot lines to adjoining sidewalks or drive aisles in order to reduce traffic entering and exiting the right-of-way and to foster a safer pedestrian development.
    - b. Front Yard Parking Orientation. Front yard shall be orientated so that the drive lane between parking stalls is parallel to the front yard line.
    - c. Parking Access. All parking in the front yard shall be limited to one curb cut along each street frontage unless curb cuts are located more than 200 feet apart along the same right-of-way line. Curb cuts should be located at minimum 50 feet from right-of-way intersections measured from the point where the two right-of-way lines intersect.
- H. Landscaping. See [Article 5.5](#)
- I. Accessory Buildings or Structures. See [Article 5.10](#)

# 3.9

# I – Industrial

## 1. INTENT

Industrial districts are coded to permit light and heavy industrial and manufacturing uses. Such developments are typically too large in scale to fit within a neighborhood environment and should be buffered from surrounding neighborhood uses.

## 2. DEVELOPMENT STANDARDS

	Commercial or Mixed-Use	Industrial	All Residential Use Only Structures	Civic Uses
<b>Lot</b>				
Lot area (min)	3,000 SF	3,000 SF	See Section 3.4.2	N/A
Lot width (min)	40'	40'		N/A
Lot coverage (max)	90%	90%		80%
Building coverage (max)	80%	80%		60%
<b>Setbacks</b>				
Front yard (min)	20'	20'	See Section 3.4.2	20'
Built-to percentage, front façade (min)	60%	N/A		N/A
Side yards (min)	5'	20'		5'
Rear yard (min)	8'	20'		8'
<b>Building Height</b>				
Building height, principal uses (max)	40 feet or 3 stories	40 feet or 3 stories	See Section 3.4.2	40 feet or 3 stories
Building height, accessory buildings (max)	May not exceed the height of the principal structure	May not exceed the height of the principal structure		May not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'	0'/4'		0'/4'
<b>Transparency<sup>2</sup></b>				
Ground floor transparency, front facade (min)	70%	20%, See Section 3.9.3.B	See Section 3.4.2	40%
Ground floor transparency, corner side facade (min)	50%	20%, See Section 3.9.3.B		40%
Upper floors transparency, front facade (min)	20%	20%, See Section 3.9.3.B		20%
Upper floors transparency, corner side facade (min)	20%	15%, See Section 3.9.3.B		20%
Transparency, all other ground or upper floor facades (min)	10%	N/A		15%
<b>Building Orientation and Pedestrian Access</b>				
Main entrance location (required)	Front facade	N/A	Front Facade	Front Facade

1. Transparency is measured according to Article 2.3.5.

### 3. SUPPLEMENTAL REGULATIONS

- A. Setbacks for Light Manufacturing. Light Manufacturing uses may reduce the required side yard setbacks to a minimum of five (5) feet with a Conditional Use Permit.
- B. Transparency for Heavy Manufacturing. All Heavy Manufacturing Uses are exempt from the transparency requirements, although access to natural daylight for spaces with employees normally present is strongly encouraged.
- C. Storage.
  - i. All outdoor storage areas shall have a minimum setback of twenty (20) feet from all property lines.
  - ii. Outdoor storage areas in the side or rear yard must be screened by a Type C Buffer Yard or greater.
- D. Maximum Building Height. Buildings may exceed the maximum permitted height with a Conditional Use Permit.
- E. Garages, Detached or Attached
  - a. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
- F. Residential Use Only Structure. Residential Use Only Structures and their accessory structures shall conform to all applicable Supplemental Regulations within the Neighborhood Residential district.
- G. Exterior Lighting. See [Article 5.1](#).
- H. Architectural Requirements. See [Article 5.2](#).
- I. Signs. See [Article 5.3](#).
- J. Parking. See [Article 5.4](#).

The following standards shall apply to non-residential uses.

  - i. Front Yard Parking Orientation. Front yard shall be orientated so that the drive lane between parking stalls is parallel to the front yard line.
  - ii. Parking Access. All parking in the front yard shall be limited to one curb cut along each street frontage unless curb cuts are located more than 200 feet apart along the same right-of-way line. Curb cuts should be located at minimum 50 feet from right-of-way intersections measured from the point where to the two right-of-way lines intersect.
- K. Landscaping. See [Article 5.5](#)
- L. Accessory Buildings or Structures. See [Article 5.10](#)

# 3.10 MHN - Manufactured Home Neighborhood

## 1. INTENT

Manufactured housing is a recognized form of affordable housing. The Manufactured Home Neighborhood (MHN) is coded to allow for the development of specific neighborhoods which utilize manufactured homes as the principal building construction methods. MHN can only occur in areas which are designated MHN on the City's land use map. By designating an area, an MHN, the intent is to treat manufactured homes consistent with the provisions of West Virginia Code §8A-11-1; provided however, that manufactured homes shall be subject to the design considerations codified in this Ordinance.

## 2. DEVELOPMENT STANDARDS

Lot	
Lot area (min)	3,600 SF
Lot width (min)	40'
Lot coverage (max)	60%
Building coverage (max)	40%
Setbacks	
Front yard (min/max)	Prevailing Setback (min & max) See 2.3.3.C, or 20' / -
Built-to percentage, front façade (min)	50% but no greater than a 40' min
Side yards (min total/min each side)	20% of lot width / 8'
Rear yard (min)	25'
Building Height	
Building height, principal uses (max)	2 stories or 26'
Building height, accessory buildings (max)	Shall not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'
Roof Slope (min)	4/12
Transparency <sup>1</sup>	
Ground floor transparency, front and corner side facades (min)	20%
Upper floors transparency, front and corner side facades (min)	15%
Building Orientation and Pedestrian Access	
Main entrance location (required)	Front facade

1. Transparency is measured according to Article 2.3.5

## 3. SUPPLEMENTAL REGULATIONS

### 1. Residential Use Only Structures

- A. Entrance. Primary entrance shall be architecturally and functionally designed on the front façade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the fronting facade.
- B. Residential Use Only Structures and their accessory structures shall conform to all applicable Supplemental Regulations within the Neighborhood Residential district.

### 2. Garages, Detached or Attached.

- A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
- B. All garages with more than two bays shall be turned such that the bay are not visible from the street.
3. Exterior Lighting. See [Article 5.1](#).
4. Architectural Requirements. See [Article 5.2](#)
5. Signs. See [Article 5.3](#).
6. Parking. See [Article 5.4](#).
  - A. Parking areas, driveways, and garage aprons shall not exceed 40% of the front yard area.
7. Accessory Buildings and Structures. See [Article 5.10](#)

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# 3.11 MHP - Mobile Home Park

## 1. INTENT

In addition to other factory-built homes, mobile homes are a recognized form of affordable housing. The Mobile Home Park (MHP) is coded to allow for the placement of mobile homes in specific locations designated for such use on the City's land use map.

## 2. DEVELOPMENT STANDARDS

Lot	
Lot area (min)	3,000 SF
Lot width (min)	60'
Lot coverage (max)	60%
Building coverage (max)	40%
Number of Mobile Home Spaces	
Minimum number of spaces	8
Maximum number of spaces	24
Setbacks (Shall Included from Interior Roads)	
Front yard (min)	20'
Built-to percentage, front façade (min)	N/A
Side yards (min each side)	20'
Rear yard (min)	20'
Building Height	
Building height, principal uses (max)	1 story
Building height, accessory buildings (max)	Shall not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'
Roof Slope (min)	N/A
Transparency <sup>1</sup>	
Ground floor transparency, front and corner side facades (min)	15%
Building Orientation and Pedestrian Access	
Main entrance location (required)	Front facade

1. Transparency is measured according to Article 2.3.

## 3. SUPPLEMENTAL REGULATIONS

1. Exceeding Maximum Number of Spaces. 25 or more mobile home spaces may be permitted as a Conditional Use.
2. No mobile home or accessory building shall be located within twenty feet of another mobile home or within twenty feet of a private road/ street within the park;
3. No mobile home or accessory building shall be located within twenty feet of a park boundary line or a public right of way;
4. At least two paved off-street parking spaces are available for each mobile home space;
5. A Type B Buffer Yard shall be provided around the perimeter of the mobile home park;
6. All private mobile home park roadways are paved with a permanent all-weather surface, such as concrete or asphalt or other material approved by the Planning Department and shall be constructed in compliance with the West Virginia Division of Highway's Standards for Highway Construction and maintained by the owner of the mobile home park;
7. The mobile home park owner shall assume responsibility for all refuse collection;
8. Illumination for internal streets shall be provided and maintained by the owner of the mobile home park;
9. Each mobile home must be tied down and have underpinning in accordance with applicable building code;
10. Two hundred square feet of common recreation area shall be provided for each mobile home space. No portion of the minimum lot requirement shall constitute or be used to satisfy any portion of this requirement.
11. Fire protection facilities and water supply for fire protection shall be provided to the satisfaction of the Fire Chief.
12. Fences. Side and rear yard fences shall not exceed 4 feet in height. Fences shall be constructed such that

- the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way.
13. Trash containers and mechanical equipment shall be located in the side or rear yard.
  14. Mobile Home Parks with more than 16 lots shall have at least two (2) entrances.
  15. Individual homes shall be placed upon separately platted lots.
  16. Garages, Detached or Attached.
    - A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
    - B. All garages with more than two bays shall be turned such that the bay are not visible from the street.
17. Exterior Lighting. See [Article 5.1](#).
  18. Architectural Requirements. See [Article 5.2](#)
  19. Signs. See [Article 5.3](#).
  20. Parking. See [Article 5.4](#).
    - A. Parking areas, driveways, and garage aprons shall not exceed 40% of the front yard area.
  21. Accessory Buildings and Structures. See [Article 5.10](#)

# 3.12 T - Technology

## 1. INTENT

The purpose and intent of these regulations are to provide a protective area for the orderly growth and development of certain industries and uses by the creation of a Technology District. The Technology district, by virtue of control, shall be mutually harmonious with other industries and uses permitted within the districts as well as with residential, commercial and other uses permitted in nearby districts. The Technology district caters to information technology and other similar high technology research and development industries requiring the benefits that accompany this zoning classification and protects these industries from encroachment by commercial, residential and other land uses adverse to the locations and expansion of such development. These Technology district regulations are intended to promote the physical and mental health, safety, morals, welfare, comfort and convenience of the inhabitants of this district and its environs.

## 2. DEVELOPMENT STANDARDS

Lot	
Lot area (min)	6,000 SF
Lot width (min)	40'
Lot coverage (max)	80%
Building coverage (max)	70%
Setbacks	
Front yard (min)	20'
Built-to percentage, front façade (min)	N/A
Side yards (min each side)	20'
Rear yard (min)	20'
Building Height	
Building height, principal uses (max)	N/A
Building height, accessory buildings (max)	Shall not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'
Roof Slope (min)	N/A
Transparency <sup>1</sup>	
Ground floor transparency, front and corner side facades (min)	40%
Ground floor blank wall width	30' front façade; 50' corner side facade
Building Orientation and Pedestrian Access	
Main entrance location (required)	Front facade

1. Transparency is measured according to Article 2.3.5

## 3. SUPPLEMENTAL REGULATIONS

1. Accessory Buildings and Uses. Within any Technology district, the following accessory buildings and uses shall be permitted only to the extent and as an incident to a permitted use for the district:

- A. Any structure which is incidental to the primary use including, but not limited to, warehouses and storage buildings, provided that no such accessory structure shall be greater than twenty percent (20%) of the total building area occupied by the primary use.
- B. Recreational facilities, dining facilities, fitness centers, day care centers, and other employee amenity services in connection with the operation of a permitted use and primarily for employees, students or faculty.
- C. Retail sales and consumer service establishments (not including wholesale sales),

dealing primarily with employees, students and faculty of permitted uses, provided that such retail or consumer uses shall not occupy more than five percent (5%) of the total floor area of any building on any lot or group of contiguous lots in common ownership or control.

2. Performance Standards. Within any Technology district, the following performance standards shall be applicable to and shall be required for all uses located in the Technology district.

- A. Air Pollution. Manufacturing processes emitting odor, dust, fumes, smoke or other pollutants shall confine such pollutants so as not to create a nuisance to adjacent properties and any such discharge shall conform to all federal, state and/or local regulations and standards.
- B. Vibration. Except in temporary instances during site construction work, the maximum permitted

- vibration from any cause shall not exceed the following, when measured at the lot line.
- C. Radiation. Research operation shall cause no dangerous radiation at any property line and shall conform to all federal, state and/ or local regulations and standards.
  - D. Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air or water, and the disposal of radioactive wastes shall conform to all federal, state, and/or local regulations and standards.
  - E. Electromagnetic Interference. Industries. shall emit only that amount of unshielded spurious electromagnetic radiation as is necessary for the conduct of their operations. Federal. Communications Commission requirements shall govern maximum radiation which tends to interfere with meaningful signals and all such emissions shall conform to all federal, state, and/or local regulations and standards.
3. Regulation of Improvements. Within any Technology district, the following regulations shall be applicable to and shall be required for all uses, improvements, buildings and. structures located in the Technology district:
    - A. Drainage and Erosion Control. Every lot and/or individual development within the District must conform to the requirements of a site and drainage plan, which must. be pre-approved by the appropriate regulatory agencies, as well as the City Engineer and the Director of Public Works.
    - B. Excavation and Site Grading. No excavation or grading shall be permitted except in connection with the construction of an improvement, and upon completion thereof, exposed openings shall be backfilled, graded and leveled. No excavation or grading shall occur until all the requirements of this Code.
    - C. Curb Cuts. It is intended that curb cuts be minimized and designed in accordance with West Virginia Department of Highways and City of Fairmont specifications.
    - D. Loading, Service, and Outside Storage. Each lot devoted to development shall provide sufficient on-site loading facilities to accommodate site activities. All loading movement, including turnabouts, shall be made off of the public right-of-way. Loading docks shall be located and screened so as to minimize their visibility from any street or other right-of-way. Screening of service areas, loading docks, and so forth may consist of any approved combination of earth mounding, landscaping, walls and/or fencing. All screened materials, supplies and equipment shall be permitted to remain outside of any building. Tanks, motors, and special technological equipment will be permitted to remain outside of any building so long as they are screened with a Type C Buffer Yard or greater from the street and surrounding property. Rubbish and garbage facilities shall be screened with a Type C Buffer Yard or greater so as not to be visible from any street or right-of-way.
    - E. Exterior and Interior Lighting. Exterior lighting on all building sites shall be limited to signs and security and safety illumination of streets or roadways, parking lots, access drives and walks, building entrances, loading areas, and service areas and exterior lighting of overall building surfaces. No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building. Pole mounted exterior fixtures shall be limited to a maximum height of thirty (30) feet unless approved by the Building Inspector.
  4. Garages, Detached or Attached.
    - A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
  5. Exterior Lighting. See [Article 5.1](#).
  6. Architectural Requirements. See [Article 5.2](#)
  7. Signs. See [Article 5.3](#).
  8. Parking. See [Article 5.4](#).
  9. Accessory Buildings and Structures. See [Article 5.10](#)

## 3.13 E - Education

### 1. INTENT

The Education district is intended to identify the areas where primary and secondary educational facilities are located. In addition, this district identifies the location of colleges, universities and other institutions of higher learning and defines the uses usually associated with them. Particularly the segregation of such facilities is appropriate given the unique characteristics of the areas, the variety of uses needed to serve these communities and the impacts of such land use in the City.

### 2. DEVELOPMENT STANDARDS

Lot	
Lot area (min)	3,000 SF
Lot width (min)	40'
Lot coverage (max)	80%
Building coverage (max)	70%
Setbacks	
Front yard (min)	5'
Built-to percentage, front façade (min)	N/A
Side yards (min each side)	5'
Rear yard (min)	5'
Building Height	
Building height, principal uses (max)	60 feet or 5 stories
Building height, accessory buildings (max)	Shall not exceed the height of the principal structure
Finished ground floor height (min/max)	0'/4'
Roof Slope (min)	N/A
Transparency <sup>1</sup>	
Ground floor transparency, front and corner side facades (min)	30%
Upper floor transparency, front and corner side facades (min)	20%
Building Orientation and Pedestrian Access	
Main entrance location (required)	Front facade

1. Transparency is measured according to Article 2.3.5

### 3. SUPPLEMENTAL REGULATIONS

1. Garages, Detached or Attached.
  - A. All garages shall be setback a minimum of twenty (20) feet from the property line which the garage door(s) primarily faces.
2. Exterior Lighting. See [Article 5.1](#).
3. Architectural Requirements. See [Article 5.2](#)
4. Signs. See [Article 5.3](#).
5. Parking. See [Article 5.4](#).
6. Accessory Buildings and Structures. See [Article 5.10](#)
  - A. Accessory Structure Setbacks. Accessory structures within the Education District are subject to the same setback requirements as principal structures provided the accessory structure is for an accessory use pertaining to the principal use.

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## 3.19 Planned Development Area

### 1. PURPOSE AND INTENT

1. The purpose of the Planned Development Area (PDA) is to encourage flexibility in the development of land in order to promote its most appropriate use; to improve the design, character and quality of new developments; to provide and promote redevelopment and reuse opportunities; to encourage a harmonious and appropriate mixture of uses and/or housing types; to facilitate the adequate and economic provision of streets, utilities and city services; to preserve critical natural environmental and scenic features of the site; to encourage and provide a mechanism for arranging improvements and sites so as to preserve desirable features; and to mitigate the problems which may be presented by specific site conditions.
2. It is anticipated that a Planned Development Area will offer one or more of the following advantages:
3. Serve to implement the goals, objectives, and strategies of the City of Fairmont Comprehensive Plan, in general, and with specificity to the district or neighborhood in which the proposed PDA is to be located;
4. Apply the design principles of new urbanism, neo-traditionalism, and other emerging smart code principles, urban development patterns and best management practices;
5. Promote development patterns that maximize compatibility of differing adjacent land uses;
6. Enhance the appearance of neighborhoods by conserving areas of special natural beauty, steep slopes, ecological importance, flood prone areas, and natural green spaces where appropriate, while understanding that land within urban areas is best suited for urban densities and development patterns;
7. Counteract poor urban design and mitigate congestion on streets;
8. Promote architecture that is compatible with the vernacular examples of architecture common to the City of Fairmont and/or its surroundings;
9. Promote design principles that allow differing types of land uses to coexist while preserving property values and minimizing potential negative consequences;
10. Promote appropriate urban densities that will promote pedestrianism and which will help make alternative forms of transportation economically and socially feasible; and

11. Promote and protect the environmental integrity of the site and its surroundings by providing suitable design responses to the specific environmental constraints of the site and surrounding area.

### 2. MINIMUM AREA AND SINGLE OWNERSHIP REQUIRED FOR A PLANNED UNIT DEVELOPMENT; EXCEPTION

A Planned Development Area shall consist of a parcel or tract of land comprising an area of at least four (4) acres. All land comprising the proposed Planned Development Area shall be titled in the name of a single owner; provided however, multiple ownership shall be permissible if each and every ownership interest is a co-applicant for the Planned Development Area designation and all ownership interests have executed a written agreement, in duplicate, in recordable form, the covenants of which shall run with the land and shall be binding upon any transferees, which shall identify one legal entity responsible for representing the application and which entity shall have authority to act as agent for all owners for all aspects of the Planned Development Area and the Planned Development Area process. An executed original agreement shall accompany the application for any Planned Development Area designation.

### 3. GENERAL PROVISIONS

1. A Planned Development Area Outline Plan shall indicate all land uses, development standards, and all other applicable specifications which shall govern the Planned Development Area. If the Outline Plan is silent on a particular land use, a development standard, or any other applicable specification, the use, standard or specification established by the City of Fairmont Zoning Ordinance for the underlying district or any other applicable regulations shall apply.
2. Prior to any approval, a Planned Development Area map shall show the location and designation of all improvements. The location of a Planned Development Area shall be designated on the Official Land Use Map or Zoning Map for the City of Fairmont and shall be adopted pursuant to rules and regulations governing amendments of this Zoning Ordinance.
3. The Planned Development Area must comply with all required improvements, construction standards, design standards, and all other engineering standards adopted and enforced by the City of Fairmont, and any other pertinent regulations, except where specifically varied through the provisions of this section of the Zoning Ordinance.
4. Designation and Conveyance or Ownership of Permanent Open Space.

- A. Designation. Within all Planned Development Areas, a minimum of ten (10) percent of the land of the proposed Planned Development Area shall be designated as permanent open space. No plan for a single-family or multi-family residential Planned Development Area shall be approved unless such plan provides for permanent landscaped or natural open space.
- B. Proximity.
- i. In the case of a mixed-use Planned Development Area, permanent open space shall be allocated to the property in proportion to the uses assigned to the Planned Development Area and shall be located within reasonable proximity (within one-quarter of a mile) to those uses. Provided, however, the permanent open space need not be located in proximity to the use in the case of preservation of existing features.
  - ii. As an alternative, a payment in lieu of the open space provision may be made to the City for the purchase or provision of permanent open space on a separate parcel within one quarter of a mile of any Planned Development Area.
- C. Proportion. If the Outline Plan provides for the Planned Development Area to be constructed in stages, open space must be provided for each stage of the Planned Development Area in proportion to that stage.
- D. Conveyance. Permanent open space shall be owned by or conveyed to one of the following:
- i. To a municipal or public corporation;
  - ii. To a nonprofit corporation or entity established for the purpose of benefiting the owners and tenants of the Planned Development Area or, where appropriate and were approved by the Municipal Planning Commission and the City Council, adjoining property owners, or both. All conveyances hereunder shall be structured to ensure that the grantee has the obligation and the right to affect maintenance and improvement of the common open space; and that such duty of maintenance and improvement is enforced by the owners and tenants of the Planned Development Area and, where applicable, by adjoining property owners;
  - iii. To owners other than those specified in subsections 3.1.12.4D.i. and ii. above, and subject to restrictive covenants describing a n d guaranteeing the open space and its maintenance and improvement, running with the land for the benefit of residents of the Planned Development Area or adjoining property owners, or both; or
  - iv. Included in single-family residential lots under the individual control of lot owners.
5. Uses permitted in a Planned Development Area may be any use that is found in the Zoning Ordinance in any district, subject to the approval of the City of Fairmont Planning Commission and City Council; however, the City reserves the right to require that a PDA shall consist of only residential uses when circumstances warrant. Examples of such circumstances may include, but are not limited to:
- A. Significant infrastructure constraints that could cause practical difficulties in supporting nonresidential uses;
  - B. The character and land use pattern of surrounding neighborhoods; or
  - C. Possible deleterious changes in traffic circulation patterns in the immediate area.
  - D. A developer may also initiate a request to limit his or her Planned Development Area to residential uses.
6. For purposes of determining overall project size, two or more parcels of land owned or controlled by the applicant that are wholly or partially separated by a public street or other right-of-way may be considered contiguous and thus may be counted in fulfilling the minimum acreage requirement of a Planned Development Area, provided that the use and development of the public street or other right of way is incorporated into, and is an integral part of the project plans; and provided that there is no other property not owned by the applicant separating the parcels in question. Where there is uncertainty in determining a parcel's qualification to be included in the Planned Development Area, the Planning Commission shall resolve the issue and make a determination as to the project boundaries, after considering the advice of the Planning Director and the request by the applicant.
- 4. PROCEDURE FOR APPROVAL OF PLANNED DEVELOPMENT AREA**
1. Applications for a Planned Development Area shall be accompanied by all plans, descriptions, narratives, documents, and exhibits required by subsection E hereof. A three-step application process shall be used. The steps in the process are:
- Pre-application Conference;
  - Outline Plan Approval; and
  - Development Plan Approval.

2. Pre-application Conference. Prior to filing a formal application for approval for a Planned Development Area, the applicant shall schedule a pre-application conference with the Planning Department. The purposes of the pre-application conference shall be to:

- A. Allow the applicant to present a general concept and to discuss characteristics of the development concept in relation to adopted municipal plans and policies;
- B. Allow the Planning Department to inform the applicant of pertinent policies, standards, procedures and recommendations for the Planned Development Area; and
- C. The pre-application conference is intended only for the above purposes; neither the developer nor the City of Fairmont is bound by any decision made during a pre-application conference.

3. Outline Plan Approval.

- A. Based upon the pre-application conference, the applicant shall develop and submit an Outline Plan for the proposed Planned Development Area.
- B. The Outline Plan and application for the Planned Development Area shall be submitted to the Planning Department, and the Director, who, after certifying the application package to be complete, shall initiate a review of the proposed development.
- C. The application and the results of the review shall then be forwarded to the Planning Commission for its consideration, public hearing and recommendations together with the Planning Department's report and such other documents as may be pertinent to the Planned Development Area.
- D. The Planning Commission shall hold a special public meeting in the district where the proposed Planned Development Area project is located. If the project crosses district boundaries, the meeting shall be held in the district where the majority of the property is located. The hearing shall be conducted at least seven (7) days prior to the regularly scheduled Planning Commission meeting at which the formal public hearing will be held. The Planning Department will place a Class I advertisement in the newspaper specifying the time and location of the special public meeting, at least five (5) days prior to meeting.
- E. Where there are environmentally sensitive features on the site or the subsequent Development Plan is expected to be complex, or there are other important planning implications involved, the Planning Commission may reserve

the right to review the subsequent Development Plan. Where the Planning Commission recommends denial of an Outline Plan and the City Council approves the plan, the Planning Commission shall review the subsequent Development Plan.

- F. Upon completion of its review, the Planning Commission shall forward the application to the City Council with
  - i. A favorable recommendation,
  - ii. An unfavorable recommendation, or
  - iii. No recommendation.
- G. Effect of Approval of Outline Plan:
  - i. When an Outline Plan for a Planned Development Area has been approved by the City Council, by Ordinance, the Plan shall become effective and its location shall be shown on the Zoning Map or Land Use Map. The Zoning Map or Land Use Map shall be amended to designate the site as a Planned Development Area (PDA).
  - ii. Upon such amendment of the Zoning Map or Land Use Map, the use and development of the site shall be governed by the Planned Development Area Outline Plan, subject to approval of a subsequent Development Plan.
  - iii. Notwithstanding approval of an Outline Plan no permit of any kind shall be issued until the Development Plan has been approved.

4. Development Plan Approval:

- A. Purpose of Development Plan Approval. The purpose of the Development Plan is to designate the controls for development of the Planned Development Area. The Development Plan shall show the exact location of each building and improvement to be constructed and a designation of the specific internal use or range of uses for each building.
- B. Time Limit for Approval of Development Plan. The Development Plan shall be submitted to the Planning Department not more than eighteen (18) months following City Council approval of the Outline Plan. The Outline and Development Plans may be submitted as a single plan if all requirements of Section 3.19 are satisfied. The Development Plan may be submitted and approved in stages, with each stage representing a portion of the Outline Plan, at the discretion of the Municipal Planning Commission. The time limit for submitting each stage for approval may be set forth in the Outline Plan, in which case that schedule shall control the timing of

development, rather than the time period contained in this paragraph. The City of Fairmont Planning Commission may extend the time for application for approval of the Development Plan for good cause, consistent with the purposes of the Zoning Ordinance.

- C. Expiration of Time Limit. Periodically, the Planning Director shall report to the City of Fairmont Planning Commission on Planned Development Areas with expired time limits. The original applicants or current developers of the Planned Development Area shall be notified by the Planning Director. The Municipal Planning Commission shall determine whether to consider extending the time or to initiate action to amend the Land Use Map to rescind the Planned Development Area designation.
- D. Relationship of Development and Outline Plan. The Development Plan shall conform to the Outline Plan as approved.
- E. Procedure for Approval of a Development Plan: The applicant must have the Development Plan approved prior to issuance of any building permit.
  - i. Development Plan Submission. The Development Plan and supporting data shall be filed with the planning staff.
  - ii. Review. The Planning Director shall review the Development Plan to include site plan review, in accordance with the requirements of the Zoning Ordinance.
  - iii. Staff Approval. It shall generally be the responsibility of staff to review Development Plans unless the City of Fairmont Planning Commission reviews the Development Plans, or where no Development Plan is required.
  - iv. City of Fairmont Planning Commission Review. If the Planning Commission has retained Development Plan approval authority, the Planning Commission shall hold a public hearing in accordance with its rules and regulations for amendments. The Commission may approve, deny or approve with modifications.
- F. Expiration of Development Plan. The Development Plan shall expire 2 years after approval, unless grading and/or building permits have been obtained and are still current and valid on that date. This rule shall also apply to each stage of a Development Plan approved in stages. The applicant may request, in writing, an extension of time, and the approving authority may extend the time limit were deemed appropriate. Such extension may be considered at the time of Development Plan approval.

- G. Effect of Approval of Development Plan. No permit of any kind shall be issued for any purpose within a Planned Development Area except in accordance with the approved Development Plan, and after acceptance by the City of Fairmont of all required guarantees for improvement.

#### 5. PRE-APPLICATION CONFERENCE, OUTLINE PLAN AND DEVELOPMENT PLAN REQUIREMENTS

- 1. Planned Development Area plans and supporting data shall include all documentation listed in this Section of the Code unless certain documentation is deemed superfluous by the Planning Director due to the specific circumstances of the particular request.
- 2. Pre-application Conference Requirements:
  - A. A written letter of intent from the applicant describing the applicant's intention for developing the site;
  - B. A preliminary scaled drawing of the site depicting the proposed location and extent of the land uses, major streets, and the approximate location of any existing easements, natural features, and topographic or geologic constraints;
- 3. Outline Plan Requirements.
  - A. A drawing of the proposed Planned Development Area shall be prepared at scale not less than 1' = 50'-0", or as considered appropriated by the Planning Director, and shall show in concept major circulation; generalized location and dimensions of buildings, structures, and parking areas; open space areas, recreation facilities, and other details to indicate the character of the proposed development. The submission shall include:
    - i. A site location map;
    - ii. Map data such as north point, scale and date of preparation;
    - iii. The name of the proposed development, with the words "Outline Plan" in the title block;
    - iv. Boundary lines and acreage of each land use component;
    - v. Existing easements and rights-of-way, including location, width and purpose;
    - vi. Existing land use on abutting and adjacent properties;
    - vii. Other conditions on adjoining land: topography (at 2-foot contour intervals) including any embankments or retaining walls; use and location of major buildings, railroads, power lines, towers and other

- influences; name of any adjoining subdivision plat;
  - viii. Existing streets on and adjacent to the tract, including street name, right-of-way width, walks, curbs, gutters, culverts and drainage ways;
  - ix. Proposed public improvements: streets and to her major improvements planned by the public for future construction on or adjacent to the tract;
  - x. Existing utilities on the tract;
  - xi. Any land on the tract within FIRM Zone A; and/or A-E (the 100-year floodplain) and/or floodway;
  - xii. Other conditions on the tract, including water courses, wetlands, sinkholes, wooded areas, isolated trees six (6) inches or more in diameter, existing structures and other significant features;
  - xiii. Existing vegetation to be preserved and the locations, nature, and purpose of proposed landscaping;
  - xiv. A master plan for types, quantities and maximum square footage allotments for all signs proposed to be placed within the development, including illustrations of proposed sign types;
- B. Miscellaneous: The Planning Director shall inform the applicant of any additional documents or data requirements necessary for Outline Plan approval after the Pre-application Conference. The developer must submit 20 copies of any page of any portion of the plan that exceeds 11 inches by 17 inches in size. If fewer copies than required are submitted, the Planning Director may deem the application to be incomplete and shall not schedule hearing dates until the situation is resolved.
- C. Written Statement of Character of the Planned Development Area: An explanation of the character of the Planned Development Area and the reasons why it has been planned to take advantage of the flexibility of these regulations. The written statement shall include:
- i. Objectives. A specific explanation of how the proposed Planned Development Area meets the objectives of all adopted land use policies which affect the land in question.
  - ii. Ownership. A statement of present and proposed ownership of all land within the project including the beneficial owners of a land trust.
- iii. Scheduling. Timing of proposed development indicating:
    - a. Stages in which the project will be built, including the area, density, use, public facilities, and open space to be developed with each stage. Each stage of development shall be described and mapped; and
    - b. Projected dates for beginning and completion of each stage of land development.
  - iv. Proposed Uses.
    - a. Residential Uses: type, gross area, architectural concepts (narrative or representative illustration), number of units, bedroom breakdown, and proposed occupancy limits for each residential component; and
    - b. Nonresidential Uses (for any mixed-use PDA): specific nonresidential uses, including gross floor areas (GFA), architectural concepts (narrative or representative illustration), and building heights.
  - v. Facilities Plan. Preliminary concepts and feasibility reports for:
    - a. Streets, roadways and bikeways;
    - b. Sidewalks and pedestrian pathways;
    - c. Water supply system;
    - d. Sanitary sewers;
    - e. Stormwater management;
    - f. Public utilities;
    - g. Streetscaping, furniture and lighting
    - h. Landscaping
  - vi. Traffic Analysis. The Planning Director or the City of Fairmont Planning Commission, shall require a study of the traffic impact caused by the proposed Planned Development Area and/or any measures proposed to mitigate that impact. Such study shall be conducted by a licensed traffic or transportation engineer.
4. Development Plan Requirements. The application for Development Plan approval shall include, but shall not be limited to, the following documents:
- A. Such additional information as may have been required by the Outline Plan approval;
  - B. An accurate map exhibit of the entire phase for which Development Plan approval is being requested, showing the following:

- i. Precise location of all buildings to be constructed, and a designation of the specific use or range of uses for each building. Single-family residential development on individual lots need not show precise locations of buildings on each lot, but plans shall show building setback lines and other design constraints;
  - ii. Design and precise location of all streets, sidewalks, curbs, drives, and parking areas, including construction details, street lighting, traffic control devices, signage, centerline elevations, pavement type, pavement design, curbs, gutters, culverts details and any other information required by the City Engineer;
  - iii. Location of all public utility lines and easements, both proposed and existing;
  - iv. A final detailed landscape plan. Tabulation on each separate subdivided use area, including land area, number of buildings, number of dwelling units per acre, type of unit, bedroom breakdown, and limits on occupancy;
  - v. Stormwater management plans including stormwater calculations, location and size of storm lines (both existing and proposed), detention/ retention facilities with construction details. Stormwater management plans are to conform to local, state and federal regulations; and
  - vi. Sediment and erosion control plans per local, state and federal regulations.
- C. If lands to be subdivided are included in the Planned Development Area, a subdivision plat meeting the requirements of a preliminary plat, as modified by the Outline Plan approval, is required where platting is to be proposed concurrent with the Development Plan review and approval process.
- D. Projected construction schedule.
- E. Agreements and covenants which govern the use, maintenance, and continued protection of the Planned Development Area and its common spaces, shared facilities, and private roads.
- F. Guarantee of Performance for Completion of Improvements. A performance bond with corporate surety or other guarantee acceptable to the City of Fairmont shall be provided for all proposed public improvements and shall be executed at time of permit application or platting, whichever comes first. Improvements that must be guaranteed include facilities that shall become public, and may include other facilities or improvements as may be specified in the

Outline or Development Plan approval. If the project is to be built in phases, the bond or guarantee shall be posted prior to the commencement of work on each phase. The bond or guarantee shall specify the time for completion of improvements, and shall be in an amount of one hundred twenty-five percent (125%) of the estimated verifiable cost of the improvements, as determined by the project contractor or engineer, and as approved by the City Engineer.

## 6. REVIEW CONSIDERATIONS

In considering a Planned Development Area Outline Plan, the Planning Director in his report to the City of Fairmont Planning Commission, the Planning Commission in its recommendation to City Council, and the City Council in its decision, shall evaluate the project in light of as many of the following objectives as may be relevant to the specific proposal:

1. The extent to which the Planned Development Area meets the purposes of the Zoning Ordinance, the Comprehensive Plan, and any other adopted planning objectives of the City of Fairmont;
2. The extent to which the proposed plan meets the requirements, standards, and stated purpose of the Planned Development Area regulations;
3. The extent to which the proposed plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to, the density, dimension, bulk, use, required improvements, and construction and design standards and the reasons why such departures are or are not deemed to be in the public interest;
4. The proposal will not be injurious to the public health, safety, and general welfare;
5. The physical design of the Planned Development Area and the extent to which it makes adequate provision for public services, provides adequate control over vehicular traffic and promotes alternative forms of transportation, provides for and protects designated permanent open space, and furthers the amenities of urban ambience, light and air, recreation and visual enjoyment;
6. The relationship and compatibility of the proposed plan to the adjacent properties and neighborhood, and whether the proposed plan would substantially interfere with the use or diminish the value of adjacent properties and neighborhoods;
7. The desirability of the proposed plan to the City of Fairmont's physical development, tax base and economic well-being. At the discretion of the Planning Commission and City Council, special consideration in the form of increased development flexibility may be given to projects that are intended to rehabilitate or

replace dilapidated areas, brownfields, or other areas of general visual or economic blight. Such special consideration shall not be granted to projects intended for construction on lands that consist of sixty percent (60%) or more of greenfield or previously undeveloped lands.

8. The proposal will not cause undue traffic congestion, and can be adequately served by existing or programmed public facilities and services.
9. The proposal preserves significant ecological, natural, historical, and architectural resources to the extent possible.
10. The proposal will enhance the appearance, image, function, and economic sustainability of the community at large.
11. Projects which are designed to a more human scale, support multi-modal transportation options, promote pedestrianism, reserve useful open space, provide significant amenities to residents, and incorporate architectural detailing, massing and scale that is consistent with historical community norms shall have a significant advantage in the review process over those that merely seek to maximize inappropriate forms of density, circumvent customary development standards, or promote a pattern of development that can be generally recognized as "urban sprawl," as defined in the definition section of the Zoning Ordinance. Projects that fail to achieve these objectives will likely result in a recommendation for denial by the Planning Department and/or Planning Commission.
12. The proposal makes reasonable accommodations in housing, recreational amenities, and pedestrian facilities for individuals with disabilities.
13. The proposal dedicates and provides a percentage of the total number of dwelling units to be offered at sale or rental prices deemed affordable to individuals of low and moderate income, as defined by the U.S. Department of Housing and Urban development. Generally, between three to five percent (3% - 5%) of all units should meet this goal.
14. For any PDA containing only residential uses, clustering of units should be utilized (and may be required by the City) in order to preserve meaningful open space and/or recreational amenities for the residents. In addition, such projects shall be required to provide a mixture of different dwelling types and sizes. Examples of dwelling types include townhouses,

row houses, patio homes, zero lot line houses, single-family detached housing, apartments, duplexes, condominiums, etc.

## 7. CHANGES IN THE APPROVED PLANNED DEVELOPMENT AREA

1. Changes Requiring Outline Plan Approval. Changes which alter the concept or intent of the Planned Development Area including but not limited to:
  - A. Significant increases in density;
  - B. Significant changes in the proportion or allocation of land uses;
  - C. Change in the list of approved uses;
  - D. Changes in the locations of uses;
  - E. Changes in functional uses of open space, where such change constitutes an intensification of use of the open space; and/or
  - F. Changes in the final governing agreements where such changes conflict with the approved Outline Plan.
2. Changes Requiring Development Plan Approval. These changes shall include the following:
  - A. Changes in lot arrangement, or addition of buildable lots that change approved density of the development;
  - B. Changes in site design requirements, such as location of required landscaping, signage, building height, architectural character, cube and/or footprint, or other such requirements of the Zoning Ordinance;
  - C. Changes to the internal street system or off-street parking areas;
  - D. Changes in drainage management structures;
  - E. Changes in access to the development site, where such change amounts to an intensification in the traffic patterns of roadways of classification higher than local; and/or
  - F. All other changes not expressly addressed under subsection (h)(1) hereof shall require new Development Plan approval.

## 3.20 MAP AND BOUNDARIES

The neighborhood, district, and corridor boundaries, overlay districts, and other elements of zoning established by this ordinance shall be reflected upon and shown on an electronic map or plat maintained by the City of Fairmont entitled or referred to as Zoning Map, City of Fairmont, West Virginia, duly approved on the date listed on the most recently adopted Zoning Map. The electronic map required

by this ordinance shall be from time to time modified to reflect all subsequent amendments to this ordinance and all changes in the boundaries of any neighborhood, district or corridor or other zoning element which is adopted by the governing body by ordinance. Said map, as amended, shall be available for inspection by the public at all times.

## 3.22 RULES FOR ZONING MAP INTERPRETATION

The following rules shall apply in the interpretation of neighborhood, corridor, district or overlay boundaries and the location of centers shown on the zoning map:

1. Boundaries delineating the centerline of streets, highways, or alleys shall follow such centerlines.
2. Boundaries delineating lot lines shall follow such lot lines.
3. Boundaries delineating the Corporate Limits shall follow such Corporate Limits.
4. Boundaries indicated as following railroad lines shall be midway between the main tracks.
5. Boundaries indicated as following a river or stream shall be mid-stream unless otherwise indicated on the zoning map.
6. Boundaries shown parallel to or extensions of features indicated in this Section shall be construed as such. Distances not specifically indicated on the zoning map shall be determined by the scale of the map.
7. Centers shown at the intersection of streets shall be at the intersection of the street centerlines.
8. Centers shown at parks or other civic spaces shall be at the center of such areas.
9. Where a boundary line divides a lot in single ownership, the rules, requirements and regulations of this ordinance applicable to the most restrictive portion of the lot shall be construed as extending to the entire lot.
10. Where the actual location of existing physical or natural features varies with those shown on the zoning map, or in other circumstances not covered by this Section, the Planning Commission shall be vested with the authority to interpret and determine the boundaries.
11. Whenever any street, alley or public way is vacated, any applicable boundary shall be automatically extended to the center of such vacation and all areas included in the vacation shall then and henceforth be subject to all applicable rules, regulations and requirements.
12. Any area shown on the map as a park, playground, school, cemetery, waterway, right of way or any other public or semipublic use, shall be subject to all applicable rules, regulations and requirements of the neighborhood, district, overlay or corridor in which it is situated.

## 3.23 INDUSTRIAL PARK DEVELOPMENTS

1. Because of the significant impacts certain interior Industrial district uses have on the community in size and/or use, such interior uses shall be permitted only upon review of a Master Plan by the Planning Commission and approval of City Council in accordance with the procedure outlined in [Section 3.19](#) Individual sites with uses permitted by right may be approved administratively in accordance with the approved Master Plan.
  - A. Minimum District Size for New Development: 5 Acres
  - B. Minimum District Setbacks: All Perimeter Yards: 80 feet
  - C. Minimum Interior Lot Size: Lot size may be determined by use and shall be decided upon during the development review process.
2. Platting provisions for new developments.
3. Internal setbacks shall be set during the review process.
  - A. A coherent, interconnecting network of internal public streets shall be designed to accommodate the various uses found within the district.
  - B. Sidewalks shall be constructed along the main streets within the district to provide internal users pedestrian access to external environs.
  - C. Lots and buildings shall be designed so as to establish quadrangles within the District.
4. Building placement.
  - A. All buildings shall front on internal streets.
  - B. Internal front setbacks shall be designed to create steady and even frontage lines.
  - C. Parking areas and private driveways may not encroach into setbacks that abut external public streets. Internal public streets may encroach into setbacks that do not abut public external streets or residential uses up to 40 feet.
  - D. External streets shall be screened in accordance with the Master Plan at the discretion of the Planning Commission.
5. General provisions.
  - A. All buildings shall front on internal streets.
  - B. Internal front setbacks shall be designed to create steady and even frontage lines.
  - C. Parking areas and private driveways may not encroach into setbacks that abut external public streets. Internal public streets may encroach into setbacks that do not abut public external streets or residential uses up to 40 feet.
  - D. External streets shall be screened in accordance with the Master Plan at the discretion of the Planning Commission.

## 4.0 USE STANDARDS

### 4.1 GENERAL REQUIREMENTS

In addition to any special conditions and standards listed in the following subsections all applications for Conditional Use either as a Use Permitted with Conditions or a Conditional Use shall demonstrate that:

1. The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies.
2. The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses. Conditions may be imposed on a proposed Conditional Use to ensure that potential significant adverse impacts on surrounding uses will be reduced to the maximum extent feasible, including but not limited to, conditions or measures addressing:
  - A. Location on a site of activities that generate potential adverse impacts such as noise and glare;
  - B. Hours of operation and deliveries;
  - C. Location of loading and delivery zones;
  - D. Light intensity and hours of full illumination;
  - E. Placement of outdoor vending machines;
  - F. Loitering;
  - G. Litter control;
  - H. Placement of trash receptacles;
  - I. On-site parking configuration and facilities;
  - J. On-site circulation;
  - K. Privacy concerns of adjacent uses.
3. The use can generally be accommodated on the site consistent with any architectural and design standards set forth in the applicable district regulations of this Code, and in conformance with all dimensional, site development, grading/drainage, performance, and other standards for the district in which it will be located.
4. To the maximum extent feasible, access points to the property are located as far as possible, in keeping with accepted engineering practice, from road intersections and adequate sight distances are maintained for motorists entering and leaving the property proposed for the use.
5. The use will be adequately served by public facilities and services. Public facilities and services that may be considered in light of this standard include but are not limited to water, sewer, electric, schools, streets, fire and police protection, and storm drainage.
6. The use provides adequate off-street parking on the same property as the use in compliance with standards set forth in this Code.
7. Any storage of hazardous material that is ancillary to a permitted use or a Conditional Use must meet the following conditions:
  - A. All storage shall be in compliance with all state, federal, and local regulations, particularly Part 11 Health and Sanitation Code of the City of Fairmont.
  - B. Such material shall be listed and made known with the Office of the Chief of the City of Fairmont Fire Department.
8. Unless addressed in the Use Standards, the use will be screened with fencing and/or landscaping in excess of what is required for the district as appropriate, if the use may otherwise result in an adverse impact on adjacent property benefiting from such screening.
9. Conditional Use decisions are made by the Board of Zoning Appeals. In considering the proposed Conditional Use the Board must determine whether all General Requirements and Special Conditions have been met.
10. The Board may impose additional conditions and safeguards deemed necessary.
11. The breach of any condition, safeguard or requirement shall be considered a violation of the Conditional Use approval. The board, following notice to the property owner, shall have the authority to revoke, after a public hearing held in the same manner as the original approval, any Conditional Use if the applicant fails to comply with any of the applicable requirements in this Section or any other applicable sections of this ordinance.
12. Extension of Approval. The Board may permit one (1) six (6) month extension, if applied for in writing by the applicant prior to the expiration of the approval, provided that the Board finds that the extension is warranted due to the circumstances beyond the control of the applicant.
13. No application which has been denied wholly or in part by the Board of Zoning Appeals shall be

resubmitted for a period of one (1) year from the date of the last denial, unless permitted by the Board after a demonstration by the applicant of a change of circumstances from the previous application.

#### 4.2 ADULT ESTABLISHMENTS

1. No such adult establishment shall be located less than 1,000 feet from a school, place of worship, library, day care center, civic building, park, historic district, lot in residential use, lot with residential districting, or other adult establishment as measured from door to front door along the curb line of public streets providing access;
2. All doors, windows, and other apertures shall be located and covered or screened in with opaque glazing to discourage and prevent visibility or viewing of the interior;
3. The maximum floor area of each use shall be 1500 square feet; and
4. No exterior signage, building element, advertisement, display or other promotional material shall be pornographic in nature or convey any such idea or element or relate to specified anatomical areas, as defined in Section 2.2, and shall not be visible from a public right of way or pedestrian walk.

#### 4.3 AUTOMOTIVE/BOAT/HEAVY EQUIPMENT/FACTORY BUILT HOMES, REPAIR, SALES, AND/ OR SERVICE

1. Automotive sales and limited service which is clearly ancillary to the auto sale use in the Neighborhood Mixed Use district may be permitted for passenger vehicles only. Large equipment, factory-built homes and recreational boats sales or service uses are not permitted within this district. Uses shall be subject to the following conditions:
  - A. Buildings shall be oriented to the front of the lot facing the main street;
  - B. Access to and from the site shall be provided using controlled driveway access meeting the requirements of the City of Fairmont. Large curb cuts providing little to no defined driveway access shall be prohibited. Driveways shall be designed so

- C. as to provide the minimum interference with the residential nature of the street;
  - C. Outdoor storage areas shall be located within the side or rear yards and screened from adjacent properties with fencing or with a landscape buffer area;
  - D. Outdoor lighting shall be limited to a maximum height for wall or pole mounted lighting of eighteen (18) feet. All fixtures must be full cut-off fixtures and shielded from adjacent residential properties.
  - E. Outdoor sales areas must be setback a minimum of ten (10) feet from the property line and screened with an appropriate landscape treatment; and
  - F. Exterior noise shall be a factor in determining the appropriateness of this use. All potential adverse noises shall be mitigated as required by the Board of Zoning Appeals.
2. Automotive repair, sales and service in the Main Corridor Commercial district shall be subject to the following conditions:
    - A. Buildings shall be oriented to the front of the lot facing the main street;
    - B. Outdoor sales areas must be setback a minimum of ten (10) feet from the property line and screened with a Type B landscape treatment.
    - C. Exterior noise shall be a factor in determining the appropriateness of this use. All potential adverse noises shall be mitigated as required by the Board of Zoning Appeals;
    - D. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the planning director;
    - E. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties;
    - F. For automobile sales, there shall be a minimum of 6,000 square feet of outdoor display area; and
    - G. Access to and from the site shall be provided using controlled driveway access meeting the requirements of the City of Fairmont.

3. Automotive, boat, heavy equipment and factory-built home sales and service in the Highway Commercial shall be subject to the following conditions:
  - A. Large surface parking lots should be visually and functionally segmented into several smaller lots. The size of any single surface parking lot shall be limited to three (3) acres, unless divided by a street, principal building, or Type A Opaque Screen/Buffer;
  - B. No outdoor public address system shall be permitted which can be heard beyond the boundaries of the property; and
  - C. Access to and from the site shall be provided using controlled driveway access meeting the requirements of the City of Fairmont.

#### 4.4 BARS AND NIGHTCLUBS, AND NEIGHBORHOOD BARS

1. Design. Plans and specifications for exterior design, interior layout, service area and signage must be submitted for review at the time of the application for a Conditional Use Permit and shall comply with all district regulations, including any architectural requirements of this Code; and with the West Virginia Alcohol Beverage Control Administration. Violations and enforcement actions on record at the Alcohol Beverage Control Administration will be considered by the Board of Zoning Appeals.
2. Transparency Requirements. The front facade of the commercial space where the use will be located must meet the transparency requirements for the district in which it is located. All non-conforming building frontage pertaining to the use must be altered to meet the transparency requirements before a certificate of occupancy or business license may be issued.
3. Board of Zoning Appeals Approval. Any approval granted by the Board of Zoning Appeals shall be contingent upon the safe and orderly operation of a bar that does not cause a nuisance or hazard to the area.
4. Conditional Use Permit Hearing Evidence. The Board may consider evidence of public nuisance as determined by the City of Fairmont

Police Department or City Manager at a duly advertised public hearing to review the Conditional Use Permit, which may be revoked if the Board finds the above conditions are not being met.

5. Buffer Yards. The following buffer yard requirements shall apply to all new bar and neighborhood bars:
  - A. Along adjacent property lines for parcels zoned any of the Residential Districts, a Type D Buffer Yard shall be required.
  - B. Along adjacent property lines for single-family dwellings, duplexes, townhouses, or multi-family dwellings not in a mixed-use building and not within a Residential District, a Type C Buffer Yard shall be required.
  - C. Noise Reduction Screening. The Board of Zoning Appeals may also require more substantial screening, such as a solid masonry wall of at least 8 inches in thickness, to help reduce the impact of noise between the bar or neighborhood bar and the adjacent residential land uses. Architectural or engineering style drawings may be required if a more specific Sound Transmission Class (STC) rating of 50 or higher is deemed to be necessary.
    - i. Trees and shrubs do not significantly reduce noise and should not be a substitute for solid walls.

#### 4.5 BED AND BREAKFAST INNS

1. Single family homes used as bed and breakfast inns shall have a minimum heated floor area of 2,500 square feet and shall meet the definition of a bed and breakfast outlined in Section 2.2.
2. Single family homes used as bed and breakfast inns may not subdivide existing rooms into less than 200 square feet.
3. The bed and breakfast inn shall be owner-occupied.
4. The structure shall be virtually indistinguishable from the surrounding houses.
5. Meals shall be served to overnight guest only.
6. Cooking facilities within bedrooms is prohibited.

7. Parking shall be provided using on street parking, if available, or off-street parking within the rear of the home. One space per guestroom and one per employee must be provided.
8. Not more than two identification signs with a total area of two (2) square feet may be used. Signs shall not be internally illuminated.
9. All bed and breakfast inns shall comply with the provisions of West Virginia Code 29-3-16c Safety Standards for Bed and Breakfast Establishments.
10. Employment may not exceed two (2) full time employees not including the owner.

#### 4.6 CEMETERIES

1. Brick or stone walls between one and one-half (1.5) and four (4.0) feet are permitted.
2. Wood or wrought iron fences between two (2.0) and eight (8.0) feet are permitted.
3. Setbacks from all street right of way and adjacent properties to a wall or grave shall be a minimum of eight (8) feet.
4. One sign per road frontage may be permitted. Sign size is based on one (1) square foot of sign per linear foot of road frontage to a maximum of forty (40) square feet per frontage.
5. Access to the site must be provided using paved driveways clearly defined and designed so as not to interfere with the residential character of the neighborhood.
6. Off street parking areas must be paved and screened from view using a Type B screen type.

#### 4.7 DAY CARE BUSINESSES

1. Child Care Facilities or Centers
  - A. Licensing and Inspections. All child care providers, be they state or privately operated, shall obtain a license from the WV Secretary of State and the DHHR. Each facility shall also be inspected by the City Building Inspector and Fire Marshal to ensure the safety of both children and employees.
  - B. Indoor Space. A center shall provide a minimum of thirty- five (35) square feet of useable indoor space per child and any rooms and/or areas that have not been approved for the use of children shall be made inaccessible. No activity space may

be created in the basement of a structure unless expressly approved by the Fire Marshal.

- C. Outdoor Space. An outdoor activity area must be provided by the center allowing a minimum of seventy-five (75) square feet of space per child. Should the minimum space not be available, a rotating outdoor activity schedule shall be established to meet the minimum requirements and ensure that each child be afforded outdoor playtime every day.
  - D. Outdoor Activity Areas. The outdoor activity area noted above shall be located in the rear yard or side yard and must be fenced. Fences shall be a minimum of four (4) feet in height. All play equipment shall be located in the fenced area. Front yards shall not be used as playground areas.
  - E. Public Parks. Parks may be used to meet outdoor activity requirements if contiguous to the facility.
  - F. Landscaping and Fencing. Decorative fencing or a vinyl coated chain link fence screened with landscaping shall be provided when the fence is visible from the street.
2. Day Care Home
    - A. Licensing and Inspections. All day care providers, be they state or privately operated, shall obtain a license from the WV Secretary of State and the DHHR. Each facility shall also be inspected by the City Building Inspector and Fire Marshal to ensure the safety of both clients and employees.
    - B. Signage Prohibited. There shall be no outdoor advertising or signage permitted for a day care home.
    - C. Home Occupation Classification. All day care homes shall be considered a home occupation and are subject to the rules and regulations as stated in Section 4.17.
    - D. Parking Restriction. A day care home is not permitted to have additional parking beyond the normal requirements of a residential district.

#### 4.8 RELIGIOUS USES

1. An existing residential structure converted to a church or place of worship shall:
  - A. Retain its residential character, appearance and driveway;
  - B. Is permitted one (1) sign. Sign size is permitted based on the linear frontage of the property at a ratio of one (1) square foot of sign size for every linear frontage of property to a maximum of forty (40) square feet.
  - C. Not create off street parking out of any portion of the required front, side or rear yard setbacks. Any allowable parking shall be situated towards the interior of the lot and shall be paved.
  - D. Not provide for any significant alteration to the exterior of the structure.
1. New construction shall:
  - A. Not interfere with the quiet use and enjoyment of the neighboring properties as a result of noise, light, or increased traffic;
  - B. Parking must be screened using a Type B screen type;
  - C. Exterior lighting is limited to eighteen (18) feet in height and must be full cut-off fixtures oriented away from adjacent residential lots;
  - D. Building height shall be as permitted for residential buildings within the district.

#### 4.9 CIVIC USES, COLLEGE / UNIVERSITY, AND PRIMARY / SECONDARY SCHOOL

1. Intent. A new or redeveloped principal civic use, college / university use, or primary / secondary school use building shall be regulated in such a way as to permit flexibility from the development standards of the zoning district in which it is located. This is to ensure that open space and principal structure are designed to maximize public benefit, consider the context of the site, and to create a sustainable landmark building that clearly demonstrates its significance to the community.
2. General Standards. A new or redeveloped principal civic use, college / university use, or primary / secondary school use building located on a site totaling equal to or greater than ½ an acre (21,780 sq ft) is subject to major site plan

review by the Planning Commission. A major site plan review shall occur after any necessary Conditional Use Permit is obtained and additional conditions set by the Board of Zoning Appeals. Sites less than ½ an acre shall be subject to the civic use development standards for the zoning district in which they are located. As part of major site plan review, the Planning Commission must evaluate a proposal for a civic building against the following design guidelines:

- A. A civic building should be located and designed to provide a landmark appropriate to its importance and setting, aiding legibility of the wider area.
  - B. A civic building should physically define public space and thoroughfares as places of shared use.
  - C. A civic building should be designed to encourage public use and activity within and nearby its site.
  - D. A civic building should communicate its importance and function through architectural cues and attractive signage.
  - E. A civic building should be built with high quality, durable materials.
  - F. A civic building should incorporate sustainable building and landscape practices.
  - G. A civic building should be noteworthy in itself and in relation to its surroundings, contributing to an attractive setting for users, customers, and the wider public.
  - H. A civic building should promote public spaces and access routes that are attractive and accessible for all users.
  - I. A civic building should build upon and improve community character by responding to and reinforcing locally distinctive patterns of development, landscape, and culture.
3. Exterior Materials. The following exterior facade materials are prohibited on civic buildings:
    - A. Exterior insulating finish systems (EIFS).
    - B. Vinyl siding.
    - C. Reflective wall surface material with a Visible Light Reflectance (VLR) of greater than 15%.
  4. Accessory Structures. Building(s) incidental to

the principal structure shall be behind a line a minimum of twenty (20) feet from the front facade of the structure, and if more than one, shall be arranged to create secondary gathering spaces within the lot.

5. Parking. Parking shall be located towards the interior of the lot. Parking may not occur within a front setback or corner side setback.
6. Setbacks. Front setbacks may be altered to preserve views or significant trees.
7. Existing Residential Structure Conversion. Any existing residential structure redeveloped into a library, museum, or art gallery or similar civic use shall be subject to Article 4.19.

#### **4.10 COMMERCIAL USES EXCEEDING 30,000 SQUARE FEET**

1. Uses generating an additional 8,000 or more car trips a day shall be required to improve adjoining street or intersection infrastructure as determined by the City and/or West Virginia Division of Highways.
2. Parking shall be to the rear and the side of any building or structure.
3. Significant trees and stands of trees within the required setbacks shall be preserved.
4. Front setbacks may be altered (increased) to preserve significant trees and stands of trees.

#### **4.11 CONVENIENCE STORES/AUTOMOBILE FUELING STATION**

1. Gasoline Pumps. Gasoline pump and parking within Neighborhood Commercial Districts shall be located in the rear or side yards;
2. Outdoor Merchandise. No outdoor display of merchandise or products shall be permitted;
3. Lighting. Lighting shall be full cut off fixtures and oriented away from surrounding residential uses; and
4. Traffic. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties.
5. Accessory Structures and Equipment. All ancillary equipment or facilities (gasoline pumps, car washes, etc.) shall be to the side or rear of the principal building with the following exceptions:
  - A. Electric vehicle charging stations shall be permitted in any yard so long as they are

setback at minimum five (5) feet all property lines.

6. Buffer Yards. The following buffer yard requirements shall apply to all new convenience stores with fuel sales:
  - A. Along adjacent property lines for parcels zoned any of the Residential Districts or adjacent to any single-family dwelling, duplexes, townhouses, or multi-family dwellings not in a mixed-use building and not within a Residential District, a Type E Buffer Yard shall be required.
  - B. Along adjacent property line for Child Care Facilities, Child Care Centers, or Primary / Secondary Schools, a Type E Buffer Yard shall be required.

#### **4.12 COUNTY CLUB**

1. A country club building shall form a central gathering place for a neighborhood.
2. Parking shall be to the rear and/or side of the building(s).
3. The principal building shall face the fronting street and shall not be setback a distance that inhibits pedestrian access.

#### **4.13 DRIVE-THROUGH FACILITIES**

1. Service Windows. Drive-through windows must be located within the side or rear of the building and shall be limited to one (1) lane.
2. City Center District. Uses in the City Center district with side-loaded drive-through windows are not permitted. Only rear loaded drive through windows may be permitted.
3. Vehicle Stacking. A vehicle stacking space shall be the same dimensions as parallel parking space. Vehicle stacking for a drive-through window uses shall be located outside of and physically separated from the right-of-way of any street. This area shall not interfere with the efficient internal circulation of traffic on the site, adjacent property, or adjacent street right-of-way. All drive-throughs shall have a minimum of 6 stacking spaces.
4. Buffer Yards. Drive-through lanes, which can never be less than the required stacking space in length, shall have the following buffer yard requirements:
  - A. Drive-through window facilities shall be

screened from off-site view from a street right-of-way by a Type B Buffer Yard.

- B. Drive-through lanes along an open alley shall have a Type A Buffer Yard.
  - C. Drive-through lanes along a shared property line shall have a Type C Buffer Yard.
  - D. Drive-through lanes adjacent to Residential Districts shall have a Type D Buffer Yard, except for the General Residential district which shall require a Type E Buffer Yard.
- 5. Signage. Two (2) menu boards shall be permitted as part of a drive-through facility.
  - 6. Speakers and Noise. Audible electronic devices such as loudspeakers, automobile service order devices, and similar instruments must not be located within 50 feet of any lot used for dwelling purposes or a residential district zoned lot except for Recreation, where practicable. On sites that do not allow for such separation, specific design considerations must be employed to effectively buffer adjacent residential properties from the noise generated from such devices.

#### 4.14 MOTELS/HOTELS/INNS, MEDICAL INSTITUTIONS, AND, AND ENTERTAINMENT USES

- 1. Shall be oriented to the front of the lot facing the main street;
- 2. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties, as determined by the Board of Zoning Appeals;
- 3. Noise shall be of such a nature so as not to interfere with the quiet use and enjoyment of surrounding properties. Additional information regarding projected noise levels and mitigations measures such as a noise analysis prepared by a professional qualified to complete such a study may be required by the Board of Zoning Appeals;
- 4. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties; and
- 5. In Neighborhood Commercial Districts and the Recreational District, parking shall be in a parking garage, underground, or the side or rear yard of the principal structure.

#### 4.15 GARAGE SALES

- 1. Temporary sales events as defined within Section 2.2. No more than three (3) events are permitted within any twelve (12) month period for each individual and property address.
- 2. Sales areas must be contained within the individual's property and may not encroach into a public right of way.
- 3. Sales events shall not be permitted to last more than three (3) days per event.
- 4. Tents may be used during the event subject to subsection (2) above and must be removed immediately following the conclusion of each event.
- 5. All items must be removed from the exterior of the premise at the end of the sales event.

#### 4.16 ACCESSORY USES AS PRINCIPAL USES

Accessory structures and uses shall be permitted in the Education district provided they meet the following conditions:

- 1. The structure or use is customarily and clearly incidental and subordinate to the permitted or conditionally permitted principal use located in the same district.
- 2. The structure shall not be used for living or sleeping quarters.

#### 4.17 HOME OCCUPATIONS; MINOR AND MAJOR

- 1. General Standards: No home occupation shall be permitted that:
  - A. Changes the outside appearance of the dwelling or is visible from the street;
  - B. Creates a hazard to person or property, results in electrical interference, noxious fumes, and excessive noise or becomes a nuisance for the neighborhood;
  - C. Results in any outside storage or display of material, wares, inventory or merchandise;
  - D. Results in a non-resident employee contracted, employed or otherwise hired, on the premises;
  - E. Makes use of any accessory building in which the area used for the Home Occupation to exceeds the amount of area that would be permitted to be used by the home occupation in the principal residence as listed below;

- F. Occupies more than twenty-five percent (25%) of the total square footage living space of the home (living space shall not include any garage, attic, and basement). The applicant shall provide a sketch showing the entire floor plan, the total square footage of living space, and the area thereof to be utilized for the conduct of the home occupation;
  - G. Results in retail sales from the premises other than online sales; and
  - H. Is open to the public before 8:00 a.m., nor later than 5:00 p.m, excluding tutoring services which may be permitted to continue until 9:00 pm.
2. All home occupations shall be subject to and comply with all City Building, Fire, Life Safety, and all other applicable codes and regulations.
  3. All applicants must sign a Home Occupation Affidavit as provided for by the Planning Department.
  4. All home occupations shall be subject to inspection by the Building Inspector to determine compliance with the City Building, Fire, Life Safety and all other applicable codes and regulations.
  5. All home occupations shall be subject to all City business licensing requirements and to all City business and occupation tax filing and payment requirements.
  6. Minor Home Occupations. These are occupations that by nature generate little or no traffic, require a minimum amount of parking and will not result in the increased use of public services in excess of what is normal for an exclusive residential use. Minor home occupations may be permitted in residential districts subject to the General Standards for home occupations outlined above and the following:

Minor home occupations may be but are not limited to:

- A. Dressmaking, sewing, and tailoring, provided that no laundry service, pressing or cleaning is done on the premises;
- B. Painting, sculpting, writing;
- C. Telephone answering;
- D. Home crafts such as model making, rug

- weaving, wood working, and ceramics; not to include cabinet making or furniture refinishing;
  - E. Tutoring for not more than one student at a time;
  - F. Computer programming;
  - G. Architectural, engineering, drafting or graphic services.
  - H. Musical or artistic instruction for not more than one student at a time;
  - I. Accounting services;
  - J. Offices for contractors, including masonry, plumbing or painting provided that there is no on-site storage of materials;
  - K. Internet based retail services where customers are not coming to the home;
  - L. Any other similar use as determined by the Planning Director.
7. Major Home Occupations. These are occupations that by nature generate additional traffic, require parking, and the use of additional public services. Major home occupations may be permitted in residential districts. Conditional Use major home occupations include but are not limited to:
    - A. Law offices;
    - B. Barbershops or beauty salons with a single chair, or single station tanning parlors;
    - C. Insurance offices;
    - D. Printing services;
    - E. Photographic services; and
    - F. Similar uses in nature as determined by the Planning Director.

#### 4.18 FAMILY, FUNCTIONAL AND FACTUAL EQUIVALENT

1. Determination. In determining whether or not a group of unrelated individuals comprise a functional and factual family equivalent, a Conditional Use Permit petition will be presented before the Zoning Board of Appeals, which will consider, among other things, the following factors:
  - A. Whether the occupants share the entire dwelling unit or act as separate roomers.
  - B. Whether the household has stability akin to a permanent family structure. The criteria used to determine this test may

include the following:

- i. Length of stay together among the occupants in the current dwelling unit or other dwelling units.
  - ii. The presence of minor, dependent children regularly residing in the household.
  - iii. Proof of sharing expenses for food, rent or ownership costs, utilities, and other household expenses.
  - iv. Common ownership of furniture and appliances among the members of the household.
  - v. Whether the household is a temporary living arrangement or a framework for transient living.
  - vi. Whether the composition of the household changes from year to year or within the year.
  - vii. Any other factor reasonably related to whether or not the group of persons is the functional equivalent of a family.
2. Approval. The Conditional Use Permit shall only be valid so long as the conditions considered above are maintained and consistent, and if the sharing of a dwelling unit in this nature does not cease for more than 12 months as is consistent with other Conditional Uses.
- A. This approval shall apply to those already living in or pursuing to live in the dwelling unit together at the time of the application apart from minors or dependents of the adults dwelling there which may move in later or for new adults which are not dependents of the current occupants which are newly related by marriage, adoption, or other legal means after the approval of the Conditional Use Permit.
3. Non-qualifying Groups. A group of individuals living in the same dwelling unit shall be presumed not to be a “functional family unit”, as defined above, if such dwelling unit contains five or more unrelated persons whose association is temporary or seasonal in character or nature or a group whose sharing of a dwelling unit is merely for convenience and economics.
4. College Students. A group of individuals living in

the same dwelling unit shall be presumed not to be a “functional family unit”, as defined above, if such dwelling unit contains three or more college students over the age of sixteen years.

- A. A college student is a person who attends, at least half time, any college, university, or other institution authorized to confer degrees by the State of West Virginia.
  - B. For the purpose of this presumption, dependent children of any other member of the household shall be excluded in calculating the number of college students in the household.
5. Rebuttal. The presumptions set forth in subsections 3 and 4 of this definition may be rebutted by sufficient evidence of the characteristics set forth in subsection 1 of this Use Standard.

#### 4.19 LIBRARIES, MUSEUMS AND ART GALLERIES

An existing residential structure converted to a museum, library or art gallery shall:

1. Retain its residential character, appearance and driveway;
2. Be permitted one (1) sign. Sign size is permitted based on the linear frontage of the property at a ratio of one (1) square foot of sign size for every linear frontage of property to a maximum of 40 square feet;
3. Not create off street parking out of any portion of the required front, side or rear yards. All parking shall be situating towards the interior of the lot. Parking must be screened using a Type B screen type;
4. Not provide for any significant alteration to the exterior of the structure;
5. Not interfere with the quiet use and enjoyment of the neighboring properties as a result of noise, light or increased traffic;
6. Exterior lighting is limited to eighteen (18) feet in height and must be full cut-off fixtures oriented away from adjacent residential lots; and
7. Building height shall be as permitted for residential buildings within the district.

**4.20 LIGHT MANUFACTURING**

Within any City Center, light manufacturing shall be subject to the following performance standards.

1. Air Pollution. Manufacturing processes emitting odor, dust, fumes, smoke or other pollutants shall not be permitted.
2. Vibration. Except in temporary instances during site construction work, the maximum permitted vibration from any cause shall not exceed the following, when measured at the lot line:

4.20.2 Maximum Permitted Vibrations	
Frequency (Cycles per second) 0008	Displacement Inches
10 and below	.0008
10 - 20	.0005
20 - 30	.0003
30 - 40	.0002
40 - 50	.0001
50 and above	.0001

3. Radiation. Research operations shall cause no dangerous radiation at any property line and shall conform to all federal, state and/or local regulations and standards.
4. Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air or water, and the disposal of radioactive wastes, shall conform to all federal, state and/or local regulations and standards.
5. Electromagnetic Interference. Industries shall emit only that amount of unshielded spurious electromagnetic radiation as is necessary for the conduct of their operations. Federal Communications Commission requirements shall govern maximum radiation which tends to interfere with meaningful signals and all such emissions shall conform to all federal, state and/or local regulations and standards.
6. Water Pollution. No effluent shall be discharged into any stream. Discharge into the City of Fairmont sewer system shall be as approved by the City Engineer and the Director of Public Works and shall conform to all federal, state and/or local regulations and standards.
7. Industrial Waste. All industrial waste shall be treated and disposed of in such a manner as to comply with all federal, state and/or local regulations and standards.

8. Storage Requirements. No outdoor storage of raw materials or component parts.

**4.21 LIMITED VIDEO LOTTERY**

1. Establishments that offer or provide limited video lottery regulated under the provisions of the Limited Video Lottery Act, West Virginia Code §29-22B-101 et seq. are permitted as a conditional use in the City Center and Highway Commercial districts, provided that any such establishment that offers video lottery shall not be located within 1,500 feet of any residential zone, school, church or place of worship, park, community center or facility, recreation center or facility, public building or public arena, or any other similar structure or any other structure which houses an establishment that offers or provides limited video lottery as measured in a straight line from the nearest point of the wall of the establishment offering limited video lottery to the nearest property line of any residential zone, school, church or place of worship, park, community center or facility, recreation center or facility public building or public arena, or any other similar structure or any other structure which houses an establishment that offers or provides limited video lottery.
2. No establishment may be approved for the conditional use to offer or provide limited video lottery until such establishment has been in operation as a restaurant lounge under the provisions of this Ordinance for a period of one (1) year.
3. No establishment may be approved for the conditional use to offer or provide limited video lottery when such establishment is located in an approved Historic district.
4. All exterior signage and design of the establishment must be approved by the Planning Department.

**4.22 MIXED USE BUILDINGS AND LIVE- WORK UNITS**

1. Mixed-use buildings within the NR district are limited to main arterial street frontages only.
2. Residential driveway character should be maintained.

3. No outdoor sales or display is permitted in the front or side yards.
4. All mixed-use buildings shall have at least two occupiable stories with at least fifty (50) percent of the habitable area of the building dedicated to residential use. The remainder of the building may be used for neighborhood commercial uses as permitted within the district.
5. New construction, additions, and renovations, rehabilitations, or remodels of existing structures shall meet all requirements of this Zoning Code, including all miscellaneous requirements provided by Section 5.2, 5.4, and 5.5 of this Zoning Code.

#### 4.23 MOBILE HOME PARKS WITH MORE THAN 24 SPACES

1. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the Board of Zoning Appeals;
2. Noise shall be of such a nature so as not to interfere with the quiet use and enjoyment of surrounding properties.
3. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties.
4. Other conditions which the Board of Zoning Appeals may deem warranted under the particular or unique circumstances of the situation necessary to meet the contour of the land and to protect the quiet use and enjoyment of surrounding properties.
5. Shall be subject to submission, review and approval of a site plan.
6. Shall provide improved active open space based upon a ratio of one-half (½) acre for each twenty-five (25) spaces.

#### 4.24 MOBILE VENDING

1. Operators or owners of a mobile vending operation must obtain a business license from the State of West Virginia and the City of Fairmont.
2. Operators must have all appropriate permits from the Marion County Health Department, City of Fairmont Building Department, and Fire Department.

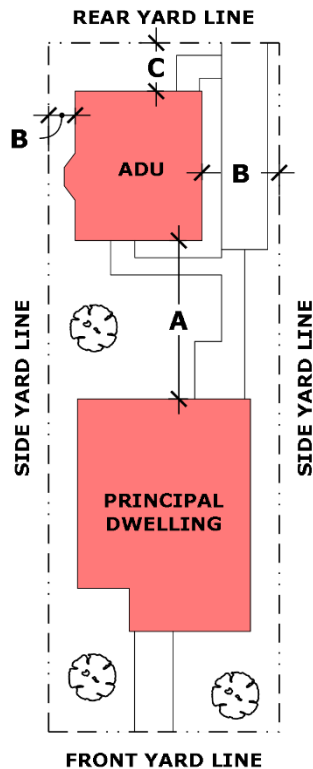
3. Operators/Owners of mobile vending operations must have the property owner's written consent prior to setting up their business on or within said property.
4. Mobile vending vehicles must be parked in a legal manner and business operations shall be conducted only to pedestrians. The minimum number of parking spaces required for the permanent business location must be maintained.
5. No service to the public shall be made from the street side of the vehicles parked within an approved-on street parking space.
6. Mobile vending carts, trailers, and vehicles, and similar apparatus must be removed from the premises at the close of business every evening, with the following exception:
  - A. Mobile vending carts, trailers, vehicles, and similar apparatus may remain on the premises if the premises are being used for a multiday event and has an approved Special Event Permit for the dates in which the mobile vending will remain on site.
7. Mobile vending carts, trailers, and vehicles, and similar apparatus must be designed and built meeting normal industry standards and uses in a safe manner as determined by the City of Fairmont.
8. Mobile vending operations must not obstruct the safe ingress/egress or ADA accessibility within parking areas, sidewalks, or driveways.

4.25 ACCESSORY DWELLING UNIT

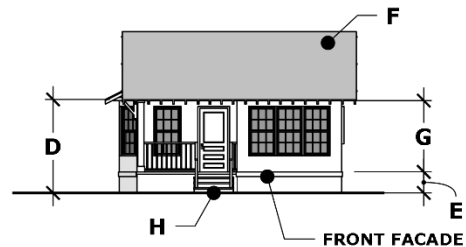
1. Accessory dwelling units (ADUs) are an accessory structure to single-family detached, single-family duplex, and single-family attached (townhouse) units on their own lots with no other principal structures on the same lot. Accessory dwelling units may be entirely standalone, part of a detached garage, or part of a structure used for a Home Occupation.

2. Development Requirements

Lot		
-	Lot coverage (max)	See the Zoning District Development Standards
Setbacks		
A	Front Yard (min)	20' from principal structure <sup>A</sup>
B	Side Yards (min)	5' <sup>A</sup>
C	Rear Yards (min)	5' <sup>A, B</sup>

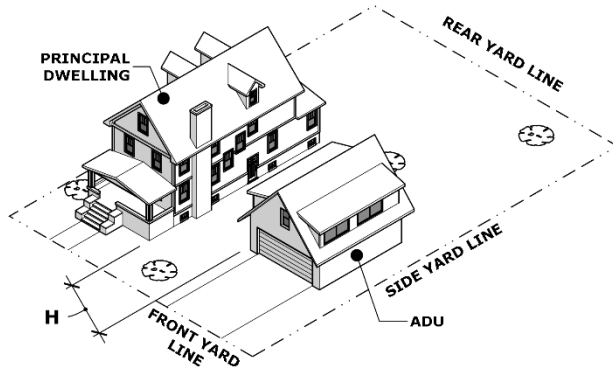


Building Size		
-	ADU Square Footage (max) (does not include area dedicated for the use as a garage.)	No more than 50% of the gross floor area of the principal dwelling unit. <sup>C</sup>
Building Height		
D	Building Height, as an Accessory Building (max)	2 stories / 25' but not to exceed the number of stories of the principal structure.
E	Finished Floor Height (min/max)	0' / 4' <sup>D</sup>
F	Roof Slope (min)	4/12
Transparency		
G	Ground Floor Transparency, Front Facades (min)	20% <sup>F</sup>
-	All Other Facades (min)	15%
Building Orientation and Pedestrian Access		
H	Main entrance location	Facing the principal dwelling unit <sup>E, F</sup>



3. Supplemental Regulation

- A. Location. Accessory dwelling unit structures are only permitted to be built in the rear yard with the following exemption:
  - i. An ADU meets the setback requirements within the zoning district where it is located for a single-family dwelling and shall at minimum have a side yard (dimension H in the diagram below) between the principal dwelling and the ADU that is twice the required with for single-family dwellings in that district.



- B. Required Rear Yard. If the ADU is attached to a garage, all regulations which pertain to garage setbacks also apply to the ADU. See Article 2.3 Measurements, Article 3 Zoning Districts, Article 4 Use Standards, and Article 5 Site Standards. If the required yards or setbacks are different, the stricter requirement shall always apply.
- C. Gross Square Footage. For an ADU attached to a detached garage (not attached to the principal dwelling), the square footage of the garage shall not count toward the maximum square footage of the ADU.
- D. Finished Floor Height. This applies to ADU's with living space on the first floor and shall not apply to ADU's which are solely on an upper story of a garage.
- E. Front Façade. The ADU may be built so that Front Façade faces the side or rear yard instead of the rear facing of the principal structure if it meets the following requirements:
  - i. No frontage element, such as a porch or stoop, may encroach upon the required side yard of an ADU.
  - ii. The Front Façade may only face the rear yard line if it abuts an improved alley.
- F. Transparency Exemptions for Garage Apartments. If the ground floor contains a vehicular entry, the area of the vehicular entry is subtracted from the calculated area of the ground floor façade for transparency requirements.
- G. Number. No more than one (1) accessory

- dwelling unit shall be permitted on each parcel.
- H. Garage Conversions. When converting an existing detached garage into an ADU or renovating existing garage space in a garage apartment structure into space for the dwelling unit:
  - i. All off-street parking requirements must still be met for the property and,
  - ii. The total square footage dedicated to living space for the ADU cannot exceed the square footage requirements set forth in the development requirements for ADU's.
  - iii. If the existing structure does not meet the setback requirements set-forth above, the applicant must obtain a Conditional Use Permit from the Board of Zoning Appeals before being issued a Building Permit to ensure there is no negative impact upon nearby land uses or to the prevailing development pattern of the neighborhood.
- I. Internal Stairwell. An internal stair which is separated from the garage by partition walls with a ground level landing or foyer of less than 64 square feet shall be exempt from the following:
  - i. Gross square footage
  - ii. Finished floor height
  - iii. Ground floor transparency for an upper story only ADUs
- J. Separation of Principal Structure and ADU. No principal dwelling unit or ADU may be connected via a deck, porch, patio, breezeway, or similar structure and must maintain a physical separation of ten (10) feet at minimum between any such elements attached to the principal dwelling unit to any such elements attached to the ADU with the following exception:
  - i. A stoop, as described in Article 2.3 Measurement, may encroach upon the required separation as if it was

a required side yard.

- K. Prefabricated or Factory Built Housing. If the structure is prefabricated offsite or factory built, the structure must meet the requirements of Factory Built Housing within this zoning code. The ADU must also meet the requirements of the International Residential Code or equivalent adopted by the City of Fairmont. ADUs that are 400 gross square feet or less must also meet the requirements of Appendix Q from the building code.

#### 4.26 NEIGHBORHOOD DEVELOPMENT STANDARDS

All new neighborhoods greater than 5 acres in size shall comply with the following general design provisions:

1. All neighborhoods shall have an identifiable center and edge;
2. Edge lots are readily accessible to the center;
3. Housing types are mixed and in close proximity to one another;
4. Street networks are interconnected and blocks are small;
5. Civic buildings, churches, if any, are given prominent sites throughout the neighborhood;
6. Each neighborhood shall contain, as its central focus, at least one square or park no smaller than 10,000 square feet within general walking distance of the geographical center of the neighborhood as determined by the Planning Department; and
7. No portion of the neighborhood shall be further than 600 feet from a park, square or other formal open space.

#### 4.27 OFFICE RETAIL OR SERVICE USES

1. In the NMU district:
  - A. Commercial office, retail, or service uses are a use permitted by right if they do not exceed 2,500 square feet in total floor area and are not expressly excluded from the district.
  - B. Existing commercial buildings where the office, retail or service area exceeds 2,500 square feet are a permitted use with conditions. These buildings may not be

expanded unless it is to add a residential component thereby creating a mixed use building as defined by this ordinance and requiring conditional use approval.

- C. New commercial office, retail, or service uses not exceeding 2,500 square feet in total first floor area and 5,000 square feet in total floor area are permitted as a conditional use.
2. In the City Center: In general, office, retail, or service, not exceeding 30,000 square feet, which are designed and/or operated to service the daily needs of the residents of the surrounding neighborhoods and provide workplace opportunities for the community are permitted unless otherwise noted.
3. Office, retail or service use in excess of 2500 square feet first floor and 5000 square feet total floor area (new construction).
  - A. Hours of operation shall be restricted to 8:00 a.m. to 10:00 p.m.;
  - B. Shall be oriented to the front of the lot facing the main street;
  - C. Parking shall be located in the rear or side yards;
  - D. No outdoor display of merchandise or products shall be permitted;
  - E. Lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the planning director;
  - F. Traffic flow shall be patterned in such a manner so as not to interfere with the quiet use and enjoyment of surrounding properties;
  - G. Other conditions which the Board of Zoning Appeals may deem warranted under the particular or unique circumstances of the situation necessary to meet the contour of the land and to protect the quiet use and enjoyment of surrounding properties;
  - H. Shall be subject to submission, review and approval of a site plan.
4. In the Education district, retail and service establishments, which do not occupy more than 10,000 square feet of floor space and whose primary customers are students or faculty of a college, university or institution of higher learning shall be permitted by right.

#### 4.28 OUTDOOR STORAGE (INCLUDING OUTDOOR DISPLAY AND SALES USES)

1. All outdoor sales or display of products (including automobile and lumber yard sales) shall be setback twenty (20) feet from the front property lines. Large surface parking lots should be visually and functionally segmented into several smaller lots. The size of any single surface parking lot shall be limited to three acres, unless divided by a street, principal building, or Type A Opaque Buffer.
2. A Type B Semi-Opaque Screen shall be provided around the perimeter of all outdoor sales areas.
3. All outdoor storage areas shall be located in the rear yard only. Only outdoor areas for sales may be permitted within the front yard subject to (1) above.
4. Fences visible from the street shall be a maximum of eight (8) feet in height, shall be decorative, and shall be made of wood, wrought iron, or similar material. Fences not visible from the street shall be a maximum of eight (8) feet in height and may be constructed of another durable material.

#### 4.29 PORTABLE STORAGE CONTAINERS

1. Only one (1) portable storage container per property is permitted.
2. Portable storage containers must not remain at a property in any zoning district in excess of thirty (30) days within one calendar year.
3. Portable storage containers associated with construction at a site where a building permit has been issued are permitted for the duration of construction and shall be removed from the site within fourteen (14) days of the end of construction.
4. Portable storage containers shall be utilized only for the storage, loading, and unloading of personal property belonging to the property owner or lease holder.
5. No construction equipment, building materials, hazardous or flammable substances may be stored inside any container unless it is being used according to subsection (3) above.
6. Portable storage containers shall not be utilized for the purpose of storing materials, equipment or merchandise related to a home occupation or otherwise used for commercial purposes.

7. No portable storage container shall be located on a public right-of-way or public property, unless the permit holder is the public entity on whose property or right-of-way the portable storage container will be located.

#### 4.30 RECREATIONAL FACILITIES

1. All recreational facilities shall be treated as parks in design and landscaping. All structures associated with a recreational facility shall be located toward the perimeter of the lot.
2. Recreational facilities are encouraged to be built adjoining school campuses, parks, greenbelts, parkways, greenways, or waterfronts.
3. Parking shall be located behind structures, or along the perimeter of the lot and shall be in accordance with Section 5.4.

#### 4.31 RESTAURANT WITH ALCOHOL SALES

1. Hours of Operation. The permitted hours of operation for a restaurant and restaurant lounge are from 6:00 a.m. to 1:00 a.m.
2. Uses must meet the definition of restaurant with alcohol sales as provided in Section 2.
3. WV ABCA. The applicant must be licensed and in good standing with the West Virginia Alcohol Beverage Control Administration. Violations and enforcement actions on record at the Alcohol Beverage Control Administration will be considered by the Board of Zoning Appeals.
4. Board of Zoning Appeals. Any approval granted by the Board of Zoning Appeals shall be contingent upon the safe and orderly operation of a bar that does not cause a nuisance or hazard to the area. The Board may consider evidence of public nuisance as determined by the City of Fairmont Police Department or City Manager at a duly advertised public hearing to review the Conditional Use Permit, which may be revoked if the Board finds the above conditions are not being met.
5. Portion of Alcohol Sales. Food and non-alcoholic beverages must comprise a minimum of sixty percent (60%) of total gross sales of all food and drink items in each calendar month.
6. Seating. At least thirty percent or more of the indoor public space of the restaurant must be seating area with tables, countertops, or similar

apparatuses to permit for the consumption of food and drink by the public.

7. Buffer Yards. The following buffer yard requirements shall apply to all new restaurants with alcohol sales:
  - A. Along adjacent property lines for parcels zoned any of the Residential Districts, a Type D Buffer Yard shall be required.
  - B. Noise Reduction Screening. The Board of Zoning Appeals may also require more substantial screening, such as a solid masonry wall of at least 8 inches in thickness, to help reduce the impact of noise between the bar or neighborhood bar and the adjacent residential land uses. Architectural style drawings may also be required if a more specific Sound Transmission Class (STC) rating of 50 or higher is deemed to be necessary.
    - i. Trees and shrubs do not significantly reduce noise and should not be a substitute for solid walls.
8. Financial Reporting.
  - A. Alcohol Revenue at Time of Sale. The licensee and/or the employees of the establishment shall, at the time of each sale or at the time of payment therefor, record the amount of revenue derived from the sale of beer and alcoholic beverages separately from the amount of revenue derived from the sale of food and non-alcoholic beverages.
  - B. Monthly Revenue Records. For each calendar month, the licensee shall maintain and preserve accurate and adequate records including those required by subsections hereof, to prove compliance to the City's Finance Director, and shall make all records available for review and audit promptly upon request by said Finance Director. The records for each month shall be preserved for not less than twenty-four months.
  - C. Quarterly Reporting. Quarterly, the licensee shall send to the City Finance Director summaries showing the amount of revenue derived from beer and/or alcoholic beverages versus the amount

derived from the sale of food and non-alcoholic beverages.

#### 4.32 MANUFACTURED HOME SALES AND SERVICES

1. Buffer Yard. All Retail and Services of Manufactured Homes shall be required to have a Type B Buffer Yard along all lot lines with the following exception:
  - A. Side and rear lot lines adjacent to parcels not zoned Industrial or Highway Commercial shall have a Type D Buffer Yard.
  - B. Side and rear lot lines adjacent to existing residential uses shall have a Type E Buffer Yard.

#### 4.33 TECHNOLOGICALLY INNOVATIVE BUSINESS

1. All General Requirements of Section 4.1 must be met.
2. No new buildings may be constructed for such purpose greater than 10,000 square feet in size.
3. Business must meet all district use and site standards.
4. The total number of such establishments in concurrent operation within any zoning district where permitted cannot exceed ten (10).
5. No two of such uses shall be located within 500 feet of each other measured front door to front door along the curb line of the public streets providing access.
6. Testing of the product outdoors in the Main Corridor Commercial District is strictly prohibited.
7. 24 hour operation of the facility is prohibited.
8. The manufacture, use, storage, or disposal of radioactive materials are prohibited in the Main Corridor Commercial Zoning District.
9. No outside storage of raw materials, component parts, goods or finished products. No accessory structures or cargo containers may be stored on the property.
10. Air Pollution. Manufacturing processes emitting odor, dust, fumes, smoke or other pollutants shall not be permitted.
11. Vibration. Except in temporary instances during site construction work, the maximum permitted

vibration from any cause shall not exceed the following, when measured at the lot line:

3.6.2.B Maximum Permitted Vibrations	
Frequency (Cycles per second) 0008	Displacement Inches
10 and below .0008	10 and below .0008
10 - 20 .0005	10 - 20 .0005
20 - 30 .0003	20 - 30 .0003
30 - 40 .0002	30 - 40 .0002
40 - 50 .0001	40 - 50 .0001
50 and above .0001	50 and above .0001

12. Radiation. Research operations shall cause no dangerous radiation at any property line and shall conform to all federal, state and/or local regulations and standards.
13. Electromagnetic Interference. Industries shall emit only that amount of unshielded spurious electromagnetic radiation as is necessary for the conduct of their operations. Federal Communications Commission requirements shall govern maximum radiation which tends to interfere with meaningful signals and all such emissions shall conform to all federal, state and/or local regulations and standards.
14. Water Pollution. No effluent shall be discharged into any stream. Discharge into the City of Fairmont sewer system shall be as approved by the City Engineer and the Director of Public Works and shall conform to all federal, state and/or local regulations and standards.
15. Industrial Waste. All industrial waste shall be treated and disposed of in such a manner as to comply with all federal, state and/or local regulations and standards
16. External Lighting. Use must meet the Outdoor Lighting Standards as detailed in Section 5.1: Exterior Lighting. Additionally, exterior lighting shall be shielded and subdued so as not to interfere with the quiet use and enjoyment of surrounding properties as determined by the Planning Director.

#### 4.34 WIRELESS COMMUNICATIONS

1. All wireless communications facilities and freestanding communications towers shall comply with any and all Federal Aviation Administration\ and all other federal and state regulations.
2. Wireless communications facilities may exist in all districts as a component of an existing or proposed structure not intended for residential use (i.e., church bell tower or steeple) or attached to existing or proposed public infrastructure such as street lights, water towers, and electrical transmission towers. All such facilities shall be designed using stealth design elements. Wireless communications facilities attached to existing or proposed structures such as water towers, transmission towers, church steeples, streetlights, bell towers, of similar structures do not require a Conditional Use Permit.
3. Freestanding wireless communications towers may exist only in Highway Commercial and Industrial districts as a conditional use. The owner or developer shall submit a site plan for all proposed tower projects and require a Conditional Use Permit, which shall be subject to the following conditions:
4. The maximum height of all freestanding wireless communications towers shall be 180 feet; provided, however, that the maximum height of a tower may be greater than 180 feet, but less than 200 feet when such tower is designed and constructed to accommodate the present or potential collocation of an additional wireless communication service provider and / or public safety communication use;
5. Freestanding wireless communications towers shall be setback from all property lines a distance equal to 125% of the total height of the tower measured from grade elevation from all adjoining properties. Peripheral supports and guy anchors for communication towers may be located within the required setbacks, provided that they shall be located within the boundaries of the property on which the tower is located and shall be located no closer than five (5) feet from any lot line;
6. No freestanding wireless communications tower shall be sited within one (1) mile of

another wireless communications tower except as a component of existing public utility infrastructure;

7. All ancillary structures, including guy anchors and peripheral support shall be screened with and opaque screen of landscaping, wood fence, or wall, or any combination thereof;
8. All freestanding wireless communications towers in the Highway Commercial and Industrial districts shall be constructed using a monopole design; and
9. All freestanding wireless communications towers shall, when appropriate, display, in large bold letters the following "HIGH VOLTAGE".

#### 4.35 TEMPORARY USES

1. Approval. All Temporary Uses must receive approval of a Certificate of Zoning Compliance from the Planning Department and be located within a permitted zoning district.
2. Certificate of Zoning Compliance. The Certificate of Zoning Compliance may be conditioned upon such special requirements as the Planner or Building Inspector may determine are necessary to achieve the purposes of this Ordinance and protect the public health, safety and welfare.
3. Produce Sales. Produce stands may be permitted for a maximum of six (6) months but may be re-permitted upon submission of a new application.
4. Retail Sales. Christmas tree sales, fireworks, book buy back, sidewalks sales, and similar temporary retail sales are permitted as temporary uses within nonresidential districts and are limited to a maximum duration of forty-five (45) days within a calendar year. The following standards must be met:
  - A. Consumer firework sales must be located within an approved zoning district in accordance with the Permitted Principal Uses table in Article 3, regardless of their temporary nature, and if located in a tent or other temporary structure the sales and storage areas must be located at least 100 feet from any structure used only for residential dwellings.
  - B. Truck trailers and flat beds are not permitted except for short-term delivery

services.

- C. Temporary uses utilizing a tent or similar canopy shall secure approval from the Fire Prevention and Training Officer of the City of Fairmont Fire Department.
5. Temporary Offices. Contractor's offices and real estate's offices/ trailers and equipment sheds may be permitted for the period of active construction or selling of units. No sleeping or cooking accommodations are allowed.
6. Bazaars, Carnivals, Circuses, and similar temporary uses. The activities shall be open to the general public. Such activities outside of local event parks within the City shall be limited to ten (10) days and must comply with the requirements of Building and Fire standards.
7. Property Owner. Temporary uses shall present proof of property owner approval prior to the issuance of a permit.
8. Revocation. Failure to meet the requirements of this Ordinance and conditions of the Certificate of Zoning Compliance will necessitate the revocation of the Certificate.

#### 4.36 USE AND PARKING OF RECREATIONAL AND COMMERCIAL VEHICLES

1. Recreational Vehicles: A recreational vehicle shall not be considered a dwelling unit. The use of a recreation vehicle for living, sleeping or housekeeping and its connection to utility services (other than for periodic maintenance and/or repair purposes) shall be prohibited unless the vehicle is located in a camping and recreational vehicle park designed to accommodate recreation vehicles.
2. Commercial Vehicles: Commercial vehicles used primarily for commercial purposes and with more than two axles are prohibited from parking in residential districts. This shall not be construed as to prevent the temporary parking of delivery trucks, moving vans, and similar vehicles, which deliver goods and services. No residentially developed lot may be used as the base of operation for any freight hauling truck.

#### 4.37 DORMITORY

1. A dormitory is permitted only within 1,320 feet of the institution with which it is affiliated.

#### 4.38 CAR WASH

1. Historic Districts. Car washes must be located at least 500 feet from a Historic Overlay District or registered historic district.
2. Minimum Buffer Yards. Car washes must have a Type B Buffer Yard along side and rear property lines.
3. Adjacent Residential Uses. Car washes must have a Type C Buffer Yard along any side or rear yard line adjacent to a single-family, duplex, townhouse, multifamily, or similar residential only use.
4. Residential Districts. Car Washes must have a Type E Buffer Yard along any side and rear yard line adjacent to any Residential District.

#### 4.39 TOWING SERVICES

1. Outdoor storage yards for towing services shall be screened by a Type C Buffer Yard.
2. Any outdoor storage yard adjacent to any residential district, Neighborhood Mixed Use district, City Center, district, Education district, Recreation district, residential only use, civic use, shall be screened by a Type D Buffer Yard.

#### 4.40 HOME GARDEN

1. Intent. Home Gardening may include elements beyond the growing of fruits and vegetables, such as keeping of animals or bees. The standards within this section shall outline how such uses shall occur to ensure such uses do not impact other nearby land uses or the occupants of the parcel in which such Home Gardening activities occur.
2. Zoning Permit. All Home Gardens with bees and any animals, as permitted within this code, must obtain a Zoning Permit prior to bringing bees or animals on site for the first time.
  - A. Zoning Permit Requirements. For accessory structures related to Home Gardening, such as an apiary, the following requirements must be met to obtain and Zoning Permit:
    - i. Must be inspected by a code enforcement or planning official and must be found in compliance with all applicable regulations.
    - ii. Must sign all affidavits and sign to acknowledge reading and

understanding best practices forms pertaining to beekeeping and/or permitted animals supplied by the Planning and Development Department. Required forms will be based on whichever specific use is being applied for.

3. Bee Keeping. Honeybee apiaries are a permitted accessory use to a single-family home, subject to the following regulations:
  - A. Registration. The apiary is properly registered pursuant to all applicable state, county, or city laws.
  - B. Other Standards. Beekeeping practices are consistent with the standards of any state, county, or city agency with purview over beekeeping practices. Beekeepers should check with the West Virginia Department of Agriculture prior to beginning beekeeping for state regulations.
  - C. Hives. The number of hives is limited to the relation of property size as follows:
    - i. Less than 20,000 SF – 4 colonies
    - ii. More than 20,000 SF but less than 40,000 SF – 6 colonies
    - iii. 40,000 SF or more – 8 colonies
  - D. Setbacks. Hives cannot be located within 25 feet of any lot line except when situated eight feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or when situated less than eight feet above the adjacent existing lot grade and behind a solid fence or hedge at least six feet high.
  - E. Yard Requirements. No beehive shall be kept in a front or side yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.
  - F. Water Source. Beekeepers shall maintain a water source near the colonies at a distance less than the nearest unnatural water supply.
  - G. Animal Protection. Beekeepers shall not keep an apiary within 50 feet of an established animal that is tethered, kenneled or otherwise prevented from escaping a stinging incident.

- H. Colony Enclosure. Beekeepers should avoid opening colonies for inspection or manipulation when neighbors are present or in the immediate vicinity.
- I. Swarming. Beekeepers shall manage all colonies to minimize swarming.
- J. Queen Bees. Beekeepers shall replace queens in colonies exhibiting defensive behavior that may be injurious to the general public or domesticated animals as determined by West Virginia Department of Agriculture's apiary staff.

#### 4.41 EMERGENCY SHELTER

1. No more than 200 beds are allowed for any emergency shelter in a Commercial District and no more than 15 beds are allowed for any emergency shelter in any other districts with the following exception:
  - A. No more than 200 beds are allowed for any emergency shelter in the City Center District.
2. Emergency shelters in all districts shall have Improved Open Space located on site with pedestrian amenities. In all commercial districts, there shall be at minimum Improved Open Space equal to 10% of the GFA of the emergency shelter which shall be made available during daytime hours with pedestrian amenities and adequate shade during the summer months.

#### 4.42 VEHICLE REPAIR, MAJOR AND MINOR

1. Enclosed Building. Any repair and service operations must be performed within a fully enclosed building. Bay doors may be open during hours of operation.
2. Vehicle Storage. No partially dismantled, wrecked, or unregistered vehicle may be stored outdoors for more than 30 days.
3. Minor Vehicle Repair Limitations. A minor vehicle repair use may not include vehicle dismantling.
4. Major Vehicle Repair Outdoor Storage Screening. A major vehicle repair establishment must screen any outdoor storage area with a Type C or greater Buffer Yard.
5. Historic District. A vehicle repair establishment must be located at least 150 feet from any historic overlay district.

6. Buffer Yard Requirements. Vehicle Repair (Major or Minor) must have a Type E Buffer Yard along any side or rear yard line adjacent to any Residential District.

#### 4.43 VEHICLE RENTAL OR SALES

1. In a Neighborhood Commercial District vehicle rental and sales must be located within a fully enclosed building.
2. Any repair and service operations must be performed within a fully enclosed building. Bay doors may be open during hours of operation.
3. A vehicle rental or sales establishment must screen any outdoor display area with a Type C or greater Buffer Yard.
4. No partially dismantled, wrecked, or unregistered vehicle may be stored outdoors on the premises.

#### 4.44 ANIMAL CARE ESTABLISHMENT

1. Animal boarding facilities must be located indoors.
2. Exterior exercise areas must be located to the rear or side yard of the principal building on the lot.
3. Any exterior exercise areas must be designed to provide shelter against weather.
4. Fencing of exterior exercise areas is required. Fencing must be between six and seven feet in height to prevent escape, and must be buried a minimum of one foot to prevent escape by digging beneath the fence.

#### 4.45 WIND FARM

1. Setbacks. Wind turbines must be set back from all buildings and all lot lines a distance of 110% of the turbine tip height, as measured from the nearest point on the foundation of the occupied building to the nearest point on the outside edge of a tower. Turbine tip height is measured from the base of the tower to the tip of a prop at maximum vertical rotation.
2. Accessory Setbacks. Accessory operation and maintenance buildings and substations must be set back in accord with the underlying zone standards.
3. Finish. Wind turbines must be a non-obtrusive and non-reflective color, such as white or off-white. The facility owner or operator must maintain the paint on wind turbines at all times in good repair.
4. Lights. Wind turbines may not be artificially lighted unless otherwise required by the Federal Aviation Administration (FAA) or any other governmental authority. If lighting is required, the lighting must, to the extent feasible, cause the least disturbance to the surrounding areas.
5. Non-essential appurtenances may not be affixed to any wind turbine, including, but not limited to, wireless or radio antennae.
6. A "Danger, High Voltage" sign must be installed where it is clearly visible by persons standing near the base of all pad-mounted transformers and substations. No additional signs or advertising are permitted on the turbine aside from identification of the turbine manufacturer or the facility owner and operator.
7. Climbing Safety. To prevent unauthorized climbing, climbing pegs must be removed from the lower ten feet of the turbine, or ladder access must be restricted. All access doors to wind turbines and electrical equipment must be locked or fenced, as appropriate, to prevent entry by unauthorized persons.
8. Noise. During normal operation, wind turbines may not exceed five dBA over ambient sound as measured at the closest neighboring inhabited dwelling in existence at the time of application for the wind farm. This sound level may be exceeded during short-term events, such as utility outages and storms

9. Light. A wind turbine may not cause shadow flicker to fall upon any window of an inhabited dwelling that exists at the time of application for the wind farm.
10. Ice. A wind turbine must employ preventive measures to eliminate any deleterious effects of ice throw in compliance with specifications contained in the latest edition of the Germanischer Lloyd Guideline for the Certification of Wind Turbines.
11. Termination of Use. A wind farm or wind turbine that has reached the end of its useful life must be removed within six months of such determination. A wind energy system is considered to have reached the end of its useful life when it has been inoperable for six consecutive months. Time extensions may be granted by the Commissioner of Permit and Inspection Services when good faith efforts to repair the turbine are demonstrated. Foundations must be removed, unless an exception is granted by the Commissioner of Permit and Inspection Services. The City may ensure and enforce removal by means of its existing regulatory authority

#### 4.46 SELF-STORAGE FACILITY

1. In all districts except for Industrial, the individual storage units of a self-storage facility must be located in a fully-enclosed building, with access to individual storage units provided from common areas located indoors.
2. In all Neighborhood Commercial Districts, the individual storage units of a self-storage facility must be located only in the upper stories of a fully-enclosed building, with access to individual storage units provided from common areas located indoors.
3. Storage units accessed individually from outside a structure are permitted only in the Industrial District.
4. Where the individual storage units of a self-storage facility are accessed from outside a structure, such a facility must include a Type C Buffer Yard.

#### 4.47 COMMERCIAL GREENHOUSE

1. Buildings and Structures. A parcel may contain multiple commercial greenhouses. Only one or more need to be located within the build-to zone and have enough frontage to meet the build-to percentage. The other greenhouses may be located behind those located in the build-to zone provided that no greenhouse encroaches upon any required setback for a principal structure in that zoning district.
2. Brownfields. Any Commercial Greenhouse proposed to do in soil cultivation that includes soil from the outdoor space of the property within a Brownfield Redevelopment Area, Riverfront Redevelopment Area, or property known or suspected to be a brownfield must submit a completed ATSM Phase I Environmental Site Assessment by a Licensed Remediation Specialists, and if recommended by the LRS a ASTM Phase II Environmental Site Assessment, which states that agricultural land use is appropriate for the location in the proposed conditions prior to the approval of a business license.

#### 4.48 MARKET FARM

1. Size. The maximum area dedicated a market farm may not exceed ten (10) acres. The remainder of any parcel used for a Market Farm may be dedicated to other uses which are permitted in the same zoning district such as dwellings, open space, and more.
2. Sales. In Residential Districts, no sale of product may occur on site with the following exception:
  - A. The parcel is located on and has vehicular access for customers from an arterial or collector street.
3. Large Scale Equipment. No large-scale equipment may be used for the cultivating, planting, harvesting, value improvement, transportation, or other activity related to this land use except for equipment used in permitted construction on site.
4. Animals. All livestock, poultry, and fish related to the use shall be prohibited.
5. Buildings and Structures.
  - A. Square Footage. When determining the square footage permitted for accessory

buildings or accessory structures which are incidental to this land use, then the maximum square footage permitted shall be ten (10) percent of the land area used for cultivating crops or similar activities rather than a percentage of the principal structure with the following exception:

- i. Greenhouses shall not count against the ten (10) percent limit of maximum accessory building square footage as permitted above but are still limited by the development regulations, such as building coverage limits, for the zoning district in which it is located.
- B. Greenhouses. Market Farms may include a greenhouse. If a greenhouse is larger than 200 square feet, it shall meet the setback requirements of a principal building for the zoning district in which it is located with the following exception:
  - i. Greenhouses are exempt from the maximum front yard setback requirement and may be constructed outside of the build-to zone.
6. Brownfields. Any Market Farm proposed to do in soil cultivation that includes soil from the outdoor space of the property within a Brownfield Redevelopment Area, Riverfront Redevelopment Area, or property known or suspected to be a brownfield must submit a completed ATSM Phase I Environmental Site Assessment by a Licensed Remediation Specialists, and if recommended by the LRS a ASTM Phase II Environmental Site Assessment, which states that agricultural land use is appropriate for the location in the proposed conditions prior to the approval of a business license.

#### 4.49 PRIVATE GARDEN

1. Buildings and Structures. Private Gardens are permitted to have an accessory building incidental to the garden of up to 100 square feet in area.
2. Lighting. All lighting shall be motion activated and must meet the other applicable lighting standards within this zoning code.

3. Fencing. Private gardens may be fenced. The fence must be an open fence.

#### 4.50 URBAN FARM

1. Size. The minimum area required is ten (10) acres.
2. Sales. In Residential Districts, no sale of product may occur on site with the following exception:
  - A. The parcel is located on and has vehicular access for customers from an arterial or collector street.
3. Animals. All livestock, poultry, and fish related to the farm use shall be prohibited.
4. Buildings and Structures.
  - A. Front Yard Setbacks. Principal structures related to this use, except for principal dwellings located on the same property, are exempt from maximum front yard setback requirements and do not need to be located in the build-to zone.
5. Brownfields. Any Urban Farm proposed to do within a Brownfield Redevelopment Area, Riverfront Redevelopment Area, or property known or suspected to be a brownfield must submit a completed ATSM Phase I Environmental Site Assessment by a Licensed Remediation Specialists, and if recommended by the LRS a ASTM Phase II Environmental Site Assessment, which states that agricultural land use is appropriate for the location prior to the approval of a business license.
6. Agricultural Tourism.
  - A. Existing Urban Farm. An Urban Farm that proposes to include Agricultural Tourism on an existing Urban Farm must obtain a Conditional Use Permit to do so. The Board

of Zoning Appeals should consider the general requirements for Conditional Uses to ensure the additional use will not negatively impact the health, safety, and general welfare of the public.

- B. New Urban Farm. The BZA may approve an Agricultural Tourism use at the same time as the initial approval for a new Urban Farm use on the same parcel but should vote on the two matters separately starting first with the Urban Farm.
- C. Accessory Use. An Agricultural Tourism use may never be subdivided out from the parcel in which the Urban Farm is located unless the parcel is deed restricted so that the two parcels may not be sold separately without the approval of the Planning Commission or Planning Commission Staff of the City of Fairmont. This information should also be noted on the approved subdivision plat or deed bearing the seal of the City of Fairmont Planning Commission.

#### 4.51 CREMATORIUM

1. When located on the same parcel as a Funeral Service permitted use, crematoriums must be incidental to the Funeral Service use with the following exception:
  - A. The crematorium use has been approved as a conditional or permitted use in accordance with the permitted use chart for the same location as the funeral service use.
2. Crematory services must comply with all city, county, state, or federal regulations to include the Clean Air Act of 1970 and its amendments.

## 5.0 SITE STANDARDS

### 5.1 EXTERIOR LIGHTING

1. Purpose and Intent. It is the goal of this Section to provide guidance to developers in implementing minimum requirements for lighting for all non-residential projects and multi-family developments. The requirements of this Section will serve to provide direction in controlling light spillage, glare and intensities so as not to adversely affect motorists, pedestrians, and land uses of adjacent properties. To ensure appropriate lighting while minimizing its undesirable side effects, the following regulations are established.
2. Applicability. Lighting facilities shall be required for all off-street parking areas and off-street loading areas and for all driveways providing ingress and egress thereto for all non-residential and multi-family developments. In the approval of any development plan, the Planning Director or Board of Zoning Appeals shall have the authority to require lighting to be incorporated for other uses or locations where in their reasonable discretion such lighting is warranted.
3. Outdoor Lighting Standards. All outdoor lighting shall conform to the following standards:
  - A. All exterior lighting, including free-standing, canopy, pole, and building mounted, shall be fully shielded and directed downward to prevent off-site glare. Canopy lighting shall be fully recessed.
  - B. The intensity of light within a site shall not exceed ten (10) foot-candles within any part of the site and one (1) foot-candle at any property line, except where it abuts a residential district or use where a maximum of .5 foot-candles is permitted. The only exception is with vehicle service use canopies and new or used vehicle sales lighting, where a maximum of twenty (20) foot-candles are permitted within the site but the above requirements shall apply to intensity at the property line.
  - C. Foot-candles is the unit of light density incident on a horizontal plane and measurable with an illuminance meter, a.k.a. light meter.
  - D. Outdoor lighting fixtures shall be designed, located and mounted at heights no greater than eighteen (18) feet above grade for non-cut-off lights, or thirty-five (35) feet above grade for cut-off lights; and located at least ten (10) feet from property lines defining rear and side yards or required perimeter landscaped areas required by this Code.
  - E. When the light source is located adjacent to a residential neighborhood the height of the fixture may not exceed eighteen (18) feet.
  - F. All non-essential lighting will be required to be turned off after business hours, leaving only the necessary lighting for security. Non-essential lighting applies to display, aesthetic, parking and sign lighting.
  - G. Fixtures should be placed to provide uniform distribution of light and to avoid intense lighting that produces excessive glare. Fixture locations should be chosen to minimize the hazards of glare.
  - H. Lighting fixtures in scale with pedestrian activities shall provide for uniform distribution of lighting to produce minimal shadows.
  - I. Up lighting of any architectural feature of a building or of a sign is permitted, but such lighting may consist only of low wattage fixtures (designed for bulbs not exceeding seventy-five (75) watts) trained directly onto the surface intended to be illuminated. Internally lit signs are acceptable in certain zoning districts provided that they meet the requirements of this ordinance.
  - J. Light sources should not be located within any perimeter-landscaped areas except on pedestrian walkways.
  - K. The internal illumination of building-mounted awnings is prohibited.
  - L. All lights must emit either white or orange yellow illumination.
  - M. When outdoor lighting installation or replacement is part of a development proposal for which site plan approval is required under these regulations, the Planning Director shall review and approve the lighting installation as part of its site plan approval.
  - N. Specifications for all proposed lighting fixtures including mounting heights, photometric data, designation as Illumination Engineering Society of North America (IESNA) "cut-off" fixtures, Color Rendering Index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures. The lighting plan shall provide a design for illuminations in accordance with this Section.

- O. When an outdoor lighting installation is being modified, extended, expanded or added to, the entire outdoor lighting installation shall be subject to the requirements of this Section.
  - P. All lighting fixtures in any Historic district shall be approved by the Historic Preservation Review Commission.
  - Q. No flickering or flashing lights shall be permitted. The use of laser light source, search lights or any similar high intensity light for outdoor advertisement or entertainment is prohibited.
4. Installation and Maintenance.
    - A. Where practical, electrical service to outdoor lighting fixtures shall be underground, not overhead.
    - B. Lighting fixtures shall be maintained by the property owner so as to always meet the requirements of this ordinance.
  5. Modifications. The Planning Director may modify the requirements of this Section if it is determined that in so doing, it will not jeopardize the intent of this Section. However, exceeding the height and intensity of lighting fixtures as stated in the Section may only be approved as a variance by the Board of Zoning Appeals.
  6. Outdoor Recreational Lighting.
    - A. Because of their unique requirements for nighttime visibility and limited hours of operation, the lighting of active recreation areas, such as for ball fields and tennis courts are not considered in this Section. Lighting conditions for such uses shall be approved by the Planning Director in accordance with approved standards and specifications.
    - B. Temporary holiday lighting during the months of October, November, December and January shall be exempt from the provisions of this Section, provided that such lighting does not create dangerous glare on adjacent streets or properties.
  7. Exemptions.
    - A. Outdoor light fixtures installed prior to the effective date of this Section and replacements of the luminaire or lamp of those fixtures.
    - B. Fossil fuel light produced directly or indirectly by the combustion of natural gas or other utility-type fuels.
    - C. Streetlights located within a public right-of-way.
    - D. Outdoor light fixtures, which use an incandescent light bulb of, or light level equivalent to, one-hundred fifty (150) watts or less except where they create a hazard or nuisance from, glare or spill light.
    - E. Lighting necessary for road or utility construction or emergencies.
    - F. Temporary lighting.

## 5.2 ARCHITECTURAL REQUIREMENTS

1. Applicability. This article is intended to serve as a visual definition of the architectural building requirements noted throughout this Ordinance. The key architectural elements of building type and frontage serve as the essential elements of all district provisions. Setbacks, height, and use are all components of a building's frontage and type.
2. Architectural Standards. Any and all construction requiring a building permit shall conform to the architectural requirements of this Section. The Planning Director may approve minor variations to this Section provided similar materials, configurations, and/ or techniques are used that fulfill the intent of this Section. Major variation to building facade requirements due to unique building use requirements may be approved by the Board of Zoning Appeals, provided the overall pedestrianism of the street is maintained in accordance with all other standards. All variations shall be noted on the final approved plan or building permit. All structures shall adhere to the following general principles:
  - A. General Principles.
    - i. To perpetuate the unique building character of the City of Fairmont, development shall employ dwelling types that are sympathetic to the historic architectural vocabulary of the area in their massing and external materials.
    - ii. The front elevations facing the street and the overall massing shall be pedestrian in scale.
    - iii. Buildings adjacent to each other shall be architecturally compatible through similar silhouettes, spacing between facades, setbacks, proportions, treatments, exterior materials, scale, massing, and/or architectural style.
    - iv. The primary entrance shall be both architecturally and functionally designed on the front facade of the building facing the primary public street. Such entrances shall be designed to convey their prominence on the fronting facade. The use of fire escape or exit-only doors as primary entrances is explicitly prohibited.
  - B. Residential Buildings (All Districts).
    - i. General Requirements.
      - a. All garages with more than two bays shall be turned such that the bays are not visible from the street. Exception: Corner lots may have garage access (side loaded) from the non-fronting street.
      - b. Garage doors are not permitted on the front facade of any multifamily dwelling.
    - ii. Materials. Residential exterior building walls shall be wood clapboard, wood shingle, wood drop siding, cement plank board, wood board and batten, brick, stone, stucco, approved vinyl, or similar material approved by the Building Inspector.
    - iii. Configurations.
      - a. Monopitch (shed) roofs, often used for porches, stoops, or coach doors, are allowed only if they are attached to the exterior wall of the main building. No monopitch roof shall be less than 3:12. Flat roofs may be allowed upon approval by the Building Inspector.
- v. All new construction shall conform in street orientation, massing, lot width and setbacks to adjacent existing and proposed structures subject to building placement requirements within each zoning district.
- vi. Ground mounted mechanical equipment shall be located to the rear or side yard and screened from offsite view. Roof-mounted mechanical equipment shall be screened from offsite view by a parapet wall.
- vii. The front facade of all buildings shall extend parallel to the frontage line of the lot.
- viii. No roofing, siding or other exterior building or construction material of any kind or nature shall be used, installed, affixed, applied, or applied to any structure so as to create a candy stripe effect, whether in a horizontal or vertical pattern.

- b. All principal dwelling units shall have a minimum depth of twenty (20) feet, measured perpendicular to the front façade to the rear facade.
  - c. The principal dwelling unit shall contain a minimum of 400 square feet of living space, excluding garages, attics and basements.
  - d. Subject to Section 5.2.2.A. two wall materials may be combined horizontally on one facade. The heavier material should be below.
  - e. Exterior chimneys shall be finished in brick or other material approved by the Building Inspector.
  - f. The undercroft of buildings shall be enclosed.
- iv. Techniques.
    - a. Overhanging eaves may expose rafters.
    - b. Flush eaves shall be finished by profiled molding or gutters.
- C. Manufacture Homes.
    - i. General Requirements.
      - a. If a manufactured home is located in any district other than a Manufactured Home Neighborhood (MHN), it must bear a seal certifying that it was built to the standards and meets or exceeds the construction standards promulgated by the Federal Housing and Urban Development, as provided West Virginia Code §8A-11-1, in effect at the time of construction and must satisfy each of the following additional criteria:
        - 1. The structure shall be installed on a permanent masonry perimeter foundation that complies with the requirement of the City's duly adopted building code;
        - 2. The structure shall meet the development standards and all other regulations for the district in which it is proposed to be located in prior to any modifications after it has been sold by the manufacturer with the exclusion of porches, stoops, or other primary entrance identifying elements approved by the Planner which are required by this ordinance; and
- 3. The structure shall contain a minimum of 400 square feet of living space, excluding garages, attics and basements.
  - b. In no instance may a manufactured home be used for a nonresidential purpose.
  - c. No manufactured home shall be placed in a designated historic district or an area that is eligible for historic designation.
  - d. No manufactured home may be used as an accessory dwelling unit.
- ii. Manufactured Homes in Manufactured Home Neighborhoods. In addition to satisfying all of the general requirements of manufactured homes, a manufactured home in a MHN must comply with the following requirements:
    - a. Materials.
      - 1. The exterior siding shall consist of wood, masonry finish, brick or horizontally grooved or lap sided or its appearance and shall be comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction. Unfinished plywood, oriented strand board, or other sheathing materials shall not be installed as finished siding. The use of flat, vertical or corrugated metal for the exterior walls or roof shall be strictly prohibited.
      - 2. The roof shall be finished with a type of shingle that is commonly used in standard residential construction.
    - b. Configurations.

1. Stairs, porches, entrance platforms and other means of entrance and exit to the manufactured homes shall be installed and constructed in accordance with the City of Fairmont's duly adopted Building Code.
  2. The pitch of the roof of the manufactured home shall have a minimum vertical rise of three (3) feet for each twelve (12) feet of horizontal run, or the standard of each individual manufacturer's equivalent to a 3' x 12' roof pitch.
  3. The roof of the manufactured home shall have an overhang (eave) extending at least ten (10) inches from each vertical exterior wall, A site installed gutter may be counted in the width of the eave.
  4. The front facade of the building shall extend parallel to the frontage line.
- c. Techniques.
1. The manufactured home is set up on the site in accordance with established industry standards.
  2. The tongue, axels, transporting lights, and removable towing apparatus are removed after placement on the lot but before occupancy.
- D. Commercial and Mixed-Use Buildings.
- i. Materials.
    - a. Commercial building walls shall be brick, decorative concrete masonry unit, cast concrete, stucco, stone, marble, or other materials similar in appearance and durability. Regular concrete block may only be used on above grade building walls not visible from a public street. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
    - b. Pitched roofs shall be clad in wood shingles, standing seam metal, corrugated metal, slate, asphalt shingles or similar material.
    - c. Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof that are visible on the front and side elevations from any public street. When used on the side elevation, parapets shall be terraced.
  - ii. Configurations.
    - a. Subject to Section 5.2.2.A.viii two wall materials may be combined horizontally on one facade. The heavier material should be below.
    - b. Sky-lights shall be flat (nonbubble).
    - c. At least seventy (70) percent of the street level frontages shall be in windows or doorways. Street level windows shall be visually permeable. Mirrored glass is not permitted in any location. Faux or display casements are not permitted in lieu of exterior window treatments for the frontage elevation.
    - d. No frontage wall shall remain unpierced by a window or functional general access doorway for more than sixteen (16) feet.
  - iii. Techniques.
    - a. Stucco shall be float finish.
    - b. Windows shall be set to the inside of the building face wall.
- E. Light and Heavy Industrial Buildings.
- i. Materials.
    - a. All building walls visible from a public street shall be brick, cast concrete, stucco, stone, marble, decorative concrete masonry unit or other materials similar in appearance and durability. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
    - b. Pitched roofs shall be clad in wood shingles, standing seam metal,

- corrugated metal, slate, asphalt shingles or similar material.
    - c. Flat roofs shall incorporate parapet walls to conceal the flat portions of the roof on the front and side elevations that are visible from any public street. When used on the side elevation, parapets shall be terraced.
  - ii. Configurations.
    - a. Subject to Section 5.2.2.A.viii two wall materials may be combined horizontally on one facade. The heavier material should be below.
    - b. Skylights shall be flat (nonbubble).
  - iii. Techniques.
    - a. Stucco shall be float finish.
    - b. Windows shall be set to the inside of the building face wall.
- F. Civic Buildings (Churches, Schools, Government Offices, and Other Civic Facilities). Schools, churches, and government buildings should be built so that they terminate a street vista whenever possible, and shall be of sufficient design to create visual anchors for the community. Civic buildings shall adhere to the provisions as marked below.
- i. Materials.
    - a. Civic building walls shall be clad in stone, stucco, brick, marble. Decorative cast concrete and wood or similar siding may be used as a minority element on facades facing public streets.
    - b. Roofs shall be clad in slate, sheet metal, corrugated metal, or asphalt shingles, or other material similar in appearance and durability.
    - c. Gutters and down spouts shall be made of copper, galvanized or aluminum painted metal.
    - d. Columns, if provided, shall be made of wood, cast concrete, or fiberglass.
    - e. Stained glass or other decorative window treatments are encouraged.
    - f. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way.
  - ii. Configurations.
    - a. Subject to Section 5.2.2.A.viii two wall materials may be combined horizontally on one facade. The heavier material should be below.
    - b. Flat roofs are permitted, but civic buildings adjacent to residential structures shall have pitched roofs or architectural features similar to the adjacent residential structures to ensure compatibility. This requirement may be waived when it is deemed to serve no meaningful purpose or public benefit.
  - iii. Techniques. Windows shall be set to the inside of the building face wall.

### 5.3 SIGNS AND SIMILAR STRUCTURES

1. Scope. The purpose of this ordinance is to create the legal framework for a comprehensive and balanced system of signs that will preserve the right of free speech and expression, provide an easy and pleasant communication between people and their environment, and avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance. With these purposes in mind, it is the intent of this ordinance to authorize the use of signs that are:
  - A. Compatible with their surroundings;
  - B. Appropriate to the activity that displays them;
  - C. Expressive of the identity of individual activities and the community as a whole; and
  - D. Legible in the circumstances in which they are seen.
2. Procedures and Permits.
  - A. It shall be unlawful for any person to erect, structurally alter, or relocate any sign or sign structure without first obtaining a permit from the Building Department, except as provided in Section 5.3.3, Permit Exemptions.
  - B. The application for the permit for a sign shall be made upon forms provided by the Building Department. All applications shall at a minimum be accompanied by accurate sketches and scaled drawings showing the proposed sign or sign structure, its content, and the location of the proposed sign upon the premises. All applications shall be accompanied by the requisite application fee which shall be established by the Building Department. All applications shall be accompanied by the written consent of the owner or his designated agent of the premises upon which the sign is to be erected or his designated agent.
    - i. No application shall be accepted for review unless it is complete, accompanied by the appropriate fee and signed by the applicant. The Building Inspector may require that the location of a proposed sign be based on a survey by a registered land surveyor or engineer, at the expense of the applicant. The Building Inspector shall endeavor to complete a review of the completed application within ten (10) working/business days.
  - C. At any time and at his sole discretion, the Building Inspector may inspect existing signs to determine if they are detrimental to the public health, safety and welfare. If they are detrimental to the public health, safety and welfare, they shall be removed or repaired within five (5) working/business days following the determination by the Building Inspector. At the determination of the Building Inspector, more time may be granted to repair or replace the sign if the property owner can demonstrate a good faith effort of working toward compliance with this ordinance. If a nonconforming sign is determined by the Building Inspector or owner to require repair, it must be brought into compliance with these regulations within a period of time determined by the Building Inspector.
  - D. With all applications for a permit under this Article there shall be a bond with surety approved by the City or a public liability insurance policy issued by an insurance company doing business in this State covering the period of construction and maintenance after completion, which bond or insurance policy shall protect against personal injuries and property damage with limits of not less than one million dollars (\$1,000,000.00), and shall provide for the matters and requirements contained in this Article.
    - i. The City shall be named as an additional insured on any such bond or policy of insurance issued hereunder and it shall be indicated on the policy or separate documentation that the City shall be notified of coverage termination. If work authorized by a permit has not been completed within six months after the date of issuance, such permit shall become null and void and the sign or such portion thereof as may be completed shall be deemed abandoned.
3. Permit Exemptions. A permit shall not be required for the following signs and activities. Except where noted otherwise, the types of signs listed below are allowed in addition to the maximum number and square footage of regulated signs as permitted in

other sections of this Article:

- A. Servicing, repainting, or cleaning an existing sign, except where such activity requires structural alterations either of the sign pole or the structure supporting the sign face.
- B. House number or nameplate identifying the occupant or address of a structure and not exceeding two (2) square feet in area.
- C. Real estate sign which is six (6) square feet or less in surface area and is five (5) feet or less in height, provided that there shall be no more than one such sign for any street frontage and such sign shall not project beyond the property line. The sign shall advertise the building or property on which the sign is located, and must be located so as not to obstruct or interfere with view of drivers on public roads or those accessing the property.
- D. The name of the building and date of erection, when cut into any masonry surface or tablet sign.
- E. One banner advertising a particular event for a business shall be allowed provided that:
  - i. Such sign shall be placed no more than seven (7) days prior to the event and removed no later than seven (7) days after the event.
  - ii. Such signs can only be used three (3) times a year.
- F. Any non-commercial flag bearing the official seal of the United States, other recognized country, or State of West Virginia.
- G. Traffic or other official government sign, such as legal notice, railroad crossing, danger or other emergency sign.
- H. Yard, garage, or moving sale signs that are placed no more than seven (7) days prior to the sale and removed within two (2) days after the conclusion of the sale.
- I. Traffic control signs on private residential property which contains no commercial message of any sort.
- J. Public warning signs for trespassing or danger area.
- K. Temporary nonprofit event sign which does not exceed sixteen (16) square feet, and is only permitted when used to advertise a specific event. These signs shall only be permitted for the period of not more than fourteen (14) days prior to the event and five (5) days after the specific event has ended.
- L. Non-commercial seasonal signs.
- M. Drive-through menu signs.
- N. One banner advertising the opening of new businesses shall be allowed as an alternative to a permitted permanent wall sign provided that:
  - i. Such signs for new businesses shall be limited to a duration of thirty (30) days within the first sixty (60) days after issuance of the first business license for that business in that location or from the issuance of a Certificate of Occupancy for that location, whichever is later.
  - ii. Such signs shall be attached to and parallel with a wall of the building on which wall signs are permitted and shall not exceed thirty-two (32) square feet in surface area.
- O. Temporary commercial signs placed by businesses or the West Virginia Division of Highways during the construction of any road improvement project. To be exempted from the permitting process, a business may either (a) relocate its permanent sign out of the construction zone to a temporary location on-site, or (b) replace the permanent sign with a temporary new sign no larger than the maximum height and size limits permitted in the zoning district. In any case, once the road improvements are completed in front of the business, any sign placed temporarily during the construction period must be removed within seven (7) days.
- P. The changing of an approved copy or message of a sign specifically designed for the use of replaceable or changeable copy.
- Q. Construction signs which are thirty-two (32) square feet and non-illuminated placed on the building site only.
- R. Sandwich Board. Such sandwich board signs shall be permitted for the purpose of announcing activities and specials with a total area, inclusive of all structural support, not greater than six (6) square feet per side and located on the property where the business is located, and must be taken inside daily at the end of business hours or 9 PM, whichever is

earlier. Sandwich board signs are not permitted in residential districts.

4. Measurement of Individual Sign Area. This Section of the Article explains how a sign is to be measured in order to determine its size.

A. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color forming an integral part of the display or used to differentiate a sign from the background against which it is placed. Necessary supports or uprights on which a sign is placed are excluded from the measurement of sign area.

B. The permitted actual size of a sign shall apply to each facing of a sign structure; however, where signs are double-faced, placed back-to-back, or in a V-type construction, only one side of the sign shall be counted when the V is at a 45-degree angle or less. Back-to-back signs must be enclosed within the same cabinet or affixed to the same pole and not separated by more than eighteen (18) inches to qualify under this Section.

C. If a sign is painted on a wall, and includes background colors and/or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.

D. 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. No filling, berming, mounding or excavating for the purpose of locating the sign is permitted

5. Prohibited Signs. The following signs are prohibited in all districts, except as otherwise noted herein:

A. A flashing sign or an animated sign which incorporates in any manner flashing or moving lights or any other visible moving or revolving part.

B. Commercial banners, pennants, flags (except as permitted in Section 5.3.3, Permit

Exemptions), spinners, or streamer.

C. Signs which resemble any traffic sign or traffic control device on a public street or road, by reason of size, shape, location, color, or illumination and/or which make use of such words as "STOP", "LOOK", "DANGER", or other similar words, phrases, symbols, or characters, in such a manner as to imply the need or requirement of stopping or the existence of danger.

D. Signs which obstruct free ingress or egress from a door, window, fire escape, or other exit way

E. Vehicle signs which are displayed for the purpose of exhibiting commercial advertising, identifying an on-site business, or supplying directional information to an off-site business, by means of any of the following:

i. The absence of a current, lawful license plate affixed to the vehicle on which the sign is displayed; or

ii. The vehicle being inoperable; or

iii. The vehicle on which the sign is displayed is not parked in a lawful or authorized location, or is parked in a manner that is distinct or different from the pre-determined parking area; or

iv. A vehicle that utilizes a sign that is not an integral piece of an automobile is not permitted. No additional materials can be added to a vehicle for the purpose of using it as a sign; or

v. The primary use of the vehicle on which the sign is displayed is not for business activities associated with products or services designated by the sign. Primary use shall be determined by the Building Inspector; or

vi. The vehicle on which the sign is displayed is a part, section, or element of an outdoor display by a dealership or business of transportation vehicles such as motor vehicle, recreational vehicle, watercraft, manufactured home, motorcycle, or utility trailer.

F. Changeable letter freestanding signs or portable signs.

G. Signs determined by the Building Inspector to contain subject matter defined within this

ordinance related to “Specified Sexual Activities” or “Specified Anatomical Areas”.

- H. Signs now or hereafter existing which no longer advertise a bona fide business, activity, campaign, service or product.
  - I. Any sign located in a public right-of-way, except as permitted by the West Virginia Department of Transportation or the City of Fairmont and in compliance with all local regulations. Any sign placed in the public right-of-way in violation of this code shall be prohibited and may be seized by the enforcement official or other representative of the City, and the person owning or placing the sign may be charged both with a violation of this chapter and with the cost of removing and disposing of the sign.
  - J. Signs attached to utility poles and West Virginia Division of Highways sign poles.
  - K. All off-premise signs, except as permitted by this Article.
  - L. Signs or banners placed on fabric not intended to be used for such purpose.
6. General Sign Regulations.
- A. Regulations by Type of Sign:
    - i. Electronic Changing Message Sign. Political subdivisions may be permitted these types of signs upon approval by the Board of Zoning Appeals upon pre-approved forms in accordance with the provisions of Section 8.9 et seq., Board of Zoning Appeals of this Code.
    - ii. Kiosks shall be permitted for the purpose of announcing activities, and the like, scheduled to occur in such buildings. One (1) square foot per one (1) lineal foot of street frontage shall be permitted with the total aggregate sign area not exceeding forty (40) square feet. Such kiosks shall not be closer than ten (10) feet to the curb nor more than ten (10) feet in overall height above grade.
    - iii. Dynamic Signs. Must adhere to the following standards, in addition to compliance with all applicable districts and all other general sign regulations:
      - a. Can only be fifty (50) percent of the maximum sign area permitted for an on-premise sign;
      - b. Dynamic signs may only be in the form of wall mounted or monument signs. No pole mounted or roof mounted dynamic signs are permitted;
      - c. If the proposed location for said sign is adjacent to any property classified, used or occupied as residential, such sign shall not be illuminated by artificial means after 9:00 p.m.; in no case shall a dynamic sign be lit from 11p.m. to 6a.m.;
      - d. No sign may exceed a maximum illumination of 0.8 foot-candles above ambient light level as measured from the edge of the property boundaries;
      - e. No such sign shall be of such a nature or character as to be detrimental or injurious to any adjacent property; the neighborhood or the public welfare;
      - f. Only one (1) per place of business is permitted regardless of the number of street frontages the businesses occupy;
      - g. Display area must freeze on a black screen if the sign malfunctions;
      - h. Will be subjected to an annual fee and inspection by the Building Inspector;
      - i. Must be tied into the Amber Alert system unless the applicant adequately demonstrates that this requirement cannot be met;
      - j. Any such sign shall be placed only in such a location that is in harmony with the general purpose and intent of this Article;
      - k. Such sign shall not be placed in a location that will cause confusion or provide a distraction to vehicular traffic;
      - l. The message displayed on such signs shall relate exclusively to activities or events which are slated to occur on the same premises as the location of the sign; No off-

- premise advertising is permitted. Exceptions for units of local government which may use signs to announce public events at their sole discretion;
- m. The message shall be limited in words and duration so that it can be read in no less than eight (8) seconds and not cause confusion or provide a distraction to vehicular traffic;
  - n. Message or text is prohibited from scrolling across screens. Transition between screens must be instantaneous without fading or dissolving; and
  - o. Such additional requirements as may be necessitated by exceptional physical conditions of the applicant's parcel real estate.
- iv. Monument Signs. All monument signs shall stand in a bed of cultivated landscaping. This area shall contain low-growing materials such as vegetative ground cover, perennials, and shrubs and shall be bordered by acceptable curbing such as wood or concrete. Such curbing shall be located in such a manner so as to prevent automobiles from contacting the sign when maneuvering. The perimeter of the landscaped area shall extend outward from the monument sign by at least four (4) feet.
  - v. Projecting Signs. Shall be governed by the following regulations
    - a. A projecting sign shall not extend over more than one-half (1/2) of a public sidewalk nor be lower than nine (9) feet above ground level.
    - b. They shall be attached at least six (6) inches away from the wall, and angular projection at the corner of a building is prohibited.
    - c. Shall project from the wall at an angle of ninety (90) degrees.
    - d. Shall not extend vertically beyond the window sill of the second story.
  - vi. Imbedded Building Signs. Shall be no more than twenty (20) square feet in size and shall only bear the name of the owner, the name of the building, or the date of erection of the building.
  - vii. Permanent Window Signs. Shall be regulated by the following stipulations:
    - a. All window signs shall consist of high-quality durable materials. Floating neon, applied vinyl, etched glass, and painted images with appropriate design features shall be considered.
    - b. Neither temporary nor permanent signs shall obscure the visibility of the store interior or its merchandise displays.
    - c. Borders around or adjacent to and backgrounds behind window sign lettering shall count toward the total sign area. All window signs shall be included in the total allowable sign area.
    - d. Window signs shall not exceed ten (10) percent of each individual window up to a maximum of eight (8) square feet per window and a total of twenty-five (25) square feet per building façade.
    - e. Messages shall be placed only within the top twenty-five (25) percent or bottom twenty-five (25) percent of a window.
    - f. All window lettering/window signs shall require issuance of an appropriate sign permit.
- B. General regulations applicable to all signs:
    - i. No sign shall be permitted within the clear-vision area as defined.
    - ii. The back of any permitted sign structure must be shielded from public view by a building, other structure, high planting, or another sign of the same size (where permitted), unless such back is painted a neutral color or is enclosed in a solid metal backing that is treated or painted against corrosion.
    - iii. All signs shall be maintained in good and safe structural condition.
    - iv. The general area in the vicinity of a sign

- must be kept clear of weeds, debris, trash, and other refuse by the property owner.
  - v. In no case shall any sign cast light directly upon any part of an adjacent residential property at any time of the day or night.
  - vi. Lots fronting two or more streets are allowed the permitted sign size for each street frontage. The square footage permitted for each street frontage cannot be combined and used on one (1) frontage. In no case shall the maximum aggregate sign area for the respective zoning district be exceeded unless expressly permitted by this ordinance.
  - vii. All signs, except where noted, must be placed on the property containing the business which is being advertised. In no case shall any part of the sign be placed within five (5) feet of a private or public right-of-way. Unless otherwise restricted in this ordinance, a sign shall comply with the height regulations for structures in the zoning district where the sign is located or unless otherwise specifically regulated in this Article.
  - viii. Signs must be placed on the frontage side which was used to calculate the size of the sign. An exception to this requirement may be made by the Building Inspector in accordance with the provisions set forth herein:
    - a. Such additional sign location shall be necessitated by the exceptional physical conditions of the applicant's parcel of real estate, which may include the fact that the parcel is exceptionally narrow, shallow or steep;
    - b. No two signs shall be located within ten (10) lineal feet of each other. No portion of either sign face shall be considered in calculating the required distance;
    - c. The location of the sign shall not cause or permit an increase in the applicable maximum permitted aggregate signage;
  - d. If the proposed conditional location is adjacent to any property classified, used or occupied as residential, whether single family or multi-tenant, such sign shall not be illuminated by any artificial means;
  - e. No such sign shall be of such a nature as to be detrimental or injurious to any adjacent property; the neighborhood or the public welfare;
  - f. Any such sign must be placed in a location that is in harmony with the general purpose and intent of this article;
  - g. No sign or sign structure shall be erected or placed at any location where, by reason of the position, shape, size or color of the sign it may interfere with, obstruct or prevent the free ingress, egress and regress to or upon any sidewalk, street, or alley of the City.
  - ix. Any sign not specifically mentioned is prohibited
7. On-Premise Signs
- A. Residential Districts: Mobile Home Park, General Residential, and Neighborhood Residential, as follows, except as noted under Section 5.3.7.D, Signs for Parking Areas:
    - i. One non-illuminated nameplate sign or non-illuminated, non-commercial message are permitted, provided the surface area does not exceed two (2) square feet and the sign is set back at least five (5) feet from the front property line. The maximum height of the sign shall be six (6) feet.
    - ii. One or more wall or monument signs shall be permitted for the conditional uses where permitted: church, school, museum, other community facility, other use, or nonresidential principal use. One (1) square foot per one (1) lineal foot of street frontage shall be permitted with the total aggregate sign area not exceeding forty (40) square feet. Such sign shall be solely for the purpose of

- identifying the use and its services or activities, or identifying the building, and may be illuminated by means which directs light onto sign face only. No illuminated or flood lights are permitted. Changeable copy signs may also be permitted provided that they do not exceed fifty (50) percent of the total area of the sign
- iii. One (1) kiosk shall be permitted for the following conditional uses where permitted: church, school, museum, or other community facility, as defined by the City Code.
  - iv. For major subdivision development: one permanent identification sign not exceeding forty (40) square feet in area. The Building Inspector may approve additional subdivision entrance signs where he finds affirmatively to at least one (1) of the following criteria:
    - a. The subdivision has principal entrances from two or more major streets
    - b. The subdivision is physically divided by an existing major street.
    - c. Major entrances from the same street are separated by at least 330 feet.
  - v. Multi-family residential complexes may be permitted one (1) sign identifying a rental office which shall not exceed four (4) square feet if the sign is visible from a public right-of-way;
- B. Highway Commercial, Industrial, High Technology Park, and Business Districts: Neighborhood Mixed Use, Main Corridor Commercial, City Center, and Educational: On-premise signs shall be permitted as follows:
- i. Area Limit:
    - a. In the Highway Commercial, Industrial, and High Technology Park districts, the maximum aggregate area for all signs is three hundred (300) square feet per place of business unless expressly permitted otherwise by this ordinance. One (1) square foot per one (1) lineal foot of street frontage shall be permitted.
    - b. In the Business districts: Neighborhood Mixed Use, Main Corridor Commercial, City Center, the aggregate area for all signs shall be limited to one (1) square foot per one (1) lineal foot of street frontage with a maximum aggregate area of one-hundred (100) square feet per frontage per place of business unless otherwise expressly permitted in this ordinance.
  - ii. Height Limit:
    - a. In the Highway Commercial, Industrial, and High Technology Park districts, the overall height limit of the entire sign structure shall be twenty (20) feet from grade.
    - b. In the Business districts, the overall height limit of the entire sign structure shall be ten (10) feet from normal grade.
  - iii. Permitted Signs: The following signs are permitted and shall be regulated as follows in regard to number, size and type of on-premise signs:
    - a. Monument Signs: Monument signs shall be limited to a total of one (1) per street frontage. To provide an incentive for business to erect monument signs in Business and Industrial districts, the maximum size for monument signs may be increased to one- and-one-quarter (1 1/4) square feet per one (1) linear foot of street frontage. In the Business districts there is a maximum of 125 square feet. In no case shall a business be permitted both a pole sign and a monument sign. The following example is provided to illustrate the incentive; Example: A business has 100 linear feet of frontage may elect to have a 50 square foot wall sign, and a monument sign as large as 62.5 square feet including the 25% bonus allowed for monument signs.
    - b. Marquee Signs: No more than one

- (1) marquee sign shall be permitted per place of business. No part of the sign shall extend beyond the outer edge of the marquee. The roofs of all marquees shall be properly guttered and connected by downspouts so that the water there from will not drip or flow onto public property.
- c. Wall Signs: An identification sign on an awning or canopy shall be considered a wall sign. Under no circumstances shall a permitted wall signs cover more than thirty-three (33) percent of a side of a building. A wall sign shall not extend further than twelve (12) inches above or from the building to which the sign is attached.
  - d. Kiosks: No more than one (1) kiosk shall be permitted for the following uses where permitted: church, school, museum, or other community facility, as defined by this City Code.
  - e. Roof Signs: In the Highway Commercial, Industrial, and High Technology Park districts, only one (1) roof sign shall be permitted per place of business. The height of a roof sign shall not exceed three (3) feet above the average height of the roof parapet. The size of a roof sign shall not exceed seventy-five (75) percent of the lot frontage (i.e., 0.75 square feet for every one (1) linear foot). No roof sign shall project over a public right-of-way. In no case shall it exceed the applicable district height limit for primary structures.
    - 1. The supporting members of roof-mount signs shall appear to be free of any extra bracing, angle irons, guy wires or cables. Supports shall appear to be an architectural and integral part of the building. Supporting columns of round, square or shaped steel members may be erected if the required bracing which is visible to the public is minimized or covered.
  - f. Pole signs: No more than one (1) pole sign shall be permitted per place of business. In no case shall a business be permitted both a pole sign and a monument sign on the same frontage.
  - g. Changeable Copy Signs: Signs with changeable copy are permitted provided that the changeable copy area does not exceed fifty (50) percent of the total permitted area of the sign. Changeable copy area is calculated in relation to the maximum aggregate sign area permitted in the zoning district.
  - h. Projecting signs: A maximum sign size of twenty (20) square feet and a height of fifteen (15) feet is permitted.
  - i. Dynamic Signs are permitted in Highway Commercial, Main Corridor Commercial and City Center districts excluding the Downtown Historic district and subject to standards in Section 5.3.6.
- C. Historic Districts. All signs in any zoning district which has been properly designated a historic district as provided for by this Fairmont Code, shall meet the requirements of the Historic Preservation Review Commission, in addition to satisfying all applicable regulations, restrictions or requirements of the district in which they are to be located.
- i. General sign requirements. All newly erected or replacement signs within the City of Fairmont's Historic districts must be approved by the Fairmont Historic Preservation Review Commission (FHPRC). Proposed signs for FHPRC review must be submitted with photos, drawings, color samples, and the City of Fairmont Sign Application.
  - ii. The size and location of any newly constructed or reconstructed or replacement sign in the designated historic districts must be consistent and

- compatible with the architecture, design, scale, and height of the building. With regards to the size, color and graphic representation of signage the FHPRC will allow a creative, diverse, and unique approach, however, signs shall not overwhelm or obscure architectural elements or details.
- D. Original signage deemed historically significant by the FHPRC must be retained and preserved where feasible. This is also applicable to mosaic tile and sidewalk signs.
  - E. Lettering and Graphics that are carved or painted onto the background of the primary material shall be permitted.
  - F. All wood signs must be painted. Stains and varnishes that create a rustic appearance shall not be used.
  - G. Indirect lighting with period lighting fixtures to illuminate signs and the surrounding building façade shall be permitted.
  - H. Signs shall be limited to trading name and logo only.
  - I. Sign and sign logo are to be of a “Theme Nature”, that reinforces the name of the business, and products sold by the business.
  - J. Animated components, flashing or lights, formed plastic, injected molded plastic, channel letters, or box sign with acrylic front are prohibited.
  - K. All signs or sign panels must have finished edges to form a cap that frames the sign.
  - L. No exposed conduit, tubing raceways, conductors, transformers, or other equipment shall be permitted on the exterior of a building.
  - M. Sign illumination is limited to the hours 6AM to 9PM or between store hours of business.
  - N. All sign bolt fastening and clips shall be of hot dipped and galvanized iron, stainless steel, aluminum, glass or bronze, no black iron materials of any type shall be permitted, and materials that will corrode or rust may not be used.
  - O. Location of all openings for conduits and sleeves in the sign shall be indicated by the sign contractor on drawings submitted. The sign contractor will install same in accordance with the approved drawing.
  - P. No sign maker’s labels or other identification (including UL Label) shall be permitted on the exposed surface of signs, except those required by local ordinance. If required by local ordinance, such labels or other identifications shall be in an inconspicuous location.
  - Q. The following types of lighting for signs will not be permitted
    - i. Exposed fluorescent tubes
    - ii. Unshielded lamps
    - iii. Exposed light bulbs
    - iv. Mercury vapor
    - v. Sodium vapor
  - R. The use of natural materials is encouraged. Acceptable materials for the sign, and sign band are:
    - i. Finished wood
    - ii. Polished or brushed aluminum
    - iii. Bronze
    - iv. Painted wood
    - v. Glass
    - vi. Other material approved by the FHPRC
  - S. The following materials are prohibited
    - i. Simulated brick
    - ii. Simulated stone
    - iii. Simulated wood or wood grain plastic laminate
    - iv. Peg board
    - v. Wall covering
    - vi. Texture paint
    - vii. Fake stucco
  - T. All interior signs located within five (5) feet of front window and can be seen from the exterior of the building must be approved by FHPRC and must meet the above criteria
  - U. Professionally painted or lettered signs on glass doors or show windows are encouraged.
  - V. Any alteration to existing sign must be approved by FHPRC, and the work must be completed by a professional sign fabricator.
  - W. Internally illuminated cabinet signs and neon “open” signs are prohibited.
8. Parking Areas. On-premise signs for parking areas shall be regulated as follows in all districts:
- A. Directional signs and pavement markings may be used to control vehicular movement in a parking area. Signs shall be limited to six (6) square feet each with an overall height limit of four (4) feet.
  - B. Parking or driveway area signs are permitted

for the purpose of indicating entrances, exits, name of establishment to which such parking area is accessory, or conditions of use. The actual business occupying the site. No additional advertising on such signs may be permitted.

#### 9. Unique Land Uses

A. Hospitals. Hospitals shall be permitted one (1) monument sign at each entrance which shall not exceed 120 square feet in area or ten (10) feet in height. Hospitals also shall be permitted one (1) building-mounted sign for each building entrance for the purpose of identifying a hospital function. No such sign shall exceed fifty (50) square feet in area. On-site parking directional signs and pavement markings shall be used to control vehicular movement in a parking area. Signs shall be limited to twenty-five (25) square feet each and shall not exceed six (6) feet in height.

B. Gasoline Stations/Convenience Stores. In addition to other sign regulations contained in this ordinance, these establishments which sell gasoline may have the following signs:

- i. Signs identifying only gasoline prices and/or the location of full-service and self-service areas may be located at and secured to each pump island and shall not be calculated in the maximum aggregate sign area. Temporary signs, attached to the pumps and no larger than one (1) square foot each, shall not be computed in the maximum aggregate sign area permitted for the business by this ordinance.
- ii. Each gasoline pump may display only the brand name or emblem of the gasoline, which shall not exceed the limits on the face of the pump.
- iii. Where the establishment provides inspection services, a State of West Virginia inspections sign may be erected on the property, provided that the sign does not exceed a surface area of eight (8) square feet per side.
- iv. Signs informing the general public of employee certifications and the use of special brand name products used in the conduct of general daily business may

be erected if placed flush against the building and shall be exempt from this regulation.

v. Signs which may be required by local, state or federal law in the interest of public health and safety shall be exempted from this regulation. These signs may include, but not be limited to, "no smoking" and "turn off engines while fueling" signs.

C. Multi-Tenant Developments. Multi-tenant developments shall include shopping centers, multi-tenant complexes and multi-tenant office buildings.

i. The project is allowed one (1) monument sign per street frontage with a maximum of height of ten (10) feet and a maximum size of one (1) square foot per one (1) linear foot of frontage with an overall maximum size 100 square feet. The monument sign shall denote the name of the development; major anchor tenants for the project also may be listed on the sign.

ii. Additionally, the project is allowed a maximum of one (1) wall sign per tenant. The following scale shall be used in determining which formula shall be used to calculate the permitted sign size for each tenant:

- a. Store frontage of <twenty-one (21) feet ratio of two (2) square feet per one (1) lineal foot of store frontage.
- b. (2) Store frontage of 21-50 feet... ratio of 1.75 square feet per 1 (1) lineal foot of store frontage.
- c. Store frontage > fifty (50) feet... ratio of 1.5 square feet per one (1) lineal foot of store frontage with a maximum of 100 square feet.
- d. End units shall be permitted a maximum of one (1) wall sign for each exterior side for a maximum of two (2) signs. Each sign is not to exceed one (1) square foot per lineal foot width for the wall where the sign is attached.

iii. Kiosks shall be permitted for the purpose of announcing activities, and

the like, scheduled to occur in such buildings. One (1) square foot per one (1) lineal foot of street frontage shall be permitted with the total aggregate sign area not exceeding forty (40) square feet. Such kiosks shall not be closer than ten (10) feet to the right-of-way nor more than ten (10) feet in overall height above grade.

- iv. Dynamic signs subject to the requirements of Section 5.3.6 only one (1) per development is permitted.
- v. Out parcels are permitted two (2) wall signs, with each sign not to exceed one (1) square foot per lineal foot of width for the wall where the sign is attached

D. Theaters. One (1) sign which carries the name of the theater is permitted. Additionally, one (1) marquee sign not to extend twenty-four (24) square feet per movie screen is permitted. Such sign shall project no more than eight (8) feet from the building face to which it is attached and shall have a minimum clearance of eight (8) feet. The total sign area of the marquee sign shall not be included in the maximum aggregate of 300 square feet.

10. Off-Site Advertising Signs. Off-site advertising signs, known as billboards or postal panels, shall be permitted in Industrial and Highway Commercial zoning districts. Such off-site advertising signs shall mean any sign the subject matter of which relates to products, accommodations, goods services, or activities which are sold, offered for sale, or provided from a site, parcel of real estate, location or premises other than upon which the sign is located. Billboards shall be permitted provided they meet the following requirements:

- A. Must be located along major arterial roads or an interstate;
- B. Must be located a minimum of forty (40) feet away from any road, residence, or building;
- C. Lighting used to illuminate the billboard may not interfere with aircraft in the vicinity;
- D. Lighting used to illuminate the billboard may not interfere with the use or enjoyment of adjacent landowners;
- E. Maximum size of 600 square feet;
- F. Maximum height of twenty-five (25) feet;
- G. Billboards must be separated by a minimum of

2000 feet regardless of jurisdictional boundaries;

- H. Billboards using animation, movement, or moving light is prohibited;
- I. Billboards may not obstruct authorized traffic signs or signals;
- J. Billboards may not be attached to a vehicle;
- K. Deteriorated or damaged billboards must be removed; and
- L. Annual inspection and fee will be required.

11. Nonconforming Signs

- A. In the event a nonconforming sign is structurally damaged in any manner, it may be repaired or reconstructed and used as before, if such repair or reconstruction is complete within thirty (30) days of the date of such damage, unless thirty (30) percent or more of the sign and/or its structure are damaged. If thirty (30) percent or more of the sign and/or its structure are damaged or the repair or reconstruction is not completed within thirty (30) days, the entire sign and its structure shall be removed and a new sign which conforms to the requirements of this ordinance may be erected, if otherwise permitted by this ordinance, except as provided in Section 5.3.8.
- B. In the event a nonconforming sign is structurally altered in any manner, the entire sign and sign structure shall be removed and a new sign which conforms to the requirements of this ordinance may be erected, if otherwise permitted by this ordinance.
- C. Any temporary or portable sign erected or displayed prior to the effective date of the amendment of this Article, and which is determined to be nonconforming shall be removed.
- D. The burden of establishing a sign to be legally nonconforming rests upon the person, firm or corporation claiming legal status for the sign.
- E. Nonconforming signs or sign structures must be completely removed or replaced with signs which fully comply with the regulations of this ordinance when one or more of the following situations occur:
  - i. The name or ownership of a business changes; provided however, that upon

application to the Board of Zoning Appeals in accordance with the provisions of Section 8.9 of the Fairmont City Code particularly Section 8.9.6. F thereof, the Board of Appeals may authorize the substitution of one (1) name or owner for another so long as no structural alterations to the nonconforming sign are made.

- ii. A new sign is desired, whether or not the name of the business or use changes.

12. Maintenance; Abandonment.

- A. Maintenance. Every sign or sign structure, whether or not a permit is required, shall be maintained in a safe, presentable and good structural condition at all times, including the replacement of defective parts, painting, repainting, cleaning and other acts required for the maintenance of such sign. No person shall maintain or permit to be maintained on any premises, owned or controlled by him, any sign or sign structure which is in a dangerous or defective condition. No sign painted or printed on paper or fabric shall be posted or otherwise secured directly to the surface of any awning, canopy, utility service pole, building or structure not intended for signs.
- B. Surrounding Area. The owner of any property on which a sign is located and those responsible for maintenance of the sign shall be equally responsible for the conditions of the area in the vicinity of the sign and shall be required to keep this area clean, sanitary and free from noxious or offensive substances, rubbish and flammable waste materials.
- C. Abandonment. Any sign or sign structure, including temporary signs or sign structures, that is located on property which becomes vacant and is unoccupied for a period of 120 days shall be deemed to have been abandoned.
  - i. Abandoned signs and sign structures are prohibited and upon abandonment as defined herein the sign shall be removed within thirty (30) days by the owner or person, firm or corporation responsible for the sign or owner of the premises or the person, firm or corporation responsible for the premises as follows:

- ii. Abandoned signs and their structures which are both nonconforming, shall be removed within ten (10) days after being designated as abandoned;
- iii. Abandoned signs where the sign is nonconforming but the structure is conforming, the nonconforming sign shall be removed within ten (10) days after being designated as abandoned;
- iv. Abandoned signs, where both the sign and the structure are conforming: the sign shall be removed within ten (10) days after being designated as abandoned but the conforming structure may remain.

13. Registration of Persons in Sign Business.

- A. Every person engaged in selling, erecting, altering, repairing and maintaining signs or sign structures including but not limited to marquees, porte-cocheres, awnings, canopies and any other similar type of outdoor display regulated by this Article shall apply to the City of Fairmont for registration, except as otherwise noted herein.
- B. The sign contractor at all times shall maintain in full force and effect contractor's public liability insurance covering personal injuries and property damage with limits of not less than \$1,000,000.00, which policy shall name and identify the City of Fairmont as an additional insured. The applicant for registration at the time of application shall file with the City Clerk a certificate of standard form evidencing that such insurance is in force and effect. The applicant shall be responsible for providing the City with notification of insurance cancellation at least thirty (30) days prior to such action.
- C. Sign Contractors License.
  - i. Upon compliance with the provisions for liability insurance providing a copy of state license and payment of the fee stipulated in this Article, the applicant shall be eligible to receive a City of Fairmont Sign Contractors License.
  - ii. A City of Fairmont Sign Contractors License shall authorize the holder thereof to engage in the business of signs and other similar types of outdoor

displays and devices regulated by this Article from the date of issuance to the succeeding June 30; provided that the holder complies with the requirements of this Article.

- D. The license may be renewed for a period of one (1) year upon application and payment of the annual fee; provided, however, that at the time of renewal, the application shall file with the City Clerk a certificate of standard form evidencing that the liability insurance required by this Article is in force and effect for the renewal period. In addition, the applicant shall provide proof that all State workers compensation premiums are paid and that workers' coverage is in force and effect. Application shall be made for renewal before July 1. Failure of currently registered persons to renew any certificate within thirty (30) days after July 1 shall automatically result in a double fee at the time of renewal.
  - E. If a person changes the name or form of organization under which he operates, such person shall be required to register and pay the required fee as would be required of a new registrant. Nothing in this Article shall be construed to permit the transfer of a registration from one registrant to another.
  - F. No person shall engage in selling, erecting, altering, repairing or maintaining sign structures or projecting signs, ground signs, roof signs, wall signs, post signs, globe signs, barber pole signs, awnings, canopies, marquees or Porte- cocheres or any other similar type of outdoor display regulated by this Article without having been registered as provided under this Section.
14. Permit Fees. Sign permit fees can be found in Article 8.11 Fees of the zoning code.
15. Revocation of Registration or Permit. The City Manager or Finance Director are:
- A. hereby authorized and empowered to revoke the license of any sign contractor under this article who, having been notified of a violation according to the procedures established in the ICC International Building Code, and NFPA Electrical Code, Property Maintenance Code, or any of the other provisions of the City Code or any of the provisions of this Article, shall fail to remove or abate such violation within thirty (30) days after notification. Such revocation shall be final and the person affected shall not be eligible to receive a new registration certificate within thirty (30) days after such revocation.
  - B. The City Building Inspector or Planning Director or their designate are hereby authorized and empowered to revoke any permit issued by the City under this Article upon failure of the holder thereof to comply with any of the provisions of this Article or any state applicable, local, or national code. They are also authorized and empowered to revoke a permit for the erection of any sign or similar structure which violates the provisions of this Ordinance.
16. Inspections and Enforcement. The City Building Inspector or his designee shall make an inspection of any sign or structure regulated by this Article at the time of sign erection. The Inspector shall cause to be removed any sign that violates any provision of this Article or a sign or structure for which no permit has been issued. The owner of the property on which the sign or structure is located or the owner or person, firm or corporation responsible for the sign or structure itself shall be notified in writing of the violation and if not altered or removed to meet the requirements of this article within twenty (20) days for structural deficiencies or thirty (30) for type, size, or location deficiencies, such sign or other structure shall be removed by the City or designee and the cost of such work shall be charged to the appropriate party and collected in the manner provided by law.
- A. Notwithstanding the above, in cases of emergency, or if the sign or structure is in danger of imminent collapse, is defective, or possess a substantial and present risk to persons or property, the inspector may cause the immediate removal of such sign or structure without notice.
17. Continuing Violations. The non-abatement of a violation of the provisions of this Article, after due notice, shall be considered to constitute a separate violation for each day that such violation is permitted to exist.
18. Penalty. Whoever violates any provision of this Article shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be subject to a

fine of not less than \$100.00 or more than \$500.00 or same as Zoning Code and/or Building Code

19. Appeals. Anyone violating any portion of this code shall have ten (10) days to appeal to the Board of Zoning Appeals. Any violation to International Code Council or National Fire Protection Association codes shall have twenty (20) days to appeal to the International Code Council Board of Appeals.
20. Non-Conforming Signs. It is the policy of the City to encourage and, to the maximum extent practicable, require that all signs within the City be brought into compliance with the requirements of this Ordinance.
  - A. A sign which was lawfully erected prior to the effective date of this ordinance but which does not conform in one or more respects with the requirements of this Ordinance may remain in use, subject to the requirements of this Section and other applicable requirements of City Ordinances.
  - B. Limitations on Nonconforming Signs.
    - i. Temporary Signs. Any nonconforming temporary sign shall be removed on or before 365 days after the effective date of this Ordinance or shall be considered in violation of this Ordinance.
    - ii. Abandonment. Any sign, including its frame and support structures, related to a use or business that ceases to exist or operate for a continuous period of ninety (90) days shall be considered non-conforming and shall not be reused for sign purposes unless and until it is in full conformity with the provisions of this Ordinance, subject to issuance of a new sign permit.
    - iii. Routine Repairs and Maintenance. Repairs and maintenance of non-conforming signs, such as repainting and electrical repairs, shall be permitted, provided that repainting shall not include a change of copy or color.
    - iv. Required Removal. Where an amendment to a previously approved development plan is proposed, approval of such plan shall be contingent upon removal of all non-conforming signs on the site. For example, if an existing retail establishment proposes a building

addition or parking expansion, then any non-conforming signs on the property must be brought into compliance as a condition of approval of the amended site plan.

## 5.4 PARKING

### 1. General

- A. Intent. The intent of this section is provide minimum standards for vehicular and bicycle parking facilities such as driveways and parking lots to:
  - i. Ensure the safety of pedestrians both on private property and on the right-of-way.
  - ii. Ensure the safety of vehicles and personal property.
  - iii. Ensure just and reasonable access to land uses.
  - iv. Protect adjacent land uses from the negative impacts of vehicular driveways and parking lots.
  - v. Protect the city, county, and state from unnecessary additional burdens of construction, maintenance, and safety of the public right-of-ways created by vehicular driveways and parking lots.
- B. Occupation and Use. No permit for the construction, reconstruction, extension, repair or alteration of any building, structure or use of land and no building or land or any part of any building or land, may be occupied or used until bicycle and vehicle parking has been provided in accordance with the requirements of this zoning code.
- C. Parking Terms. As applied in this section and elsewhere, the term “parking” may mean both bicycle parking or vehicle parking. Where bicycle parking is the specific subject of a code section, the term “Bicycle Parking” will be used. If the term “parking” would create a lack of clarity, the term “Vehicle Parking” will be used.
- D. Maintenance. The provision and maintenance of required off-street parking facilities are continuing obligations of the property owner or tenant. Every parcel of land hereafter used as a public or private off-street parking or loading area shall be maintained in good condition, free of hazards and deterioration. All pavement areas, sidewalks, curbs, drainage facilities, lighting, bumpers, guardrails, markings, signs, landscaping, and other improvements shall be maintained in workable, safe, and good condition.

### 2. Parking Access

- A. Spaces backing directly onto a street or use of the street for maneuvering between parking rows shall be prohibited.
  - B. All off-street parking must have direct access to an improved public right-of-way through an alley, driveway, or permanent access easement.
  - C. Adequate ingress and egress to the parking facility shall be provided by clearly defined driveways in accordance with access management requirements of the City of Fairmont.
  - D. Entries for parking must be placed along a secondary street or alley, where practicable.
  - E. Access to off-street parking which serves a nonresidential use shall not be permitted across land that is zoned or used for residential purposes.
- ### 3. Vehicular Circulation
- A. All parking lots and parking structures must be designed so that vehicles enter or leave a parking space without having to move any other vehicle. Parking lots and structures where vehicles are moved by employees of the facility are exempt from this requirement.
  - B. All spaces shall be provided adequate access by means of maneuvering lanes.
  - C. Parking lots and parking structures must be designed so that the driver of the vehicle proceeds forward into traffic rather than backs out into traffic.
  - D. Parking lots and parking structures must be designed so that a vehicle is not forced to back onto the public right-of-way to gain access from one parking aisle to another parking aisle.
  - E. Vehicle circulation providing cross-access between abutting lots is encouraged.
- ### 4. Curb Cuts
- A. A curb cut may be installed only with all required permits approved by the Planner, Building Inspector, and Public Works.
  - B. Curb cuts must be located to minimize conflict with pedestrian, cyclist, and vehicular traffic on the abutting public right-of-way. Curb cuts should be located at least 60 feet from any intersection unless otherwise permitted by the Planner or Public Works Director.
  - C. The number and width of curb cuts must be the minimum needed to provide reasonable

access to the site.

5. Driveways

- A. Driveways must be in accordance with Table 5.4.A: Driveway Widths.

Use	Single-lane Driveways		Double-lane Driveways	
	Min.	Max	Min.	Max
Single-Family	8'	12'	16'	24'
Multifamily	8'	12'	16'	24'
All other uses	8'	12'	18'	24'

- B. Setbacks. All driveways must be setback at minimum five (5) feet from all lot lines except for along the area where a curb cut has been approved.
- C. Flares. A driveway flare may exceed the allowable driveway dimension by up to eighteen (18) inches on either side for all uses and up to thirty-six (36) inches for industrial uses.
- D. Single-family Driveway Count. For single-family and two-family uses, only one (1) driveway access per unit is permitted with the following exceptions:
  - i. Multiple Road Frontages. A lot with two (2) road frontages may be permitted one (1) additional driveway access or a through lot with a driveway may be permitted to have a single uninterrupted driveway with one (1) access at a road frontage and one (1) access at the alley.
  - ii. Same Street Frontage. Two driveways may be permitted along the same street frontage with a minimum width of fifty (50) feet between driveways. Such driveways may connect to create a loop in the front yard so long as there is a minimum of twenty (20) feet between the edge of the right-of-way and the portion of the driveway mostly parallel to that right-of-way and all other requirements are met.

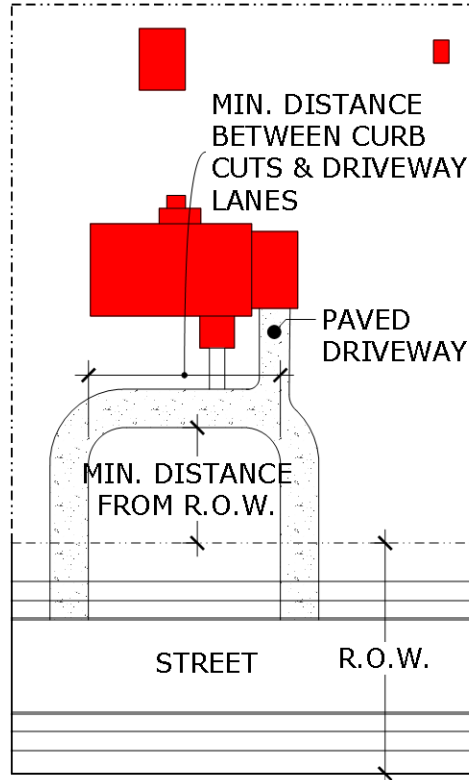


Figure 5.4.A Looped Driveway

- E. Shared Driveways for Residential. Shared driveways are permitted for residential land uses as long as the width of the driveway is a minimum of ten (10) feet. A Shared Driveway shall be any driveway that crosses the side or rear yard line in nearly equal proportions onto adjacent parcels.
- F. Double-Track Driveways. Double-track driveways are driveways in which a center portion of the width remains landscaped and are permitted so long as each wheel strip is at least 18 inches in width and the area between the wheel strips is landscaped with living groundcover. However, within the public right-of-way, the driveway must be fully paved along its total width.

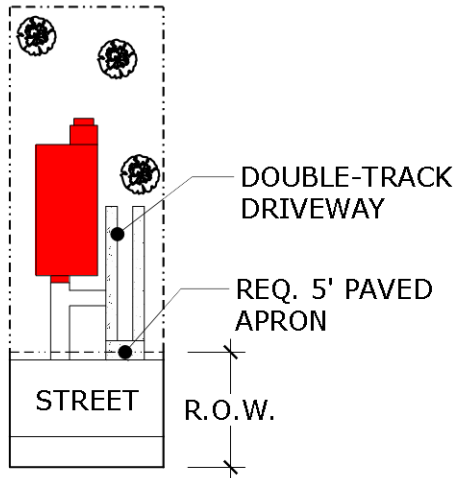


Figure 5.4.B Double-track Driveway Example

- G. **Garage Aprons.** A garage apron is a paved area in front of a garage that exceeds the maximum permitted driveway width. It is permitted to extend for a depth of twenty-six (26) feet from the garage doors, at which point the driveway must be no wider than the maximum permitted driveway width. The garage apron may be only as wide as the width of the garage.

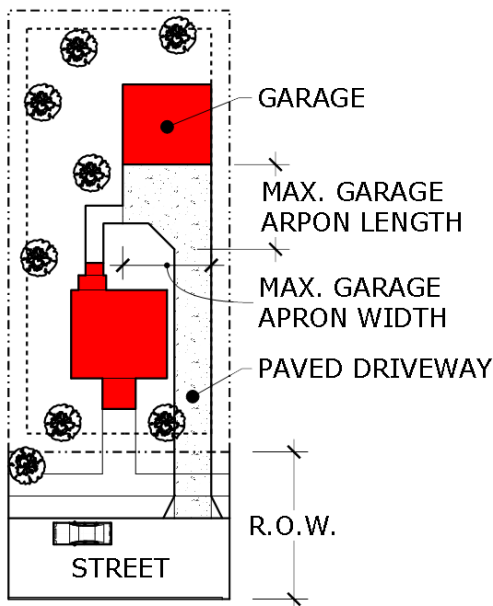


Figure 5.4.C Garage Apron

- H. **Materials.** All portions of a driveway shall be constructed of like material. Driveways shall be constructed of concrete, asphalt, driveway

pavers, or brick unless explicitly permitted otherwise in this code. A driveway on private property shall have the following thicknesses:

- i. Concrete shall be at minimum four (4) inches in thickness with a minimum of four (4) inches of base aggregate.
- ii. Asphalt shall be at minimum two (2) inches in thickness with a minimum of six (6) inches of base aggregate.
- iii. Paver and brick driveways shall be constructed to the manufacturer's specifications. If no such standards exist, the Planner, Building Inspector, or Public Works Director may set the minimum requirements as they deem necessary.

- I. **Right-of-way Material Standards.** All portions of a driveway located on a public right-of-way shall be made of concrete or asphalt and shall have the following requirements:
  - i. Concrete shall be at minimum six (6) inches in thickness.
  - ii. Asphalt shall be at minimum three (3) inches in thickness.
  - iii. Any other standards required by the Director of Public Works.

- J. **Gravel Driveways.** Gravel driveways shall be permitted for single-family and two-family uses on their own lot with the following requirements:

- i. **Slope.** Gravel driveways must have a slope of less than 15% in grade (less than 15 feet of rise per 100 linear feet). Driveways with a slope going downhill away from the right-of-way count as a slope less than 15%.

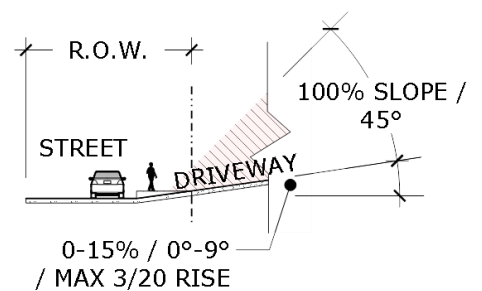


Figure 5.4.D Slope

- ii. **Right-of-way.** Within the public right-of-way, the driveway must be fully paved

along its total width and shall have a minimum paved length of five (5) feet, even if the length within the right-of-way is less.

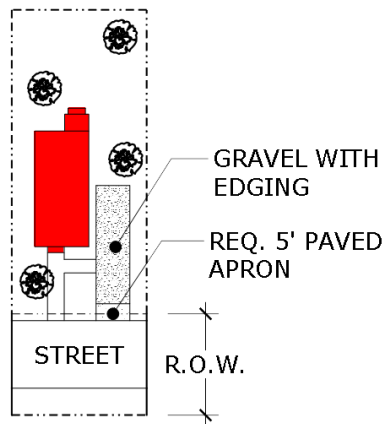


Figure 5.4.E Minimum Paved Apron

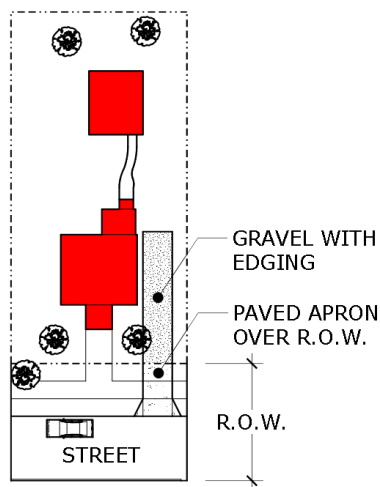


Figure 5.4.F R.O.W. Paved Apron

- iii. Containment. A curbing material such as landscape timbers or other physical barrier approved by the Planner must be constructed between a gravel driveway and any side-yard line equal to or lower in elevation to the driveway.
- iv. Type of Gravel. The gravel used must be angular and interlocking.
- v. Additional Standards. The Director of Public Works or the Planner may place additional requirements on gravel driveways to prevent negative impacts on the public right-of-way or adjacent property owners. Gravel driveways shall

count as an impervious surface.

- 6. Vehicular Parking and Parking Lots
  - A. Supplemental Regulations. Surface parking, parking not located inside of a parking garage, may also be regulated by the Zoning District or Use type. Please see Article 3 – Zoning Districts, Article 4 – Use Standards, and Article 5 – Site Standards for more information.
  - B. Parking on Landscaping. Vehicles may not be parked or stored upon any lawn or landscaped area with the following exceptions or restrictions:
    - i. Residential Dwellings and Storage of Trailers and RVs. Recreational vehicles (RV), trailers, or similar non-motorized apparatuses, may be parked in a side or rear yard landscaped area for a single-family dwelling or duplex provided that the RV, trailer, or similar apparatuses are related to the principal use and do not violate any other part of the zoning code.
      - a. Surface Requirements. The wheels and jack stand must be placed upon concrete, asphalt, driveway pavers, or similar permanent paved surfaces unless located on an approved driveway.
      - b. Enclosed Trailers and RVs. Enclosed trailers such as cargo trailers or RVs must be more than 5 feet from all property lines.
      - c. Front Yard. Trailers and similar non-motorized vehicles may not be parked within the front yard, except when on a driveway.
      - d. Operable. These trailers must be in operable condition and legal for use on public roads.
      - e. Number. No more than two trailers may be parked on a landscaped area as permitted in this section.
    - ii. Holidays. Parking on landscaped areas during holidays observed by the City of Fairmont, State of West Virginia, or the United States of American shall be permitted.
    - iii. Special Event Permits. Vehicles may be permitted to park on landscaped areas on public land included in a special event permit unless there are signs at the locations stating otherwise or if the parking of such vehicles creates a hazard or impediment for pedestrians or other motorists.

iv. Commercial Trailers. Trailers intended to be pulled by semi-trucks (semi-tractors) or similar commercial vehicles shall not be parked or stored on any residential zoned or property solely used as a residential dwelling.

C. Parking Space Use Restrictions. Off-street parking facilities required herein shall be utilized solely for the parking of passenger automobiles or light trucks with not more than two axles, belonging to patrons, occupants or employees of specified uses. Said parking facilities shall not be used for the storage, display, sale, repair, dismantling or wrecking of any vehicle, equipment or material, unless such facilities are enclosed in a building and otherwise permitted in the district, and unless such display is conducted upon stalls that are otherwise considered surplus to the requirements herein.

D. Setbacks. All parking lots shall be setback at minimum five (5) feet from all property lines.

E. Screening. Except for parking areas serving single-family and two-family dwellings on their own lots, all parking lots shall meet the screening requirements in Section 5.5.

F. Surface Material. All parking areas and driveways for all uses shall be paved with a permanent surface material or contain a similar type material approved by the Planner. Gravel and other stabilization material without a permanent wearing surface, such as concrete or asphalt, is not permitted unless explicitly stated otherwise within this code.

G. Curbs. Except for parking lots and associated driveways serving single-family and two-family dwellings on their own lots, a raised or rolled concrete curb at least six (6) inches in height shall be installed with the construction of all driveways, parking lots, access lanes and other vehicle maneuvering areas to prevent motor vehicle conflicts with abutting landscape areas, sidewalks, streets, buildings or adjoining property.

i. Exception. A curb or portions of a required curb may be modified or exempted by the Planner for the purposes of stormwater management.

H. Parking Aisle and Stall Widths. Parking area aisle widths shall conform to the following

table, which varies the width requirement according to the angle of parking.

Table 5.4.B: Aisle and Stall Widths					
Angle of Parking	0°	30°	45°	60°	90°
	Width in Feet				
A - Stall Width (Min)	8	8.5	8.5	8.5	8.5
B - Stall Depth (Min)	18	15	17.75	19	18
C - Skew Width (Min)	8	16.5	11.66	9.5	8.5
D - Drive Aisle Width, One-Way (Min)	11	11	12	13.5	-
E - Drive Aisle Width, Two-Way (Min)	20	22	22	22	23
Min. Width 2 Stalls and 1 Drive Aisle					
One-Way	19	41	47.5	51.5	-
Two-Way	38	52	57.5	60	59

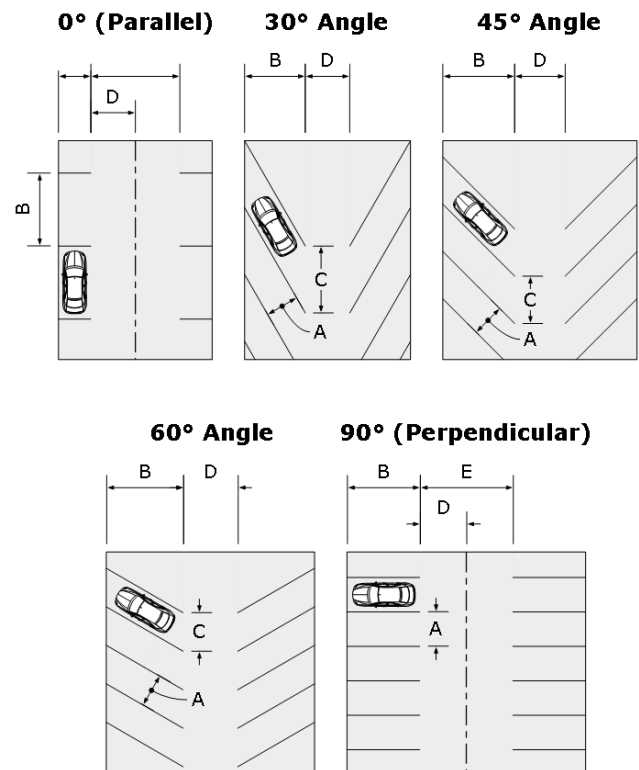


Figure 5.4.G: Automobile Parking Stall and Drive Aisles

Angle of Parking	0°	30°	45°	60°	90°
	Width in Feet				
<b>A - Stall Width (Min)</b>	8	8	8	8	8
<b>B - Stall Depth (Min)</b>	16.5	11	13.5	16	16.5
<b>C - Skew Width (Min)</b>	8	16.33	10.5	9.25	8

- I. Garbage and Recycling Containers. Off-street parking areas for new commercial, industrial, or multi-family residential developments shall be designed to accommodate containment facilities for both garbage and recycling containers.
- 7. Handicapped Parking Standards
  - A. Application of Standards. All regulations within the section are duplicative or are supplemental to the regulations within the Federal Americans with Disability Act and ADA Standards for Accessible Design published by the Department of Justice. The requirements of the Federal Americans with Disability Act, ADA Standards for Accessible Design, and this Zoning Ordinance must be considered with the most restrictive applying.
  - B. Number of Spaces. All parking lots servicing four or more dwelling units or non-residential uses shall supply a minimum number of handicapped parking spaces according to Table C. The table below indicates the number of handicapped spaces that shall be provided, unless a revised regulation is officially established under the Federal Americans with Disabilities Act.

Total Number of Required Parking Spaces on the Lot	Required Minimum Number or Percent of Handicapped Parking Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2% of required number of spaces
1,001 or more	20 plus 1% of required number of spaces over 1,000

- C. Number of Spaces Exception. Parking spaces used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, or impounded vehicles shall not be required to comply with the rules of this section provided that lots accessed by the public are provided with a passenger loading zone complying with the Federal Americans with Disability Act, section 503.
- D. Location. Handicapped parking spaces shall be located where they will result in the shortest reasonable accessible distance to a handicapped accessible building entrance. ADA compliant curb cuts, ramps, and accessible routes shall be provided as needed for access from the handicapped spaces to the uses and buildings they are provided for.
- E. Size Requirements. Handicapped parking spaces required within this section shall comply with the minimum width requirements. Car parking spaces shall be a minimum of eight (8) feet wide. Van parking spaces shall be a minimum of eleven (11) feet wide. These widths shall be clearly marked to define the width, and shall have an adjacent access aisle. The width of the spaces and access aisle is measured from the centerline of the markings. See Figure 5.4.H.
- F. Access Aisle Width. An access aisle shall be a minimum of five (5) feet in width, measured from the centerline of the parking space markings and shall have a length the full depth of adjacent parking spaces it serves. The access aisle shall be marked to discourage parking on it. See Figure 5.4.H.

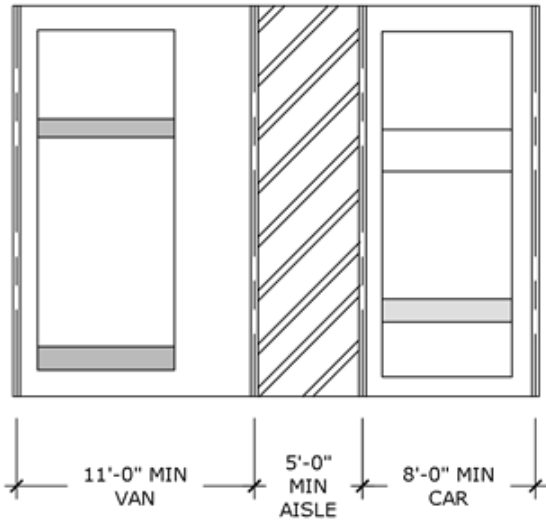


Figure 5.4.H: ADA Parking Space Size Requirements

- G. Van Parking Space Width Exception. A van parking space may be a minimum of eight (8) feet in width where the adjacent access aisle is also eight (8) feet in width.
- H. Slope. Handicapped parking spaces shall be located in areas of less than six percent slope in any direction.
- I. Marking and Signs. All required handicapped spaces shall be well-marked by clearly visible signs. Signs shall include the International Symbol of Accessibility (see Figure 5.4-I) and be a minimum of five (5) feet above the finish grade of the parking space it is intended to mark, measured from the bottom of the sign. For ground markings indicating the width of the parking spaces, blue paint is recommended.



Figure 5.0.I: International Symbol of Accessibility

8. Bicycle Parking

- A. Bicycle parking is encouraged for uses within the City Center, Main Corridor Commercial and

Neighborhood Mixed Use districts and all civic uses.

- B. Space Size. Bicycle parking space shall be a four (4) feet by six (6) feet space provided for locking up to two (2) bicycles to a Planner approved bicycle rack or a bicycle locker that can store up to two (2) bicycles per unit. Bike parking spaces may overlap by one (1) foot so that bike racks may be three (3) feet apart. See Figure 5.4.J.
- C. Location. Bicycle parking shall be at least as conveniently located as the most convenient automobile spaces, other than those spaces for persons with disabilities. Safe and convenient means of ingress and egress to bicycle parking facilities shall be provided.
- D. Visibility. Bicycle parking shall be located in highly visible areas to minimize theft and vandalism.
- E. Accessible Pathways. Bicycle parking facilities shall not interfere with accessible paths of travel or accessible parking as required by the Americans with Disabilities Act of 1990.

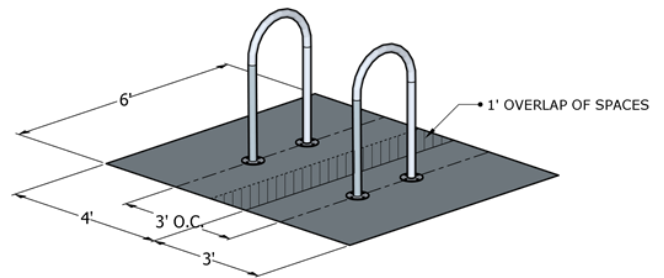


Figure 5.4.J: Bike Parking Spaces

9. Required Parking

A. Calculating Parking Requirements

- i. Parking shall be provided in accordance with Table 5.4.E. Where a use is not specifically listed or only a broad use category is shown, the Planner is responsible for categorizing the use in accordance with Article 3.1.
- ii. When a lot is used for a combination of uses, the parking minimum or maximum requirements are the sum of the requirements for each use and no parking space for one use can be included in the calculation of parking requirements for any other use, except

as permitted in this section or the Supplemental Regulations of a zoning district. For sites that contain more than one use and where at least one use has no minimum, the Shopping Center category will serve as the minimum for that use or uses.

- iii. In determining the minimum or maximum number of parking spaces, fractional spaces are rounded to the nearest whole number, with one-half or more counted as an additional space.

- B. Parking Requirements by Use. The chart below shall indicate the required parking by land use.

<b>Table 5.4.E: Parking Requirements by Use</b>		
<b>Use Type</b>	<b>Vehicle Parking Spaces (required)</b>	<b>Bike Parking Spaces (required)</b>
<b>Residential</b>		
<b>Detached Dwelling, Attached Dwellings (Single-Family Duplex), Attached Townhouse Dwellings</b>	1 per 2 bedrooms	None
<b>Multi-Family Dwelling Units, Group Residential Facility, or Dormitory</b>	1 per 1 bedroom unit 1.5 per 2 bedroom unit 2 per 3 bedroom unit or fraction thereof	None
<b>Boarding Houses, Lodging Houses, and Congregate Living Facilities</b>	1 per 4 beds plus 1	None
<b>Residential Care Facility</b>	1 per 4 bedrooms plus 1 for each full time equivalent employee (at typical maximum shift)	None
<b>Lodging</b>		
<b>Bed and Breakfast</b>	0.6 per 1 bedroom	None
<b>Hotel / Inn, or Motel</b>	0.8 per guest room in addition to the requirement for the dwelling unit for any family or household permanently residing therein. If a restaurant in connection with these uses is open to the public, the off-street parking facilities for the restaurant may be reduced by one-half	1 space per 20 bedrooms
<b>Civic / Community</b>		
<b>Assembly</b>	1 per 300 sq ft of floor area	1 per 2000 sq ft of floor area, minimum 2
<b>Cemetery</b>	None	None
<b>Civic Uses</b>	None	1 per 100 fixed seats, minimum 4
<b>Emergency Shelter</b>	None	None
<b>Religious Uses</b>	1 per 6 fixed seats in primary auditorium or 1 per 300 sq ft, whichever is greater. Churches may reduce the number of required parking spaces, provided that the number of spaces thus required may be reduced to by not more than 80 percent if the building is located within 660 feet of any public parking lot or any commercial parking lot where sufficient spaces are available by permission of the owner(s)	None
<b>Institutional Uses</b>	None. See also Hospitals.	1 per 10,000 SQ FT of GFA, minimum 4.

School	1 per 6 fixed seats in primary auditorium or principal place of assembly	1 per 100 fixed seats, minimum 4; In Residential or Neighborhood Commercial districts, 1 per 50 fixed seats, minimum 8.
Redevelopment of Closed School, Public Building, Community Center, or Church	Parking requirements will be based on the intended use within the redeveloped building	Parking requirements will be based on the intended use within the redeveloped building
<b>Commercial</b>		
Adult Entertainment	1 per 300 sq ft of floor area	1 per 3000 sq ft of floor area, minimum 2.
Animal Care Establishment or Animal Boarding Establishment	1 per 400 sq ft of floor area	None
Bar, Neighborhood Bar, or Brewpub	1 per 400 sq ft of space, excluding sq ft dedicated to brewing equipment	1 per 3000 sq ft of floor area, minimum 2.
Carwash	None	None
Child Care Center or Child Care Facility	1 per employee (at max shift, typical)	None
Convenience Store with Fuel Sales	1 per 400 sq ft of floor area devoted to repair or service facilities, and 1 parking space for each employee (on maximum shift, typical).	See Retail Sales and Services
Crematories	1 per employee (on max shift, typical)	None
Recreational Facilities (Indoors)	1 space per 5 fixed seats or 1 per 500 sq ft of indoor space, whichever is greater.	Minimum 4. 1 space per court or similar facility component.
Recreational Facilities (Outdoors)	1 space per 5 fixed seats or 1 per 5000 sq ft of outdoor space dedicated to this use, whichever is greater.	Minimum 4. 1 space per field or similar facility component.
Craft Production Facility (Microbrewery / Microdistillery / Microcidery)	1 per 2,000 sq ft of floor area or 1 for every employee (at max shift, typical); whichever is greater	None
Dry Cleaning Establishments	1 per 600 SQ FT of floor area	None
Entertainment Uses	1 space per 4 seats.	1 space per 500 seats, minimum 4.
Funeral Services	1 per each 100 sq ft of GFA for public use in addition to a service area for vehicles such as hearses and ambulances	None
Hospitals	1 per three beds and 1 for each employee (on maximum shift, typical).	None
Limited Video Lottery / Keno Establishment, or Incidental	1 per 2 gambling machines	None
Manufacturing and Sales, Artisan	1 per 400 sq ft of floor area	1 per 4000 sq ft of floor area, minimum 2.
Medical Office, or Neighborhood Medical Office	1 per 300 sq ft of GFA	2
Nanobrewery	1 per 2,000 sq ft of floor area or 1 for every employee (at max	None

	shift, typical); whichever is greater	
<b>Offices</b>	1 per 400 sq ft of floor area or 0.8 per full time equivalent employee (at max shift, typical), whichever is greater	1 per 5,000 sq ft of floor area, minimum 2.
<b>Retail and Services use</b>	1 per 400 sq ft of floor area	1 per 4000 sq ft of floor area, minimum 2.
<b>Retail and Services use, Heavy</b>	1 per 800 sq ft of floor area	None
<b>Restaurant, or Restaurant with Alcohol Sales</b>	1 per 4 interior seats, plus 1 for every 2 employees (at max shift, typical)	1 per 3000 sq ft of floor area, minimum 2.
<b>Shopping Center</b>	1 per each 500 sq ft of floor area	1 per 5000 sq ft of floor area, minimum 4.
<b>Vehicle Repair</b>	1 per 600 sq ft of floor area	None
<b>Vehicle Rental or Sales</b>	1 per 600 sq ft of floor area	1 per 10,000 sq ft of floor area, minimum 4.
<b>Industrial</b>		
<b>Manufactured Home Sales</b>	1 per 400 sq ft of GFA office space for public use and 1 per employee (on max shift, typical)	None
<b>Fuel Storage</b>	1 per employee (on max shift, typical) plus 1	None
<b>Communications Network Facility, Headend, or Hub</b>	1	None
<b>Junk Yard or Salvage Centers</b>	1 per 10,000 sq ft of storage area plus 1 per 600 SQ FT of office space	None
<b>Manufacturing, Heavy</b>	1 per employee on maximum shift, plus an additional 5%, but no less than two additional spaces.	None
<b>Manufacturing, Light</b>	1 per employee on maximum shift, plus an additional 5%, but no less than two additional spaces.	None
<b>Outdoor Storage</b>	2	None
<b>Recycling Center</b>	1 per 10,000 sq ft of floor area plus 1 per 600 SQ FT of office space	None
<b>Self-Storage Facility</b>	1 per 2,500 sq ft of floor area, minimum 3	None
<b>Towing Services</b>	1 per employee on maximum shift, plus an additional 5%, but no less than two additional spaces.	None
<b>Warehousing, Distribution Facilities, Wholesale Business</b>	1 per 3,000 sq ft of floor area plus 1 per 600 SQ FT of office space	None
<b>Agriculture</b>		
<b>Commercial Greenhouse</b>	1 per 800 sq ft	None
<b>Market Farm</b>	1 per 400 sq ft of space dedicated to sale of product on site	None
<b>All Other Use Types</b>	None	None
<b>Infrastructure</b>		

All Use Types	None	None
<b>Transportation</b>		
<b>Airport</b>	1 space per 200 sq ft of waiting/boarding area plus 1 per 2 employees	None
<b>Barge Terminal</b>	None	None
<b>Bus Shelter</b>	1 space per 200 sq ft of waiting/boarding area plus 1 per 2 employees	4 spaces per bus loading area
<b>Heliport</b>	1	None
<b>Passenger Terminals</b>	1 space per 200 sq ft of waiting/boarding area plus 1 per 2 employees	None
<b>Marina, Recreational</b>	1 per 40 linear ft of dock plus 8 double length spaces (min 36' ft in length) for each boat ramp.	None
<b>Railway Facilities</b>	1 per each 5,000 sq ft of floor area plus 1 per employee (on maximum shift, typical)	None

C. Additional Parking.

- i. To minimize excessive areas of pavement which depreciate aesthetic standards and contribute to high rates of stormwater runoff, no parking lot shall exceed the minimum parking space requirements by ten (10) percent greater than required except as approved by the Planning Director. In granting additional spaces, the Planning Director shall determine that the parking will be required based on documented evidence of actual use and demand provided by the applicant.
- ii. Off-site parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument shall be filed in the applicable site plan approval files of the Department of Planning, and placed on public record in the Office of the Clerk of the County Commission of Marion County, WV.
- iii. It is the responsibility of the business

owner to maintain current and valid parking as required by this Ordinance. Evidence of such parking is required prior to approval and proof of current leases shall be made available at the request of the Planning Director. Each leased space shall have a sign noting the business for which the space is reserved. Signs shall be five (5) feet above the finish surface of the parking stall.

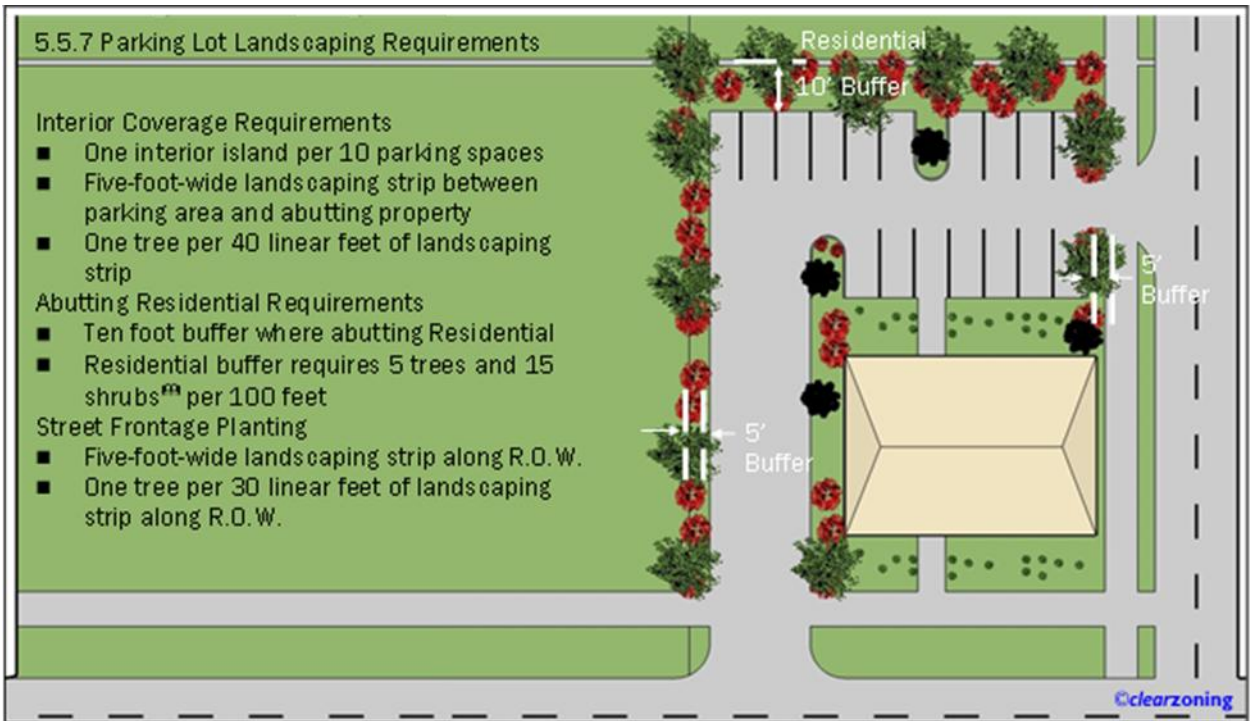
- iv. If the pedestrian access between the off-site parking facility and the use(s) is to cross an arterial street, appropriate safety measures, as determined by the Planning Director, Public Works Director, and City Engineer, must be in place to ensure pedestrian and vehicular safety.
- D. Collective/Cooperative (Shared) Parking. The collective provision of off-street parking for two (2) or more buildings or uses is permitted subject to the following:
- i. Where a mix of land uses creates staggered peak periods of parking, shared parking agreements that have the effect of reducing the total amount of needed parking spaces are encouraged. In these cases, the required number of parking spaces may be reduced. Retail, office, institutional, and entertainment uses may

- share parking areas. Except as otherwise provided in this Ordinance, shared parking shall not include the parking required for residential uses.
- ii. Provisions for collective off-street parking would be made by contract between two (2) or more adjacent property owners. The parking area provided on any one (1) lot could be reduced to not less than one-half (1/2) the number of required spaces for the use occupying the lot. The lots shall be interconnected for vehicular passage.
  - iii. Written easements which provide for the continued use and maintenance of the parking shall be submitted to the City for approval. Any agreement shall include provisions to address any changes in use which shall be reviewed.
  - iv. Whenever possible, collective or cooperative parking arrangements shall utilize shared driveways, shared service drives, cross access drives, and frontage roads to minimize driveways that access an arterial or collector street. Cross access easements, if necessary, shall be submitted to the City for approval.
- E. Parking and Storage of Certain Vehicles. Commercial Vehicles on Private Property. The parking of a commercial vehicle in residential zoned districts shall be prohibited, except that one commercial vehicle of not more than three (3) tons capacity may be parked on any lot on which there is located a principal building and is used by an occupant of the premises. This requirement shall not be interpreted to prohibit commercial vehicles from temporary loading and unloading in any residential district.
- F. Loading Requirements. Any development that involves new construction of a principal building of at greater than 15,000 square feet in gross floor area and that is expected to regularly handle materials or merchandise carried by vehicles rated by the Federal Highway Administration as "heavy duty" (i.e., Class 7 or higher and with a gross trailer weight rating of over 26,000 lbs.), must provide off-street loading facilities. This requirement does not apply if an applicant shows, with a letter of concurrence from the Director of Public Works, that on-street loading facilities are adequate.
- i. Location. All required off-street loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into a street or alley, excluding use of an adjacent alley as permitted herein. No permitted or required loading berth shall be located within thirty (30) feet of the nearest point of intersection of any two streets.
  - ii. Front Yard Restriction. No loading berth may be located on a front façade or in a front yard except in the Industrial district.
  - iii. Encroachment Restriction. Loading and unloading activity may not encroach upon any public right-of-way, except where specifically designated by the Director of Public Works.
  - iv. Landscape Buffer, Front Yard. Where any loading area is located along, within 50 feet of, and visible from a public right-of-way other than an alley, the loading area must be screened in accordance with Section 5.5. by a Type B or greater landscape buffer.
  - v. Landscape Buffer, Side and Rear Yards. Where any loading area is located within 50 feet of, and visible from, an interior side or rear lot line that abuts any lot in not in an Industrial district, the loading area must be screened in accordance with Section 5.5. by a Type C or greater landscape buffer.
  - vi. Surface Material. Paving regulations for loading areas shall be in accordance with the paving regulations for parking areas as set forth in the Development Standards Section. Drainage regulations shall be in accordance with the City's Stormwater Management Ordinance and other City ordinances.
  - vii. No Idling. All loading berths must be signed to indicate "No Idling."

## 5.5 LANDSCAPING REQUIREMENTS

1. Purpose and Intent. The purpose of this Section is to establish minimum standards for the provision, installation, and maintenance of landscape plantings in order to achieve a healthy, beautiful, and safe community.
  - A. These landscape requirements have been established to achieve the following:
  - B. Conserve the value of land and building.
  - C. Integrate various elements of a site to attain and maintain attractive properties.
  - D. Blend harmonious land uses, buffer incompatible land uses and define outdoor and architectural spaces.
  - E. Control soil erosion by slowing or constraining the effects of wind and water.
  - F. Minimize visual pollution; minimal screening provides an impression of separation of spaces and more extensive screening can entirely shield the visual effects of an intense land use from a less intense land use.
  - G. Establish a greater sense of privacy from visual or physical intrusion of intense land uses, the degree of privacy varying with the intensity of the screening.
  - H. Safeguard the public health, safety and welfare, and preserve the aesthetic qualities and enhance character of the City of Fairmont.
    - i. The landscape requirements of this Section are considered the minimum necessary to achieve the intent noted above. In several instances, the standards or requirements are intentionally flexible to encourage adaptability to specific circumstances and creative design. Applicants are encouraged to provide additional landscaping to improve the function, appearance and value of their property.
2. General Provisions/Applicability
  - A. These landscape regulations shall apply to two-family, multi-family, commercial, office, industrial, and institutional development. Previously approved development need not comply unless new site development approval is being sought.
  - B. If a proposed addition or renovation to an existing structure equals or exceeds 150% of the gross square feet of the structure, the site must be brought into compliance with the landscaping requirements of this Section; provided, that where it is clearly demonstrated that compliance with this Section will reduce the minimum number of required parking spaces for the use, compliance with this Section shall be required only to the degree that the minimum parking requirement can still be met.
3. Enforcement
  - A. Wherever site plan review is required by this Ordinance, a Landscape and Screening Plan shall be a required part of such site plan. No permanent Certificate of Occupancy shall be issued without completion of all landscaping shown on an approved Landscape and Screening Plan.
  - B. In the event that the season is not appropriate, a temporary Certificate of Occupancy may be issued for a period of one (1) year when weather conditions do not permit landscape installation at the time of occupancy.
  - C. Failure to implement an approved Landscape and Screening Plan, including preservation of existing features, or to maintain the landscaping as long as incompatibility of adjoining uses exists, shall be a violation of this Ordinance subject to the penalties outlined in this Ordinance.
4. Landscaping and Screening Plan. As a component of a required site plan, a Landscape and Screen Plan shall show the entire lot to scale (minimum 1" =50') contain the following elements:
  - A. The name, address, and phone number of the owner, developer, and plan preparer as well as the date the plan was prepared, the scale of the drawings, and north arrow;
  - B. The location, quantity, size, common name, and scientific name of all proposed planting materials;
  - C. Planting and installation details as necessary to ensure conformance with all required standards and planting specifications; and
  - D. If applicable, the design of fencing and other significant accessory structures used for screening.
5. Preservation of Existing Features
  - A. Trees and shrubs already existing on land subject to the provisions of this Article should be preserved wherever feasible.
  - B. Existing trees that are preserved will contribute to the required landscaping. For each tree that is preserved that is greater than eight (8) inch caliper and is found on the approved list, the amount of new trees to be installed shall be reduced by two (2) trees.

- C. Tree protection barriers shall be specified on the Landscape and Screening Plan and shall be placed at or beyond the drip line of trees to be protected. These barriers shall remain in place during heavy construction on the site, and no vehicle, machinery, tools, chemicals, construction materials, or temporary soil deposits may be permitted within the barriers, nor may any notice or other object be nailed, stapled, or posted on protected trees.
6. General Landscaping Requirements
- A. Required Landscaped Areas. All land areas that are not covered with buildings and pavement or used for agricultural purposes shall be appropriately landscaped in accordance with the requirements of this Section. Landscaping shall be provided in the areas specified and shall be of the minimum intensity specified below.
  - B. Landscaping Size. The scale and nature of landscape materials shall be appropriate to the size of the structures and the available space. Materials shall be located to avoid interference with overhead and underground utilities and utility easements or vehicular or pedestrian movement and visibility. Growth characteristics should be considered carefully.
  - C. Screening Trash and Outdoor Storage. All trash dumpsters, trash pads, loading, building service, and outside storage areas shall be screened from residential uses and public streets. Such screening may be achieved by using a minimum six (6) foot high, completely opaque fence or wall, a six (6) foot high berm, or a six (6) foot high evergreen screen. Height of screen shall be measured from the grade of the nearest street.
  - D. Vegetative Ground Cover. Grass and other vegetative ground cover shall be used for all open space, including parking lot islands, except for:
    - i. Decorative mulch planting beds containing trees and/or shrubs.
    - ii. Inert stabilization in areas subject to severe runoff, erosion, or ponding.
  - E. Stone. Where stone or other inert materials are to be used for ground cover, they shall be specifically identified on the Landscape and Screening Plan. Any area not so designated shall be required to have grass or vegetative ground cover.
  - F. Landscaping Vehicle Protection. All landscaped areas adjacent to off-street parking spaces shall be protected from encroachment or intrusion of vehicles (e.g., wheel stops).
  - G. Utility Easements. In no case may a tree or shrub be planted within a storm drainage, sewer, water, or utility easement.
7. Parking Lot Landscaping Requirements
- A. Interior Coverage Requirements
    - i. One interior island shall be provided for every ten (10) spaces. Each interior island shall also be not less than five (5) feet in width and extend along the entire length of the space. The location of the interior islands should be staggered to avoid a regimented appearance. At least one (1) tree shall be provided within each interior island.
  - B. Peripheral Coverage Requirements
    - i. Peripheral landscaping shall be required along the side of a parking lot, driveway, or loading area that abuts adjoining property that is not a right-of-way. See Section 5.5.7 for non-residential uses adjacent to residential uses for buffer area requirements.
    - ii. A landscaping strip at least five (5) feet in width shall be located between the parking area and the abutting property lines, except where driveways or other openings may be required.
    - iii. At least one (1) tree for each forty (40) linear feet shall be planted in the landscaping strip in addition to other planting materials.
  - C. Street Frontage Planting Requirements
    - i. In addition to the requirements of Sections a and b above, landscaping shall be provided along all property boundaries abutting the right-of-way of any street.
    - ii. A landscaping strip five (5) feet in width shall be located along the right-of-way except where driveway or other openings may be required.
    - iii. One tree shall be planted for each thirty (30) linear feet of the landscaping strip in addition to other planting materials.
  - D. Maintenance. The owner and their agencies shall be responsible for providing, protecting and maintaining all landscaping in healthy and growing conditions, replacing it when necessary, and keeping it free from refuse and debris.
  - E. Clear Vision Area. No landscaping, tree, fence, wall or similar item shall be maintained in the vicinity of any corner, street, intersection or accessway intersecting a public right-of-way that the Public Works or Public Safety determines is an obstruction, extends into necessary sight-lines or constitutes a traffic hazard.



8. Buffer Yard Landscaping Requirements

- A. Multi-family and Non-residential Development. New non-residential and/or multi-family development adjacent to single-family residential uses or the General Residential District shall have a Type B Buffer Yard between the non-residential or multi-family uses and single-family residential uses. Nothing shall be construed that this requirement shall dictate layout of landscaping material. The entire length shall be evaluated and required material provided. Preservation of existing vegetation is preferred. The following exceptions apply:
  - i. Where a natural buffer strip is considered to be impracticable or inappropriate, an opaque fence at least six (6) feet in height along the side and rear yard line of the adjacent single-family residential uses so as to continually restrict a clear view beyond said buffer yard may be substituted in whole or in part for a natural buffer provided its specifications are approved by the Planning Official.
  - ii. Existing Structures and Uses. Non-residential or multi-family developments existing at the time of adoption of this Ordinance are exempt from this requirement except when expansions to those facilities meeting the criteria noted under Section 5.5.2.B above.
  - iii. This requirement shall not apply to uses in the Neighborhood Mixed Use and City Center districts.
- B. Earth Berm. An earth berm may be used in combination with any of the above types of screening, but not more than two-thirds (2/3) of the required height of such screening may be provided by the berm. The berm shall be installed with a slope of 1:3 and a minimum crest of two (2) feet.
- C. Location. All screening shall follow the lot line of the lot to be screened or be so arranged within the boundaries of the lot as to substantially hide from adjoining properties the building, parking, loading areas or other activity required to be screened.
- D. Garbage and Trash Receptacles. In all districts, garbage cans and trash receptacles must be suitably screened from view from adjacent streets or properties prior to garbage pick-up.
- E. Buffer Yard Types. The following table is a list of buffer yard types and the minimum requirements

for each. When any requirements state a certain buffer type at minimum or greater, "A" is considered the least and each letter after is greater than the one before it.

**Table 5.5.A: Buffer Yard Types**

	Type A	Type B	Type C	Type D	Type E
Buffer Yard Depth (min)	7'	10'	5'	10'	25'
Fence/Wall Type	N/A	N/A	Solid	Solid	Solid
Fence/wall height (min/max)	N/A	N/A	6' / 7'	6' / 8'	6' / 10'
Trees (min per 100 feet)	3	5	N/A	6	8
Shrubs (min per 100 feet)	15	20	30	40	50

- F. Buffer Yard and Other Landscaping or Setback Regulations.
  - i. Minimum Setbacks. No buffer yard requirement exempts any structure from the required setbacks. If a buffer yard is greater than the required setback, no structure, accessory structure, or other impervious site feature may encroach upon the buffer yard with the exception of Section 5.5.8.G.iv.
  - ii. Minimum Landscaping Requirements. No buffer yard exempts a parcel, development plan, use, and any other circumstance with this code from meeting any other minimum landscape requirement.
  - iii. Combining Requirements. A required buffer yard may contain other setback and landscaping requirements such as street trees, stormwater management facilities, or site lighting.
  - iv. Pedestrian Infrastructure. A buffer yard may contain a sidewalk, bike path, or other pedestrian infrastructure so long as the sidewalk or path crosses the buffer yard at angle greater than forty-five degrees from the yard line in which the buffer yard is required for, making the sidewalk or bike path more perpendicular than parallel to the yard line, unless the sidewalk or pedestrian pathway 5 feet in width or less and located within a Type E Buffer Yard or any buffer yard larger than the required Type E depth.
- 9. Modifications. Under conditions where a strict interpretation of requirements may be either physically impossible or create practical difficulties,

an alternative compliance procedure may be used to maintain the spirit— rather than the letter—of the law. The proposed solution must equal or exceed standard landscaping requirements as a percentage landscaped area. Requests to the Planning Director for use of alternative landscaping schemes may be justified only when one (1) or more of the following conditions apply:

- The sites involve space limitations or unusually shaped parcels.
  - Topography, soil, vegetation, or other site conditions are such that full compliance is impossible or impractical.
  - Due to a change of use of an existing site, the required buffer yard is larger than can be provided.
  - Existing utility lines or easements complicate the placement of required plant materials.
  - Low impact development designs to meet Stormwater requirements are being used on the site. These may include items such as rain gardens, bio-swales and similar treatments.
  - The applicant must provide a justification statement that describes which of the requirements established by the Landscaping Ordinance will be met with modifications, which project conditions justify using alternatives, and how the proposed measures equal or exceed normal compliance.
- A. Where compliance is required as a result of change in use or expansion of an existing building and compliance with this Section will necessitate removal of existing pavement, the Planning Director may approve a reduction of minimum planting areas, provided that proposed plantings, screens, and other landscape features are substantially equivalent to the minimum requirements in terms of landscaping.
- B. After initial approval of the landscape plan the Planning Director may approve any substitute landscape proposal that he/she deems to be equivalent to the approved landscape.
- i. Occasionally, plant substitutions for species specified on approved landscape plans are required due to seasonal planting problems and a lack of plant availability. Minor revisions to planting plans can be approved by the Planning Director if there is no reduction in the quantity of plant material, no significant

change in size or location of plant materials, and if the substitute plants are of the same general category and have the same general design characteristics as the plants originally approved. Proposed materials must also be compatible with the microclimate of the site to ensure healthy plant growth.

#### 10. Installation and Maintenance

- A. Plant materials used in conformance with the provision of this Chapter shall conform to the standards of the American Association of Nurserymen and shall have passed any inspection required under state regulations. Trees shall be balled and burlapped or in containers. Shrubs, vines and ground covers can be planted as bare root as well as balled and burlapped or containers. All trees shall be measured from the top of the root ball to the top of the tree mass.
- i. Deciduous Trees. Deciduous trees shall have a minimum caliper of at least two and one-half (2½) inches with a single central leader, for large and medium trees, conforming to acceptable nursery industry procedures at the time of planting. If deciduous trees are to be used for screening purposes, additional materials listed in this Section must be used to create a dense screen. Small trees shall be at least ten (10) feet apart on center. Medium to large trees shall be at least twenty (20) feet apart on center. The Planner may require up to thirty (30) feet apart for large trees based on species indicated on the landscaping or site plan.
  - ii. Evergreen Trees. Evergreen trees shall be a minimum of six (6) feet in height at the time of planting and shall be unshaired, full and branched to the ground. Evergreen plantings shall be designed to provide an effective, dense screen within four (4) years of planting. It is recommended that evergreen trees be planted no further than ten (10) feet on center to assure an effective screen.
  - iii. Shrubs and Hedges. Shrubs and hedges to be used for off-street parking and screening purposes shall be at least twenty-four (24) inches in height at the time of planting. Shrubs and hedges used for landscaping purposes shall be at least

eighteen (18) inches in height at the time of planting. All shrubs and hedges shall be designed to provide an effective, dense screen and mature height of at least five (5) feet within four (4) years after the date of the final approval of each planting. The height at installation of the planting shall be measured from the level of the surface of the plant base at the edge closest to the screening.

- iv. Grass or Ground Cover. Grass shall be planted in species normally grown as permanent lawns. In swales or other areas subject to erosion, solid sod, erosion reducing net, or suitable mulch and temporary seeding shall be used for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Grass shall be sown or placed in any area not landscaped or paved. Ground cover shall be planted in

such a manner as to provide seventy-five (75) percent complete coverage after two (2) growing seasons.

- B. Mulch. After cultivation, all plant materials shall be mulched with a two (2) to three (3) inch layer of shredded bark, peat moss, or another suitable material over the entire area of the bed.
- C. Maintenance. The owner of the premises shall be responsible for the maintenance, repair, and replacement of all landscaping materials on the premises at the owner's expense. All landscape areas shall be kept free of refuse and debris. Fences, walls, and other barriers shall be maintained in good repair. It is the responsibility of each private property owner to remove any dead, diseased, or dangerous trees or shrubs, or parts thereof, which overhang or interfere with line of sight, traffic control devices, public sidewalks, rights-of-way, or property owned by the City. The City shall have the authority to order the removal of any such trees or shrubs.

11. Approved Street Tree and Shrub List. The “Approved Street Tree and Shrub List” identifies the approved species that may be used to meet street tree and landscaping requirements set forth herein. Plant materials proposed other than those listed in the table may be approved by the Planning Director.

Table 5.5.B: Approved Street Tree and Shrub List	
Approved Trees	
Genus/Species	Common Name
Medium to Large Trees - suitable for urban environments, but not under wires	
Acer rubrum & cvs.	Red Maple Cultivars
Betula spp.	Birch
Celtis occidentalis	Hackberry
Cladrastis lutea	Yellowwood
Corylus colurna	Turkish Hazelnut
Fagus spp. cvs	Beech
Fraxinus americana	White Ash
Fraxinus pennsylvanica	Green Ash
Ginkgo biloba	Ginkgo Species - Male
Gleditsia triacanthos var. inermis	Thornless Honeylocust
Liriodendron tulipifera	Tulip Tree
Nyssa sylvatica	Black Gum
Platanus acerfolia	London Planetree
Quercus alba	White Oak
Quercus bicolor	Swamp White Oak
Quercus muehlenbergii	Chinkapin Oak
Quercus palustris	Pin Oak
Quercus phellos	Willow Oak
Quercus rubra	Red Oak
Quercus shumardii	Shumard Oak
Taxodium distichum	Bald Cypress
Tilia cordata & cvs.	Littleleaf Linden
Zelkova Serrata	Zelkova

Table 5.5.B: Approved Street Tree and Shrub List (continued)	
Approved Shrubs <sup>☒</sup>	
Genus/Species	Common Name
<i>Aronia arbutifolia</i> 'Brilliantissima'	Red Chokeberry
<i>Chaenomeles</i> Species	Oriental Quince
<i>Cotoneaster</i> spp	Cotoneaster Species
<i>Cryptomeria</i>	
<i>Forsythia x intermedia</i>	Showy Border Forsythia
<i>Hydrangea quercifolia</i>	Oakleaf Hydrangea
<i>Ilex glabra</i>	Inkberry
<i>Ilex</i> M. 'Blue Princess'	Blue Princess Holly
<i>Ilex verticillata</i>	Winterberry Holly
<i>Juniperus chinensis</i>	Chinese Juniper
<i>Kolkwitzia amabilis</i>	Beauty Bush
<i>Myrica pennsylvanica</i>	Northern Bayberry
<i>Syringa patula</i> 'Miss Kim'	Miss Kim Lilac
<i>Syringa meyeri</i> 'Paliban'	Dwarf Korean Lilac
<i>Viburnum</i> spp.	Viburnum Species
Small Trees - suitable for planting under low overhead utility wires or restricted spaces	
<i>Alnus glutinosa</i>	European Alder
<i>Amelanchier</i> spp.	Serviceberry
<i>Carpinus</i> spp.	Hornbeam
<i>Chionanthus virginicus</i>	Fringetree
<i>Cornus</i> spp.	Dogwood
<i>Cotinus obovatus</i>	American Smoke Tree
<i>Crataegus</i> spp.	Hawthorn
<i>Halesia carolina</i>	Silverbell
<i>Ostrya birfiniana</i>	American Hophornbeam
<i>Oxydendrum arboretum</i>	Sourwood
<i>Prunus</i> spp. cvs.	Ornamental Cherry
<i>Stewartia ovata</i>	Mountain Stewartia
<i>Syringa reticulata</i>	Japanese Tree Lilac
Evergreen Trees	
<i>Cupressocyparis leylandii</i>	Leyland Cypress
<i>Cryptomeria japonica</i>	Japanese Cedar
<i>Picea abies</i>	Norway Spruce
<i>Picea omorika</i>	Serbian Spruce

Table 5.5.B: Approved Street Tree and Shrub List (continued)	
Approved Trees	
Genus/Species	Common Name
Evergreen Trees	
<i>Picea pungens</i>	Colorado Blue Spruce
<i>Pinus sylvestris</i>	Scots Pine
<i>Pinus strobus</i>	Eastern White Pine
<i>Pseudotsuga menziesii</i>	Douglas Fir
Trees to Avoid	
<i>Acer negundo</i>	Boxelder
<i>Acer saccharinum</i>	Silver Maple
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Eleagnus umbellata</i>	Autumn Olive
<i>Koeleruteria paniculata</i>	Goldenrain Tree
<i>Pryus calleryana</i> 'Bradford'	Bradford Pear
<i>Phellodendron amurense</i>	Amur Cork Tree

## 5.6 LOT STANDARDS

Unless otherwise specified, the following provisions shall apply throughout the City of Fairmont regardless of the underlying regulating district.

1. Mixed-use or non-residential buildings on corner lots shall be considered to have two (2) front yards and shall utilize the minimum front setback for each facade. Single and two-family residential structures may reduce the required yard setback for one (1) side of a corner lot to a minimum of eight (8) feet or the RBL, whichever is greater.
2. All non-residential structures on a lot shall have access available from a public street for use by service or emergency vehicles.
3. Generally, all buildings shall front directly upon a street in a manner that creates a public space that is conducive to pedestrian use. With the provision of open alley access, lots may front upon a central plaza, courtyard or a square, but shall be of sufficient design to allow for the provision of emergency services. Street frontage elevations for interior facing buildings shall maintain the appearance of fronting on the main roadway by use of architectural features that gives the appearance that the building is facing the street.
4. For adjoining lots under single ownership, setback requirements may be determined from the perimeter of the adjoining lots, ignoring interior lot lines, provided that only one main structure and its accessory structures shall be allowed within the perimeter of such adjoining lots and, the following notation is first placed on the recorded deed to each such adjoining lot:

"For planning and zoning purposes, the lot described herein shall be considered as part and parcel of the adjacent lot(s) owned by [insert owner's name] pursuant to a deed (or deeds) recorded at Deed Record [#s] page [#s], in the Office of the Clerk of the County Commission of Marion County. The real estate described herein shall not be considered to be a separate parcel of real estate for land use, development, conveyance or transfer of ownership, without having first obtained the expressed approval of the City of Fairmont Planning Commission. This restriction shall be a covenant running with the land."

## LOTS ACQUIRED AND DEEDED TO A SINGLE OWNER

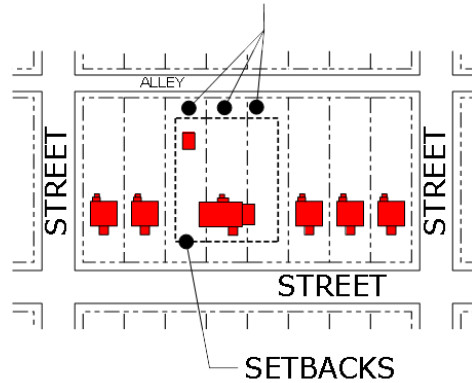


Figure 5.6.A: Example of Single Ownership Lots with Approved Deed Restriction

## 5.7 (RESERVED)

## 5.8 FENCES, WALLS, AND VEGETATIVE SCREENING

1. General.
  - A. Permitted. Fences and walls are only permitted as an accessory structure with permitted uses and may not be placed on a vacant lot, with the exception of meeting the requirements within Section 5.8.5.
  - B. New Construction, Repair, or Modification. The construction of a new fence or wall, or reconstruction of at least 50% of an existing fence or wall, must comply with the standards of this section. The height standards of this section do not apply to fences or walls required for buffer yards, which are addressed by Section 5.5.8. The following exceptions apply:
    - i. Vision Clearance. Any section of existing fence or wall that encroaches upon the vision clearance for corner lots or the vision clearance for vehicular access points at the right-of-way line and is modified or reconstructed must comply with the standards of this section.
  - C. Setbacks and Required Yards. A fence or wall may encroach upon any required yard so long as the fence or wall is aligned parallel or radial to the adjacent property line. Fences or walls shall not cross property lines unless explicitly stated otherwise.
  - D. Encroachment or Interference. No fence or wall may encroach upon a public right-of-way, conflict with required corner visibility, interfere with any utility line, or obstruct any legally required ingress or egress point.
  - E. Materials. Unless explicitly stated otherwise within this code, no fence or wall may be

constructed of barbed wire, concertina wire, razor wire, electrically charged wire, exposed concrete masonry units (CMU) of any type, scrap metal, tarps, or any other material determined by the Planner or Building Inspector to be detrimental to the public health, safety, and welfare.

2. Fence Types.

- A. Open Fence. An Open Fence, also known as a Front Yard Fence, is a fence constructed so that more than 50% of the fence surface consists of regularly distributed apertures. An Open Fence shall be constructed of split rail, wooden picket, chain link, wrought iron, or other material as determined by the Planner which will not present or create a solid visual obstruction by providing at minimum a 1:1 opening between any opaque portion of the fence, such as the vertical wooden boards on a picket fence and the gaps between them. Opaque portions of the fence shall not exceed four (4) inches in width with the exception of structural vertical posts not greater than six (6) inches in width spaced at a median horizontal interval of four (4) feet apart.
- B. Solid Fence. A Solid Fence, also known as a Privacy Fence, is a fence that conceals all materials stored and operations conducted behind it from view on adjoining lots or rights-of-way. A chain link fence with slats is not considered a solid fence.

3. Residential Uses and Residential Districts.

- A. Hedges shall be planted at least three (3) feet from the property line.
- B. Garden walls shall be constructed at least one (1) foot from the property line and shall not exceed 1 foot in height which is measured from the side of higher ground elevation.
- C. Fences.
  - i. Front Yard. Front yard fences shall not exceed four (4) feet in height and shall be Open Fences.
  - ii. Side and Rear Yard. Side and rear yard fences shall not exceed six (6) feet in height. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way. Side and rear fences may be Open Fences or Solid Fences.
- D. Walls.
  - i. Front Yard. A solid masonry wall with a brick or stone finish may be installed with a height between two (2) feet and three and one-half (3 ½) feet. An Open Fence made of wrought iron or similar material approved by the Planner may be installed on top of the masonry wall so long as the total height of the masonry wall and fence

does not exceed the maximum permitted height for a fence in the same yard.

- ii. Side and Rear Yard. A solid masonry wall with a brick or stone finish may be installed with a height between two (2) feet and six (6) feet. An Open Fence made of wrought iron or similar material approved by the Planner may be installed on top of the masonry wall so long as the total height of the masonry wall and fence does not exceed the maximum permitted height for a fence in the same yard.

4. Non-residential Uses within Non-residential Districts.

- A. Hedges shall be planted at least three (3) feet from the property line.
- B. Garden walls shall be constructed at least one (1) foot from the property line and shall not exceed 1 foot in height which is measured from the side of higher ground elevation.
- C. Fences.
  - i. Front Yard. Front yard fences are prohibited, unless the fencing encloses a forecourt, outdoor dining area, or other similar frontage element as determined by the Planner. Front yard fences shall not exceed four (4) feet in height and shall be Open Fences.
  - ii. Side Yard, Rear Yard, and Interior Courts. Side, court, and rear yard fences shall not exceed eight (8) feet in height unless otherwise approved by the Planning Department. Fences shall be constructed such that the finished (sheathed) side is oriented towards adjoining lots, streets, or the public right-of-way. Side and rear fences may be Open Fences or Solid Fences.

5. Adjacent Vacant Parcels. Fences may be permitted to cross property lines onto an adjacent parcel or parcels if the proposed fence and parcels meets all of the following requirements:

- A. At least one and only one of the parcels contains a principal structure, or that one or more of the parcels are occupied by the same principal structure and all other adjacent parcels to be built upon do not contain a principal structure.
- B. All parcels are owned by the same person(s) or entities.
- C. The parcels are contiguous.
- D. When determining yard lines, the fence shall follow the yard lines of the parcel with the principal structure if those yards were continued in a parallel direction onto the adjacent parcel, or the prevailing yard line of the adjacent parcels along the same street frontage, whichever is greater.

6. Garden Fencing. Garden fencing, which is used to create a physical barrier to a garden that produces food for consumption, are exempt from a zoning

permit, unless stated otherwise within this code, but must meet the following requirements:

- A. Material. Garden fencing must be constructed of 14 gauge or smaller wire and cannot be made of any privacy screening material.
  - B. Fabrication. Garden fencing may not be permanently attached to the ground through concrete or other means as determine by the Planner or Building Inspector and must be ephemeral in its construction.
  - C. Height. Maximum height is four (4) feet for front yard and six (6) feet for side or rear yards.
  - D. Electrically Charged Wire. Garden fences may be constructed of electrically charged wire if the following requirements are met:
    - i. A building or zoning permit is approved for the fence in which the details of the electrically charged fence is made clear.
    - ii. Electrically charged wire fences for gardens only must be setback at minimum five (5) feet from all property lines and are not permitted within the front yard.
    - iii. The area which the electrically charged wire fence is located must be fully enclosed by a fence of at least eighteen (18) inches in height and setback three (3) feet or more from electrically charged fence. The electrically charged wire fence must have a sign identifying that it is electrically charged.
    - iv. The Planner or Building Inspector reserve the right to order the removal of the electrically charged fence if it is deemed to be detrimental to the public health, safety, and welfare.
7. Recreational Facility Fences. An open fence enclosing a tennis, basketball, pickleball, or other recreational court may be erected to a maximum of 12 feet in height, irrespective of the above standards.

## 5.9 REFUSE CONTAINMENT AND MECHANICAL EQUIPMENT

1. Single-Family Dwellings and Duplexes: Garbage and refuse containers, and mechanical equipment shall be located in the side or rear yard and shall be screened from view of the street and front yard with the following exception:
  - A. If there is no other practical location available for storage of refuse, a Conditional Use Permit may be obtained for storing of garbage and refuse containers within the front yard within a mostly opaque, animal proof, and sturdy enclosure which conceals the garbage and refuse containers from view and diminishes negative impacts on adjacent properties. The enclosure may be no more than thirty-two (32) SF in area and no more than five (5) feet in height.

2. All Other Uses: Garbage and refuse containers and mechanical equipment shall be located in the side or rear yard and shall be screened from view from the right-of-way. Mechanical equipment for non-residential uses shall be setback a minimum of three (3) feet from the property line. See Section 5.5.6.C for screening requirements.

## 5.10 ACCESSORY BUILDINGS AND STRUCTURES

1. Number of Buildings on a Parcel. Only one (1) principal building and its customary accessory building(s) shall be located on any lot, except in districts that permit a lot to contain both residential and nonresidential uses in one or more principal structures or within the same structure.
2. Front Yard. No accessory building shall be located within the front yard, but may be permitted within the corner side yard as described below.
3. Corner Lot. In the case of a corner lot, no accessory building shall be located within a prevailing front yard or required front yard in the corner side yard (secondary frontage).
4. Accessory Buildings Attached to a Principal Building. Accessory buildings attached to the principal building by an approved breezeway or similar structure shall meet all yard requirements for a principal building.
5. Size. The aggregate floor area of all accessory structures shall not exceed one-half (½) the total floor area of the principal structure.
6. Satellite Dishes. Satellite dishes may not exceed two (2) feet in diameter.
7. Permitted Yard Encroachments. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, pump covers, hand railing, and similar accessory structures, as determined by the Planner, may be placed in any front, side or rear yard.
8. Permit Exempt Structures. Ephemeral structures or similar easily removable or relocatable structures that are four (4) feet in height or less, less than 64 SF in surface area, do not require a permanent foundation or similar structural element, and do not require any building permits or inspections (plumbing, electrical, etc) are exempt from zoning permit review and approval.

Examples include mailboxes, bird baths, plastic storage bins, trampolines, above ground plastic wading pools, metal pole swing sets (if less than fifteen [15] feet in height), outdoor lawn or patio furniture (including shade umbrellas less than fifteen [15] feet in height), light posts illuminating sidewalks or driveways (less than eight [8] feet in height), pet

houses, raised bed gardens, or similar structures as determine by the Planner. This shall not permit for any accessory structure which is otherwise regulated by the zoning code, building code, or fire code to be exempt from zoning or building permits. This does not exempt parcels or their improvements from the impervious coverage or building coverage limits for the zoning district in which they are located in.

9. Where permitted within non-residential districts the following shall apply:
  - i. Outdoor sales shall be located in the side or rear yard.
  - ii. All ancillary equipment or facilities (gasoline pumps, car washes, etc.) shall be to the side or rear of the principal building.
  - iii. Main pedestrian access shall be in the front half of the building nearest the fronting street.
  - iv. Bays and garage entrances may not face the fronting street.

- v. Loading docks and loading facilities shall be located in the rear yard and shall be screened from view.

10. Electric vehicle charging stations shall be permitted in any yard so long as they are setback at minimum five (5) feet all property lines.

#### 5.11 REQUIRED YARD USE BY ANOTHER BUILDING

No part of a yard, court or open space provided about any building or any structure for the purpose of complying with the provisions of this Zoning Ordinance shall be included as a part of a yard, court or other open space required under this Ordinance for another building or structure.

#### 5.12 STRIPPING OF TOP SOIL

1. No person, firm or corporation shall strip, excavate or otherwise remove top soil for sale or for use other than on the premises from which the same is taken except in connection with the construction or alteration of a building or site improvements on the premises and excavation or grading incidental thereto.

## 6.0 Development Procedures

### 6.1 SITE PLAN REVIEW

1. Purpose. The site plan review process will allow the City to review the arrangement, layout, use interrelationships and neighborhood impacts of sites intended for development or redevelopment and to ensure the aesthetic quality of such design to conform with the character of the neighborhood. The issuance of a Certificate of Occupancy does not waive the required improvements outlined on an approved site plan or forgo any other applicable code regulation, law or ordinance.
2. Administration/Development Review Committee. The Development Review Committee (DRC) shall be organized to generally ensure compliance by site owners with all applicable codes, regulations, laws, ordinances and plans and to coordinate examination of development proposals to ensure that all City requirements, established by ordinance, resolution or policy, have been met without conflict. The DRC shall have all the power and duties specifically provided for herein. The requirements of the Review Committee do not waive the requirements of any other applicable code regulations, law or ordinance.
3. Administration/Organization and Membership.
  - A. The Development Review Committee shall consist of, but not be limited to, the following:
    - i. Planning services;
    - ii. Building services;
    - iii. Fire services;
    - iv. Police services;
    - v. City Engineer;
    - vi. Transportation and streets;
    - vii. Storm water.
  - B. The City Planner or his/her designee shall be the DRC Chair.
  - C. The DRC shall have the authority to establish written rules and regulations for purposes of enforcing and implementing this Article.
4. Administration Powers and Duties.
  - A. The DRC shall review and approve all site plans in accordance with this Section 6.0 and all subdivisions in accordance with Section 7.3.
  - B. The Development Review Committee shall determine from data submitted whether or not site plans meet the requirements of codes, regulations, ordinances, policies and resolutions.
  - C. The Development Review Committee, after review of the site plan, shall inform the owner in writing of any technical compliance problems in the plan. Compliance and enforcement shall be as provided in the particular code, regulation, or ordinance.
  - D. DRC may approve, approve with conditions or deny any site plan based on subsection (a) above.
  - E. The DRC shall meet on a weekly basis, as needed.
5. Site Development Plan Required.
  - A. All buildings, structures, or outdoor uses of land which shall be used, constructed, enlarged, altered, or moved in any zoning district shall obtain site plan approval, with the exceptions listed below in subsection (c).
  - B. Site plan approval shall also be required in all districts for:
    - i. Uses subject to conditional use permit approval which are reviewed according to Article 4, Use Standards.
    - ii. Any amendment of a previously approved site plan.
    - iii. New parking lot or expansions of existing parking lots, with a total of ten or more parking spaces.
    - iv. Any substantial change in use or class of use which requires additional parking and/or screening, as determined by the City Planner.
    - v. Any structure formerly used as a residence proposed for conversion to non-residential use.
    - vi. Any non-residential structure that has been vacant for one year or more.
    - vii. All development within any Special Use district.
  - C. Specifically excluded from the provisions of this article are:
    - i. One-family dwellings or two-family dwellings on a single lot and its accessory structures.
    - ii. Renovations that are 100% internal to an existing building or structure except for uses defined by Section 6.1.5.B.i, v, or vi above.
    - iii. Exterior renovations to an existing building or structure that do not increase the outer envelope of said building or structure.
    - iv. Repair and replacement of existing driveways, curb cuts, aprons, and sidewalks.
    - v. Installation of signs or fences.
6. Approval Requirements.
  - A. The owner shall comply with all applicable requirements and regulations.
  - B. All improvements shown on an approved site plan must be completed prior to issuance of the Certificate of Occupancy. The DRC chair shall coordinate all information dissemination.
  - C. A Certificate of Occupancy may be granted for a partial development if the partial development is consistent with phasing shown on an approved

- site plan. Time for completion of all phases must be established at the time of initial site plan.
- D. The site plan must conform to any recorded plat or filed master plan for that same property or subdivision of which it is a part.
  - E. Fees for site plan applications are due and payable at time of application and are non-refundable.
  - F. An appeal to any decision made by the DRC chair and/or the Development Review Committee may be made to the appropriate board or commission (BZA, ICC, City Council, or Sanitary Board). Application for appeal shall be made in writing to the appropriate City departments in accordance with applicable City or State Codes.
7. Expiration of Approval Requirements. DRC approval of a site plan shall expire if any of the following circumstances occurs:
    - A. The site plan is not submitted by the applicant for stamping and signature by the DRC within three calendar months of site plan approval, with or without modifications.
    - B. A complete application for a building permit is not submitted within one (1) calendar year of the stamping and signing of the site plan by the DRC.
    - C. Upon prior written request to the DRC, including a statement of justification for the requested time extension, the time period for submission of the site plan or submission of the complete application for a building permit may be individually extended for a maximum period of six (6) calendar months from their otherwise specification termination dates.
  8. Application and Processing of Review Site Plans.
    - A. Pre-Application Meeting: Prior to a formal submission, the applicant should meet in person with the DRC Chair or the committee as a whole to discuss the proposed site plan. The intent of such a conference is to enable the applicant to inform the DRC of the proposal prior to the preparation of a detailed site plan and for said Department to review the basic site design concept, advise the applicant as to potential problems and concerns and to determine generally the type of information to be shown on and submitted with the site plan. The Applicant is encouraged to submit a sketch plan for review during a pre-application meeting.
    - B. Site Plan Application: The applicant shall submit nine (9) copies of the site plan and appropriate fee to the Planning Department at least six (6) business days before the next regularly scheduled DRC meeting. Incomplete plans will not be processed or placed on the DRC agenda. The copies will be forwarded to the Site Development Review Committee for review.
  9. Form and Content.
    - A. A site plan shall be prepared by a registered architect, licensed landscape architect, licensed land surveyor, licensed engineer, or professional planner.
- B. Site plans submitted must show the following items. All drawings shall be to scale, clear and complete to obtain site plan approval.
    - i. The site plan shall not exceed twenty-four (24) inches by thirty-six (36) inches nor be less than eleven (11) inches by seventeen (17) inches. The site plan shall be drafted at an appropriate engineering scale to ensure that all information can be read and interpreted.
    - ii. Property lines of the subject site and all adjoining parcels platted or unplatted. Platted and unplatted parcels shall be identified with the legal description and the owner's name.
    - iii. All property line boundaries with dimensions and building setbacks.
    - iv. Existing and proposed streets, alleys, lots, reservations, public and private easements and areas dedicated to public use. Easements shall be labeled as to type and, if recorded, reference to deed book and page number. In addition, the site plan shall show all driveways, rights-of-way, and street intersections that are adjacent to or directly across from the subject site.
    - v. The location and design of all means of vehicular access to and from the site onto public right-of-way, indicating the location and size of all driveways (including those on the adjacent property and the opposite side of the street), curb return radii, curb cuts and location and size of sidewalks and ambulatory ramps when and where required. For any development abutting frontage roads, all entrance and exit ramps shall be shown on the vicinity map.
    - vi. Location of existing and proposed buildings-number of stories, gross square footage of buildings; mechanical equipment; retaining walls, fences, culverts, bridges, roadways, etc. The structures to be removed or abandoned shall be shown with dotted lines.
    - vii. Location of existing and proposed storm drainage structures including storm sewers, grates, inlets, detention ponds, etc., with pipe sizes, grades and direction of flow and associated drainage easements, if any.
    - viii. Limits of existing 100-year flood surface elevations. Identify the limits of building encroachments and earth fill within this area.
    - ix. Location of existing and proposed utilities (water, sanitary sewer, cable television, gas, electric and telephone) with service sizes, tap and meter locations, service

- types, grades and direction of flow. Also, related easements that will accommodate more than one utility shall be shown and described.
- x. Location of power poles, guy wires, pad mount transformers, and other major electrical equipment.
  - xi. Location of existing and proposed fire hydrants and the vehicle lay-of-hose distance.
  - xii. Location of existing and proposed contour lines with spot elevations for proposed top-of-curb and parking lot slabs. The City Engineer will determine the extent to which this information will be shown.
  - xiii. Location and screening or other description to indicate control and handling of solid waste. Indicate location, screening and size of dumpster pad when dumpster is to be used.
  - xiv. The planned use or uses of the site.
  - xv. The location and design of any off- street parking areas, including handicapped parking and loading areas, showing size and location of spaces, bays, isles, ramps and barriers in compliance with City standards and West Virginia Accessibility Standards. All customer parking areas must be clearly defined on the site plan and must be separate from areas to be used for display.
  - xvi. Name of development, legal description of property including address of property, vicinity map and site plan oriented with north arrow, scale, acreage name and address of record owner and engineer, draftsperson, architect and land planner.
  - xvii. Zoning designation as determined by the official Zoning Map.
  - xviii. Landscaping plan as required by Section 5.5.
  - xix. Area designated for placement of debris during construction, wash out area for concrete trucks and new construction staging area.
  - xx. Location and pavement type for temporary access for vehicles during construction.
  - xxi. Location of all waste water pre- treatment devices and sampling well, as applicable.
  - xxii. All existing and proposed signage, including height, square footage and setbacks.
  - xxiii. Architectural facade renderings which meet the requirements of Section 5.2.
  - xxiv. Additional information or engineering data, in such form and content as necessary, to determine that the site plan meets the standards of the City.
10. Waiver of Form and Content Requirements. The DRC shall have the authority to, when reasonable, waive any requirements for the approval, approval with modifications, or disapproval of site plans. Any such waiver may be exercised in the event any such requirements are found not to be requisite in the interest of public health, safety, or general welfare or inappropriate to a particular site plan.
  11. Revision of Site Plan After Approval. No changes, modifications or revisions shall be made to any site plan after approval has been given by the DRC, unless said changes, erasures, modifications or revisions are first submitted to and approved by the Committee. Minor changes correcting an error of measurements, acreage, dimensions or other similar situation may be approved by the DRC Chair.
  12. Consultation with Other Agencies, Departments, and Consultants.
    - A. In its review of an application for site plan approval, the DRC may consult with or require the applicant to consult other City officials, the City's designated private consultants, and with representatives of county, state and federal agencies, as needed.
    - B. Reasonable costs incurred by the City for private consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the application fee required.
  13. Fees. The fee can be found in Article 8.11 Fees of the zoning code.
  14. Bonding. Bonding shall be submitted as required by applicable City and State Code regulation, law or ordinance.

# 7.0 SUBDIVISION REGULATIONS

## 7.1 GENERAL PROVISIONS

1. Policy and Purpose. It is declared to be the policy of Council and the Municipal Planning Commission of the City, to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the City. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood or other menace, such as location on the active trace or in the currently active zone or zones of faults or other soil conditions which would lead to structural defects or damage to land improvements. It also means that proper provisions should be made for drainage, water supply, sewage and other needed improvements. All proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties. The proposed streets shall compose a convenient system conforming to the Official Map, if such exists, and shall be properly related to the proposals shown on the Comprehensive Plan, and shall be of such width, grade and location as to accommodate the prospective traffic and to facilitate fire protection. Proper provisions shall also be made for open space for parks and playgrounds.
2. Scope. These Subdivision Regulations apply to the division of land into two or more lots for the purpose of transfer of ownership or building development, to the redevelopment and replating of land, to the design, construction and improvements on the land in subdivisions and to land composed of adjacent parcels or lots when such are replated, changed as to dimension or size or used collectively for subdivision purposes or, if a new street is involved, any division of a parcel of land.
3. Approving Agency. In accordance with West Va. Code 8A-5-1, a certified copy of the Comprehensive Plan and any ordinance and amendments thereto containing provisions for subdivision control and the approval of plats and replats shall be filed with the Clerk of the County Commission; thereafter the Municipal Planning Commission shall have exclusive control over the approval of all plats involving land covered by such municipal plan and ordinance. The Commission shall have a seal and when affixed to a final plat shall indicate the approval of the City of all subdivided land from the effective date of this Section. Nothing herein shall be construed as affecting the validity of subdivisions heretofore approved and so indicated by the signature of the Mayor.
4. Application of Regulations. No owner shall subdivide any tract of land which is located within the City and adjoining area over which it may lawfully exercise any

jurisdiction except in conformity with the provisions of these Subdivision Regulations.

## 7.2 ADMINISTRATION AND ENFORCEMENT

1. Recording of Plat. No plat of any subdivision is entitled to be recorded in the County Clerk's office or have any validity until it has been approved in the manner prescribed herein. In the event any such unapproved plat is recorded it shall be considered invalid and proceedings shall be instituted to have the plat stricken from the County records by the City Planner through the City Attorney.
2. Sale of Land in Subdivision. No owner or agent of the owner of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, exhibition of, or by the use of a plan or plat of a subdivision before such plan or plat has been approved and recorded in the manner prescribed herein. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transactions from the provisions of these Subdivision Regulations.
3. Public Improvements. Council hereby defines its policy to be that the City shall withhold all public improvements of whatever nature, including the furnishing of sewage facilities and water service from all subdivisions created after the effective date of this Section which have not been accepted by the Planning Commission in the manner prescribed herein.
4. Inclusion and Relationship to Other Ordinances
  - A. The Subdivision and Land Development Ordinance shall be interpreted to include any and all other provisions of the Fairmont City Code which are necessary for an understanding of this Ordinance and the attainment of its purposes. The City Council of the City of Fairmont, West Virginia intends that all Fairmont City Code provisions relating to subdivision and land development, and all orders, rules, and regulations established pursuant to these provisions, be read as part of a uniform system of Fairmont subdivision and land development regulation.
  - B. All departments, officials and employees of the City of Fairmont that are vested with the duty or authority to issue permits, certificates or approvals, shall conform to the provisions of this Ordinance and shall issue no permit, certificate or approval for any use, structure or activity if the same would be in conflict with the provisions of this Ordinance, unless otherwise provided for by law. Any permit, certificate or approval issued in conflict with the provisions of this Ordinance shall be null and void and, in no event, shall act

as a waiver of the standards and requirements of these regulations

5. Fees. The subdivider shall pay a filing fee for every final plat submitted to the Planning Commission. The fees can be found in Article 8.11 Fees of the zoning code.
6. Variance Procedure. Council may, only when recommended by the Planning Commission, and pursuant to Section 7.2.7 authorize a variance from these Subdivision Regulations when, in its opinion, undue hardship may result from strict compliance. In granting any variance, Council shall prescribe only conditions that it deems necessary to or desirable for the public interest and that shall not have the effect of nullifying the intent and purpose of the Comprehensive Plans or these Regulations. In granting variances and modifications Council shall require such conditions as shall, in its opinion and judgment, secure substantially the objectives of the standards or regulations so varied or modified. No variances shall be granted unless Council finds:
  - A. That there are special circumstances or conditions affecting such property such that the strict application of provisions of these Regulations would deprive the applicant of the reasonable use of this land.
  - B. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
  - C. That the granting of the variance shall not be detrimental to the public welfare or injurious to other property in the territory in which such property is located.
7. Variance Application. The application for any variance shall be made in writing by the subdivider at the time when the final plat is denied by the Planning Commission. Such application for any variance shall state fully and clearly all facts relied upon by the petitioner as defined by Section 7.2.6 and shall be supplemented with maps, plans or other additional data which may aid Council in the analysis of the proposed variance
8. Enforcement, Guarantees and Penalty
  - A. The Planning Commission is vested with all the necessary authority to administer and enforce conditions attached to the final plat approved for a development project, including, but not limited to the authority to:
    - i. Order, in writing, the remedy for any noncompliance with the conditions;
    - ii. Bring legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
    - iii. Require a guarantee satisfactory to the Planning Commission in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall

be reduced or released by the Commission upon satisfactory evidence that construction of the improvements has been completed in whole or in part.

- B. Failure to meet all conditions attached to the final plat approved for a development project shall constitute cause to deny the issuance of any of the required use, occupancy or improvement location permits, as may be appropriate.
- C. Any person who continues any violation beyond the time limit provided for in this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount up to \$500.00. Each day in which any such violation shall continue shall be deemed a separate offense.
- D. The Building Inspector, Deputy Building Inspector, Code Enforcement Office, other Code official, and any other municipal officer authored to investigate and enforce the provisions of law shall have authority to enforce the provisions of the Subdivision Regulations.

### 7.3 PROCEDURE FOR PLAT APPROVAL

1. Pre-application Review
  - A. Prior to the filing of an application for approval of a subdivision plat, an applicant may submit to the City Planner, or other staff as delegated by the Planning Commission or Director of Planning and Development, the plans and data described in subsection (B) hereof for the purpose of a pre-application review by the Development Review Committee. This step shall not require a formal application fee or the official filing of such subdivision plan with the Planning Commission.
  - B. Required Documentation. For a pre-application review, the applicant shall furnish the City Planner the following plan and data:
    - i. A plan in simple sketch form showing the proposed subdivision
    - ii. A location map showing the relationship of the proposed subdivision to existing community facilities which serve or influence it and showing the following information: main traffic arteries, shopping facilities, schools, parks and playgrounds, churches, public transportation and railroad tracks. The location map shall include a title, north arrow, scale and date.
    - iii. Pre-Application form or a DRC review application.
  - C. Development Review Committee. A DRC meeting is recommended for any subdivision which may include new infrastructure or changes to existing infrastructure. During the DRC meeting, the City Engineer, Public Works Director, and City Planner shall inform the applicant that the plans and data do, or do not, meet the objectives of these Subdivision Regulations. In no event shall pre-

application approval constitute conditional or final approval of a subdivision plat. Additional DRC review may be required for determining completion or reviewing changes to proposed plans.

2. Major Subdivision Review and Approval.

B. Application. An applicant for approval of a major subdivision or land development plan and plat shall submit written application, a copy of the proposed land development plan and plat, and the fees to the Planning Commission having jurisdiction over the land.

i. Application Requirements. Applications shall include five (5) copies of a plat bearing the stamp and seal of a land surveyor licensed in the State of West Virginia, a complete Major Subdivision Application form provided by the Planning Department, the fees required to file the application, and all other plans, specifications, or construction documents necessary to determine compliance with the City's adopted subdivision regulations.

B. Determining Completeness of an Application. Within 45 days after receipt of the application, the Planning Commission staff shall review the application for completeness and either accept or deny the application. Provided, if the applicant requests in writing to the Planning Department that they desire for the Planning Commission to determine completion rather than staff and if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, the Planning Commission may review the application for completeness and either accept or deny it at its next regularly scheduled meeting.

i. Development Review Committee. For any Major Subdivision Application which proposes or requires new infrastructure under the purview of the Utilities Department, Public Works Department, or other City Department or proposes for the creation of a number of lots beyond what is permitted for a Minor Subdivision, then the determination of completion shall be made by the Design Review Committee.

C. Denial of Applications. If the application is not complete, then the Planning Commission staff may deny the application and must notify the applicant in writing stating the reasons for the denial.

D. Setting the Public Hearing for Approval. After the staff of the Planning Commission or DRC has determined the application to be complete, the

public hearing shall be held within forty-five (45) days with the following exception:

i. If the Planning Commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may hold the public hearing at its next regularly scheduled meeting.

E. Notice. The Planning Commission shall notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by the applicant. The Planning Commission must publish a public notice of the public hearing and meeting in a local newspaper of general circulation in the area at least twenty-one (21) days prior to the public hearing.

F. Final Plat Approval. At a meeting at the conclusion of the public hearing on the application, or a meeting held within fourteen days after the public hearing, the Planning Commission shall vote to approve, deny or hold the application.

i. Holding. The application may be held for additional information necessary to make a determination. An application may be held for up to forty-five (45) days.

ii. Approval. If the Planning Commission approves the application, then the Commission shall affix its seal on the subdivision plat.

iii. Conditional Approval. If the Commission approves the application with conditions, the Commission shall specify these conditions in writing.

iv. Denial. If the Commission disapproves the application, it shall set forth its reasons in its own record and provide the applicant with a written copy thereof. The applicant may request, one time, a reconsideration of the decision of the Commission, which request for reconsideration must be in writing and received by the Commission no later than ten (10) days after the decision of the Planning Commission is received by the applicant.

G. Conditional Approval Requirements. The Planning Commission may approve a plat for the subdivision in which the improvements and installation are in compliance with Section 7.6. In lieu of the completion of such improvements prior to consideration of a final plat, the applicant may guarantee completion of required improvements on the land by the following method:

i. Required Bond. Post a bond executed by a surety company licensed to do business in the State and approved by the Commission

- guaranteeing the completion of the improvements in accordance with standards approved by the City Engineer as set forth in a contract between the developer and a bona-fide corporate contractor; such contract shall accompany the bond, and it shall include the bond as a part of the contract. Such surety and contract shall be subject to the condition that the improvements on the land shall be completed within two (2) years after the date of approval of the final plat and also to the condition that if such improvements are not fully completed in a manner acceptable to the City Engineer, the City shall proceed with the completion of the work and hold the owner and the surety jointly responsible for all of the costs thereof even though such costs may exceed the amount stipulated in the contract for doing the work.
- ii. Reduction of Surety. The Planning Commission may, if deemed advisable to the City Engineer, reduce the amount of the surety guaranteeing completion of required improvements on the land as such improvements are completed, providing however, that at no time shall surety remaining be less than that required to fully guarantee completion of all required improvements on the land.
  - iii. Posted Check or Escrow. A bond or certified check has been posted, or an escrow account has been created, which is available to the City, and in sufficient amount to assure such completion of all required improvements on the land.
  - iv. Timeline. A time for the completion of the improvements and installations shall be specified.
  - v. Non-Refundable Escrow. If an escrow account is created to guarantee completion of required improvements to a subdivision plat, the applicant shall pay to the City a non-refundable escrow fee in the amount of \$500.00 which shall be a condition of approval.
- H. Recording. The applicant shall record the final plat, including all modifications and improvements required by the Planning Commission in the office of the Clerk of the County Commission of Marion County, West Virginia, within 365 days after the date of approval by the Commission; otherwise, the final plat shall be considered void.
  - I. Re-submittal. An applicant, upon being notified that a final plat duly filed has been disapproved by the Planning Commission may, after making any additions or alterations required for compliance with the provisions of these Regulations, resubmit the final plat for reconsideration and approval to the Planning Commission.
3. Minor Subdivision Review and Approval.
    - A. Authority to Approve Minor Subdivisions. Minor subdivisions, as defined in Section 2.2, shall be reviewed by the Planning Commission, acting through the City Planner, in accordance with the review procedures as stated in Section 7.3.3.B.
    - B. Minor Subdivision Review Procedures.
      - i. Application. The City Planner will provide information and advice concerning the review procedure during the pre-application review, (see Section 7.3.1), and coordination for the plat review and approval. Three (3) original, Final Plat maps, stamped and signed by a registered West Virginia Surveyor, shall be prepared in conformance with the requirements specified in Section 7.4 and submitted, along with the appropriate fees and application form, to the City Planner. The City Planner will distribute the plat maps to the appropriate City agencies for review and comment.
        - a. Exception: If the minor subdivision involves the merger or division of lots which are shown together on a recorded plat approved by the City of Fairmont Planning Commission, and does not subdivide any lot shown on the approved subdivision plat (i.e. only merges and divides via the original proposed lot lines), does not divide a building across parcels nor reduce the setbacks / required yards of an existing structure below those required as determine by the Planner, and does not involve a boundary line which is a natural feature such as a stream or cliff, then instead of the required plats, the minor subdivision may be approved using only a prepared deed which shall include a location for the stamp and seal of the City of Fairmont Planning Commission and its approval.
- The deed must include the metes and bounds of each lot involved (listed as parcel/lot 1, 2, 3, etc. or A, B, C, etc.) and the proposed final metes and bounds after the division or merger

occurs and must clearly state that the lots were divided or merged or both.

Such a deed must meet the filing requirements of this adopted subdivision and land development ordinance and zoning code.

- ii. Optional or Required Subdivision Classification Meeting. Within seven (7) days after the submission of the minor subdivision plat, the City Planner shall offer to meet with the applicant to discuss the proposed subdivision and the criteria used to classify the proposal as minor. Provided, that if the applicant requests such a meeting, staff shall meet with the applicant to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor.
  - iii. Site Inspection. The City Planner may make a site inspection of the proposed subdivision.
  - iv. Classification Notice. Within ten (10) days after the submission of a complete subdivision plat application or within five (5) days of the meeting, whichever comes later, the City Planner shall notify the applicant in writing that the proposed subdivision has been classified a minor subdivision.
- C. Approval of Minor Subdivisions.
- i. Timeline. Within ten (10) days after a complete subdivision plat application has been classified a minor subdivision or within five (5) days of the meeting with the applicant to discuss the criteria used to classify the proposal as minor, the City Planner shall approve or deny the plat.
  - ii. Approval. If the City Planner and other appropriate City agencies are satisfied that the proposed subdivision is not contrary to applicable provisions of these Regulations or any other law or ordinance, the City Planner, after the approval and signature of any other applicable agency heads deemed necessary, will approve such subdivision and have the plat signed, dated, and affix the seal on the plat.
  - iii. Conditional Approval. The City Planner may attach reasonable conditions and/or restrictions to the final plat. If the plat is approved with conditions, then the City Planner must state the conditions.
  - iv. Denial. If the City Planner denies the plat, the City Planner shall notify the applicant in writing of the reasons for denial.

v. Recording. The approved final plat shall be recorded in accordance with Section 7.3.2.H of these regulations.

- D. Review of Minor Subdivision Decisions.
- i. Optional Review by the Planning Commission. Within thirty (30) days after a decision or order of the City Planner on minor subdivisions, an applicant may request review of the decision or order to the Planning Commission. The petition for review shall specify the grounds for the review and on a form as prescribed by the Commission.
  - ii. Public Hearing. Within thirty (30) days after a review is requested, the Planning Commission shall at their next regular meeting make a final determination on the application.
  - iii. Notice. Notice of the meeting in which the review will be considered by the Commission will be given by regular mail to the applicant.
4. Revisions to Approved Plats. The applicant shall submit proposed revisions to the approved Plat to the City Planner. Within ten (10) days after receiving a complete application, the City Planner shall initiate a review of the proposed revisions. For all revisions determined to be major revisions, Planning Commission approval shall be required.
- A. Minor Revisions. If the City Planner deems the revisions to be minor in nature, the City Planner is authorized to approve the revisions to the plat with an affixed seal. The City Planner may direct any revised plat to the Planning Commission.
  - B. Major Revisions. For all revisions determined by the City Planner to be major revisions, Planning Commission approval shall be required. Procedures for considering a major revision to a plat shall be the same as required for an initial application for plat approval.
5. Vested Property Rights. Vested Property Rights under this Ordinance shall be addressed in the manner specified in West Va. Code 8A-5-12 as amended.
6. Appeal Process. Within thirty (30) days after a decision or order of the Planning Commission, any aggrieved person may present to the Circuit Court of Marion County a duly verified petition for a writ of certiorari setting forth:
- A. That the decision or order of the Planning Commission is illegal in whole or in part; and
  - B. Specifying the grounds of the alleged illegality.

#### 7.4 PLAT AND PLAN CONTENTS

1. Preliminary Plat Documents to be Submitted. The applicant shall submit the following plans and supplementary material that are applicable to his plats as designated by the City Planner and Engineer

with the application for approval of the preliminary plat.

- A. Form. In all cases, the preliminary plat shall be clearly and legibly drawn and the size of the map shall be a minimum size of eight and one-half (8½) inches by fourteen (14) inches and a maximum size of twenty-four (24) inches by thirty-six (36) inches. Minimum scale acceptable is one (1) inch equals twenty (20) feet and maximum scale is one (1) inch equals fifty (50) feet.
- B. Required Information. The applicant shall submit three (3) copies of the preliminary plat showing the following information:
  - i. The nearest street, to which all dimensions, angles, bearings and similar data on the plat shall be referenced
  - ii. Tract boundary lines, right-of-way lines of streets, easements, and other rights-of-way, and property lines of residential lots and other sites, with, in all cases, accurate dimensions and bearings, length of radius and length of arc
  - iii. Streets on and adjacent to tract, including name and right-of-way width
  - iv. Watercourses, marshes, houses and barns
  - v. Proposed public improvements and proposed right-of-way or easement
  - vi. Zoning districts.
  - vii. Lot lines and lot numbers, tax map, parcel, lot deed book and page, and name of adjoining parcel(s).
  - viii. Sites to be reserved or dedicated for parks, playgrounds or other public use
  - ix. Accurate location of all monuments
  - x. Title, north arrow, scale and date
  - xi. Proposed name of subdivision and names of applicant and engineer or licensed land surveyor
- C. Required Information Exception: When the request before the Planning Commission involves a minor subdivision, the City Planner may waive specific submission requirements as deemed not applicable to minor subdivisions.
- D. Major Subdivision Additional Plat Requirements. The following information shall be indicated either on the preliminary plat or on a separate document, except in the case of the minor subdivisions or boundary adjustments:
  - i. Utilities on or adjacent to the tract;
  - ii. Location, size and invert elevation of sanitary, storm and combined sewers;
  - iii. Location and size of water main;
  - iv. Location of gas lines, fire hydrants, catch basins, electric and telephone poles and street lights;

- v. Underground electric and telephone conduits.

- E. Additional Information. At the discretion of the City Planner, Engineer and the Planning Commission, a preliminary plat will indicate the following information:
  - i. Water and Sanitary. The direction and distance to, and size of nearest water mains and sewers and the invert elevation of such sewers if water mains and sewers are not on or adjacent to the tract.
  - ii. Adjacent Context. Conditions on adjacent land such as but not limited to the approximate direction and gradient of ground slope, railroads, power lines, towers and other nearby non-residential land uses or adverse influences and ownership information concerning the adjacent un-platted land.
  - iii. Sections, Profiles, and Preliminary Utilities. Profiles showing existing ground surface and proposed street grades, typical cross sections for the proposed grading, roadways and sidewalks and preliminary plan of proposed sanitary and storm water sewer with grade and size indicated.
- F. Final Plat Documents to be Submitted. The applicant shall submit the plans, data and material required in Section 7.4.1 for preliminary review, except that the plan shall be clearly and legibly drawn and shall include such detail drawings as may be required by the Planning Department to supplement material submitted or when needed to document changes. Such supplementary material may include cross sections and profiles of streets showing grades approved by the City Engineer and based on the U.S.G.S. datum plane, protective covenants, and a soil engineering report, prepared by a recognized authority, when development is on or adjacent to a known or potentially hazardous area. Five (5) copies of the plat, with original signature by professional engineer or licensed land surveyor shall be submitted to the Planning Department. Additional copies, mylar or reproducible of larger plats may be required by the Planning Department.

## 7.5 DESIGN AND PLANNING STANDARDS

### 1. Streets

- A. Conformity. The arrangement, location, extent, character, width and grade of all streets shall conform to the Comprehensive Plan and shall be considered in their relation to existing streets and to planned streets approved by the City, to topographical conditions to public safety and convenience and in their appropriate relation to

the proposed uses of land to be served by such streets. Where such is not shown in the Comprehensive Plan the arrangement of streets in a subdivision shall:

- i. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
  - ii. Conform to a plan for the neighborhood approved or adopted by the City to meet a particular situation where topographical or other conditions make continuance or conformance to existing street impracticable.
- B. Street Right-of-Way Width.
- i. Street right-of-way widths shall conform to the Comprehensive Plan and where not shown therein shall be not less than the following:

Street Type	Minimum Width of Right-of-Way in Feet
Arterial	80
Collector	60
Secondary Collector	50
Minor	40
Marginal Access	40

- ii. A hillside turnaround shall be a minimum of fifty-eight (58) feet in diameter and fifty (50) feet diameter paving at minimum.
- C. Minor Streets. Minor streets shall be laid out so that their use by through traffic is discouraged.
- D. Half Streets. Half streets shall not be used, except where essential to the reasonable development of a subdivision in conformity with other requirements of these Subdivision Regulations and where the City finds it practicable to require the dedication of the other half when the adjoining property is subdivided. Whenever a half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.
- E. Dead-End Streets. Dead-end streets designed to be so permanently shall not be longer than 500 feet and shall be provided at the closed end with a turn-around having an outside roadway diameter of at least eighty (80) feet and a street property line diameter of at least 100 feet. Where deemed appropriate by the Planning Commission, a tee turnaround may be used in lieu of the circular turnaround. The tee right-of-way shall be at least thirty (30) feet wide at all points and shall be paved throughout for a width

of at least twenty (20) feet. The minimum length of any leg of the tee shall be twenty (20) feet exclusive of the intersection.

- F. Improved streets shall extend to the boundary of the subdivision to provide access to adjoining property at intervals along the property boundary not to exceed 1,000 feet, unless one of the following conditions is found to exist:
  - i. The extension is impractical because of topography, the dimensions of the property subdivided, or other natural features, including but not limited to, regulated woodlands and wetlands;
  - ii. The extension will result in the creation of undesirable traffic patterns not customarily found in residential areas.
  - iii. Subject to Planning Commission approval, this requirement may be met by extension of an unimproved right-of-way if the Commission finds that an unnecessary hardship will occur in following the strict enforcement of this Section and that the public health, safety and welfare will not be harmed.
- G. Minor streets shall be laid out so that their use by through traffic will be discouraged.
- H. The arrangement of streets shall make provision for the continuation of principal existing streets in adjoining or adjacent subdivisions, insofar as they may be of a width as great as that of the street so continued or projected. The center line of such streets shall continue with the center line of existing streets.
  - I. Where the plat submitted covers only a part of the subdivider's tract, a sketch of the proposed future street system as a part of an overall development plan of the un-submitted part shall be considered in light of adjustments and connections with the street system of the part not submitted.
  - J. Proposed streets shall be so arranged in relation to existing topography as to produce desirable lots and streets of reasonable gradient.
  - K. The street layout plan shall be designed to provide safe and convenient traffic circulation within the subdivision and in relation to access streets. Traffic access to the subdivision shall be designed to prevent vehicular congestion or other impairment of traffic resulting from access to and from the site.
  - L. The street layout plan shall provide more than one point of external access to the subdivision. A boulevard street entrance shall not be considered as providing multiple points of

- access. Multiple access points shall be as remote from one another as is feasible. The requirement for secondary access may be satisfied by access to an adjacent subdivision. Secondary access shall not be required under the following circumstances:
- i. When each lot in the subdivision is no farther than 800 feet in street length from the point of external access to the subdivision.
  - ii. When the property has limited frontage along external arterials, or topographic conditions on the external arterials reduce sight line distances, so that a secondary access point cannot be established which will provide safe ingress and egress. In such cases, the City shall require access roads for emergency vehicles where feasible. Emergency access roads shall be of all-weather construction and designed to support vehicles of twenty-five (25) tons. To discourage nonemergency vehicles, emergency access roads shall be designated by signage as for emergency access only, shall be separated from other roadways by mountable curbs, and shall utilize entrance radii designed to permit emergency vehicles while discouraging nonemergency traffic.
  - iii. When a stub street is provided to adjacent property at a location feasible and practical for the development of a future connecting street. Where feasible, the City shall require access roads for emergency vehicles for use until such time as the adjacent property is developed so as to provide secondary access. Emergency access roads shall be of all-weather construction and designed to support vehicles of twenty-five (25) tons. To discourage non-emergency vehicles, emergency access roads shall be designated by signage as for emergency access only, shall be separated from other roadways by mountable curbs, and shall utilize entrance radii designed to permit emergency vehicles while discouraging nonemergency traffic.
  - iv. Street systems shall make use of stub streets from adjacent property.
- M. Intersections. Streets shall be laid out so as to intersect as nearly as possible at right angles and no street shall intersect any other street at less than sixty (60) degrees.
- N. Street Jogs Prohibited. Street jogs with centerline offsets of less than 125 feet shall be avoided.
- O. Reverse Curves. A tangent of at least 100 feet in length shall be introduced between reverse curves on arterial and collector streets.
- P. Street Deflections. When connecting street lines deflect from each other at any one (1) point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to ensure a sight distance of not less than 150 feet for minor and collector streets, and of such greater radii as the City shall determine prior to granting conditional approval of the preliminary plat for special situations and in the case of arterial streets.
- Q. Property Lines. Property lines at street intersections shall be the long chord of an arc subtended of a radius of twenty (20) feet or greater radius where the City may deem it necessary.
- R. Reserve Strips. Reserve strips controlling access to streets shall be prohibited.
- S. Tracts Larger Than Ordinary Building Lots. When a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the opening of future streets and logical further resub division.
- T. Private Streets. Private streets shall not be approved nor shall public improvements be approved for any private street.
- U. Railroad on or Abutting Subdivision. When a subdivision borders on or contains a railroad right-of-way or limited access highway, the City may require a street approximately parallel to and on one side or both sides of such right-of-way, at a distance suitable for appropriate use of the intervening land, as for park purposes in residential districts, or for commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
- V. Arterial Street on or Abutting Subdivision. When a subdivision abuts on or contains an existing or proposed arterial street, the City may require marginal access streets, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- W. Street Names. No street names shall be used which shall duplicate or be confused with names of existing streets and street names shall be subject to the approval of the City.

2. Alleys
  - A. Residential Areas. Alleys shall be permitted in residential areas.
  - B. Commercial and Industrial Districts. Alleys shall be provided in commercial and industrial districts, except that the City may waive this particular requirement where other definite and assured provisions are made for service access, such as off-street loading, unloading and parking consistent with and adequate for the uses proposed.
  - C. Width. The width of an alley shall not be less than sixteen (16) feet.
  - D. Intersections. Property lines at alley intersections shall be the long chord of an arc subtended of a radius of twenty (20) feet or a greater radius where the City may deem it necessary.
  - E. Dead-End. Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turnaround facilities at the dead-end, as may be deemed necessary by the City. (Ord. 1510. Passed 12-14-10.)
3. Sidewalks
  - A. Required. Sidewalks shall be provided on arterial streets, and on collector or minor streets serving apartments, commercial establishments and industrial concerns.
  - B. Width. Sidewalk shall have the following minimum widths:
    - i. Local streets: five (5) feet.
    - ii. Collector streets: six (6) feet.
    - iii. Hillside streets: curb to property lines, not less than four (4) feet.
    - iv. Commercially used or zoned land: twelve (12) feet;
    - v. Multiple-residential zones: ten (10) feet.
4. Easements
  - A. For Utilities. Easements with a right-of-way width of at least twelve (12) feet shall be centered on rear lot lines and alongside lot lines whenever necessary.
  - B. For Drainage. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a storm sewer easement or drainage right- of-way conforming substantially with the lines of such water course and further width or construction or both, as shall be adequate for the purpose.
5. Blocks
  - A. Dimensions. The length, width and shape of blocks shall be determined with due consideration and regard to:
    - i. Provision of adequate building sites suitable to the particular needs of the type of use contemplated.
    - ii. Limitations and opportunities of topography.
    - iii. Zoning requirements, if any, governing the sizes, dimensions and use of lots.
    - iv. Needs for convenient access, circulation, control and safety of street traffic.
  - B. Crosswalks. Pedestrian crosswalks shall be required only when circulation cannot be suitable and practically obtained by other arrangements, or when deemed essential to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities. (Ord. 1510. Passed 12-14-10.)
6. Lots
  - A. Dimensions. Lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location and for the type of development and use contemplated and in accord with any governing zoning ordinance.
    - i. All new residential lots shall conform to all lot requirements for the district they are zoned. To determine the minimum required lot depth for residential lots, add the minimum front yard, minimum rear yard, and thirty (30) feet. Although not required, optimal lots depths would permit for a buildable zone that is sixty (60) feet in depth or more.
    - ii. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service, parking, facilities and sidewalks required by the type of use and development contemplated.
    - iii. Corner lots for residential use or located within the residential districts shall have extra width to permit appropriate setbacks from an orientation to both streets. The additional width shall be at minimum an additional 50% of the width required within the zoning district where the lot is located.
  - B. Lines. Side lot lines shall be substantially at right angles or radial to street lines.
  - C. Double Frontage. Double frontage and reverse frontage lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.
  - D. Uninhabitable Lots. Lots subject to flooding or

which are endangered by periodic or occasional inundation, or shall otherwise not produce satisfactory living conditions shall not be platted for residential occupancy, until conditions are reviewed by qualified engineering personnel and recommended to the Planning Commission.

- E. Lot Remnants. All remnants of lots below minimum size left over after subdivision of a larger tract shall be added to adjacent lots rather than allowed to remain as unusable parcels.
  - F. Access. Any subdividing of land shall provide a public street frontage on every lot of the minimum required for the zoning district the lot is located in or, if there is no minimum lot width, at least forty (40) feet except as provided for in Section 7.5.8. B.
  - G. Existing Lots, Structures, and Required Yards. No yard or lot existing upon adoption of this Zoning Ordinance shall be reduced in size or area below the minimum requirements of the regulating district. Yards or lots created after the effective date of this Ordinance shall meet the minimum requirements established by this Ordinance.
  - H. Buildings. Every building erected, moved, or structurally altered shall be located on a lot conforming to the requirements of the regulating district.
7. Public Sites Shown on General Plan. When a proposed park, playground, school or other public use shown on the Comprehensive Plan is located in whole or in part in a subdivision, the subdivider shall dedicate or reserve adequate space for such purpose in such area within the subdivision when Council following a recommendation by the Planning Commission finds the requirement to be reasonably necessary to the public health and welfare.
8. Standards of Design for Hillside Subdivisions
- A. Purpose and Objectives. The purpose of this Section is to provide regulation of subdivisions and minor land division in hillside areas in a manner that shall adapt the improvements and lot design to natural terrain features for the best possible development. The principal objectives are to preserve the natural characteristic of the hill areas by good design practices, including cluster development where practical, protect watersheds and natural watercourses, maintain open space, preserve trails, and encourage construction of the highest quality improvement commensurate with economic feasibility.
  - B. Lot Design. Each lot shall have an area equal to or greater than that required by the Zoning Ordinance or as allowed or required under other applicable regulations, such lot area to be

sufficient for the house, setbacks, yards, any necessary cuts or fills and drainage facilities. The size and shape shall be such that any necessary permits can be issued under normal review procedures based upon application of ordinance requirements and accepted design principles. Future street openings and street extensions for traffic circulation shall be provided. Lots typically shall have frontage on only one (1) street where practicable, but may have double frontage when necessary because of natural terrain features.

- i. Landscaping and Natural Features. All lots shall be designed to provide the maximum in safety and human enjoyment while taking advantage of the best natural building sites. Trees of significant value and the natural contours of the land shall be preserved as much as possible.
- ii. Where lots have frontage on a roadway which is not designed to permit parking, off-street parking shall be provided.
- iii. Appendage type parcels, i.e., flag lots, corridor lots, etc. may be approved where this design provides the most practicable means of access to building sites. Up to ten (10) percent of the lot area may be composed of land in the appendage. The maximum length of the appendage shall be 300 feet. Appendages for single lots shall not be less than twenty (20) feet wide and have an all-weather driveway surface of not less than twenty (20) feet. If the length is over 150 feet, turnouts shall be provided as required by the advisory agency. No more than two (2) adjacent appendages shall be allowed. The combined width of two (2) adjacent appendages shall be at least thirty (30) feet, with a paved driveway surface width of not less than twenty (20) feet. Reciprocal easements shall be provided. Lesser width and greater length appendages may be approved when sufficient evidence is presented to show that the above requirements are not practicable. In all cases, the building site exclusive of the appendage shall meet the requirements of this Section and other applicable regulations.
- iv. To avoid undesirable narrow, deep lots and improvement costs, lots widths, except cluster developments shall be equal to or greater than: eighty (80) feet.

- C. **Development in Hazardous Areas.** Development on or adjacent to known potentially hazardous areas shall be discouraged. Any proposed subdivision or minor land division known to be on the active trace or in the currently active zone or zones of faults or in the immediate vicinity or areas which have critically expansive soils or other soil conditions which if not corrected would lead to building structural defects or damage to land improvements, may be allowed only after submission to and approval by the Planning Commission of a soil engineering report prepared by a recognized authority. Such report shall specify the remedial measures, if any are necessary, that shall make a safe development. Adequate guarantee shall be provided prior to recording of the final map or parcel map that such measures as are necessary shall be taken before construction of any buildings or acceptance of any improvements by the County.
- D. **Natural Topography and Streets.** Streets shall be designed to take advantage of the natural contour of the land to provide the best possible access to building sites, reduce cuts and fills and establish desirable grades. Split level or one-way design shall be used where necessary and practical to achieve these objectives.
- E. **Right-of-way Width.** Since road rights-of-way in hill areas shall provide adequate space for safe driveway approaches, pathways, utilities, and roadway cuts and fills, a minimum forty (40) foot width will be required. Additional widths or slope easements shall be provided when necessary for the construction of split level roads. Rights-of-way of less than forty (40) feet may be approved when sufficient evidence is presented to show that this width is not practical. However, the reduction of the right-of-way width shall not inhibit or prevent the construction of sidewalks or other pedestrian amenities.
- F. **Cul-de-sacs.** Cul-de-sacs should be strongly avoided as part of any development or subdivision.
- G. **One-way Loops.** One-way loop streets shall be considered when justified by detailed engineering studies submitted by the subdivider. If one-way loop streets are used, emergency pullout areas shall be provided at approximately 500-foot intervals.
- H. **Dead Ends.** The Planning Commission may require a second means of access where a dead-end road is more than 300 feet in length.
- I. **Street and Drainage Improvements.** Street and drainage improvements shall be as specified by

the City Engineer and he is authorized to modify these standards as required by varying topographic conditions. Stage construction shall be deemed practical by the City Engineer.

- J. **Landscaping of streets** shall be encouraged where appropriate especially on unsightly cuts and fills. Erosion control plantings shall be provided where necessary to prevent serious erosion.
- K. **Water Supply.** Domestic water shall be provided as required for all lots approved for development.
- L. **Fire Protection.** Fire protection facilities and water supply for fire protection shall be provided to the satisfaction of the Fire Department to reduce the risk of fire loss or damage. All land division shall meet any additional standards for fire protection facilities and water supply for fire protection adopted by ordinance of Council.

#### 7.6 REQUIRED IMPROVEMENTS

1. Prior to the granting of final approval of the final plat, the subdivider shall have installed or shall have furnished adequate bond for the ultimate installation of the following:
  2. **Monuments.** Monuments shall be placed at all block corners, angle points, points of curves in streets and at intermediate points as shall be required by the City Engineer. The monuments shall be of such material, size and length as may be required by the City Engineer.
  3. **Streets.**
    - A. **Grading.** All streets shall be uniformly graded to full right-of-way width and in accordance with lines and grades given conditional approval by the City. All watercourses crossed by a street or other open way shall be provided with permanent culverts of adequate size and of a type and size meeting City specifications.
    - B. **Construction.** All streets shall be fully constructed and surfaced in accordance with City specifications for the particular types of roadways and pavements in the subdivision; and such construction shall be subject to inspection and approval of the City Engineer.
    - C. **Curbs and gutters.** Curbs and gutters shall be constructed in accordance with City specifications and installed in all subdivisions. Such construction shall be subject to inspection and approval by the City Engineer.
    - D. **City specifications.** Streets shall be improved with concrete curbs or concrete curb and gutter, storm sewers, and paved with either concrete or bituminous pavement on crushed limestone

base as required by the schedule established by the City Engineer for this work.

- E. Lighting. Provisions for street lighting shall be made at every intersection and in the middle of any block greater than 300 feet in length.
- 4. Sidewalks. Sidewalks where required shall be constructed in accordance with the West Virginia specifications for Highways and Bridge Section 609, adopted by reference.
- 5. Water Supply. A water supply system with mains of ductile iron, at least eight (8) inches in diameter and having a sufficient number of outlets to furnish adequate domestic water supply for each lot of the subdivision and to provide adequate fire protection to meet local neighborhood needs shall be provided by the subdivider subject to statutory provisions governing such construction.
- 6. Sanitary Sewer System. Where a public sanitary sewer is reasonably accessible, each lot within the subdivision shall be provided with a connection thereto which shall be extended to the main part of the building lot. All connections shall conform to the requirements of the Sanitary Board, City of Fairmont, and shall be subject to the approval of such Board. All sanitary sewer lines shall be a minimum of eight (8) inches in diameter.
  - A. Sewer planned. When the public sanitary sewer system is not reasonably accessible, but where plans for the installation of sanitary sewers in the vicinity of a subdivision have been prepared by the City Sanitary Board, the subdivider may be required to install sewers in conformity with such plans. In such cases, until a connection can be made with the public sewer system, the use of individual disposal devices shall be permitted, provided such disposal devices are approved by the Sanitary Sewer Board and are within the requirements of the State Department of Health.
  - B. Sewer not accessible. Where a public sanitary sewer system is not accessible and no plans for sewers have been prepared, the subdivider may be required to install sewer lines and a disposal system meeting all applicable state and local statutory requirements. Provided, that if the subdivision has been platted into lots of more than 10,000 square feet, the subdivider may install individual disposal devices for each lot at the time improvements are erected thereon. All such individual sewage disposal devices and systems shall be constructed in accordance with Sanitary Board and State Department of Health requirements.
- C. No combination sewer. In no case shall connections be made with a sanitary sewer line within or without a subdivision for the disposal of surface or ground water, storm water or water from roof drains of any structure.
- 7. Storm Sewer.
  - A. Public storm sewer accessible. When a public storm sewer is reasonably accessible, the subdivider shall provide a system of storm sewers, separate and apart from sanitary sewers, and of sufficient size and capacity and with an adequate number of catch basins to handle neighborhood need in the subdivision.
  - B. Public storm sewers not accessible. When a public storm sewer is not reasonably accessible, the subdivider shall provide a system of storm sewers, separate and apart from sanitary sewers, and of sufficient size and capacity and with an adequate number of catch basins to handle neighborhood need in the subdivision providing the City has plans for a public storm sewer connection within, or in the vicinity of, the subdivision, or when the City can provide a suitable watercourse or drainage way pending the availability of a storm sewer.

## 8.0 Administration, Appeals, and Enforcement

### 8.1 PENDING APPLICATION FOR BUILDING PERMIT

1. Nothing in this Ordinance shall require any change in the plans, construction, or designed use of any building or structure for which a building permit was secured prior to the adoption of this Ordinance, providing the building permit remains valid.

### 8.2 RESTORING UNSAFE BUILDINGS

1. Nothing in this Zoning Ordinance shall prevent the strengthening or restoring to a safe condition of any part of a building or structure declared unsafe by the City.

### 8.3 NON-CONFORMITIES

1. Purpose and Applicability. The purpose of this Article is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Zoning Ordinance (or any amendment subsequent thereto) that do not conform to this Zoning Ordinance. Any non-conformity created by a change in the classification of property or the text of these rules and regulations shall be regulated by the provisions of this Article. Many non-conformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located and the intent of this Zoning Ordinance.

#### 2. Non-Conforming Uses

- A. Non-conforming uses of land or structures, and non-conforming structures that contain non-conforming uses, may continue only in accordance with the provisions of this Article, but this Article shall only apply to the extent said non-conformities fully and clearly meet the definition of "non-conforming use" in Section 2.2.
- B. Normal structural repair and maintenance may be performed to allow the continuation of a non-conforming use.
- C. A non-conforming use may be enlarged or increased to occupy a greater area of a building than was occupied at the effective date of the adoption or amendment of this Ordinance after review and approval by the Board of Zoning Appeals upon reaching a determination that the proposed enlargement, increase, or greater area;
  - i. Shall not have a substantial detrimental effect on the use and enjoyment of

adjacent uses or lots;

- ii. Shall comply with all parking, sign, landscaping, or other applicable regulations to the area affected by the proposed enlargement, increase, or greater area as evidenced on an approved site plan;
  - iii. No land beyond what was original to the use will be occupied or used by the non-conforming use. Where permissible, additional land may be added to the development but can only be constructed and used in accordance with the regulations of this Ordinance and shall not act to enlarge a non-conforming use, building, or structure.
- D. An existing non-conforming residential use located in a non-residential district may, however, be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the specific district.
  - E. Upon authorization by the Board of Zoning Appeals, a non-conforming use may be changed to another equal or less intense non-conforming use.
  - F. Once a non-conforming use has been changed or converted to a conforming use, it shall not thereafter be used for any non-conforming use.
  - G. If a use of a property that does not conform to this Zoning Ordinance has ceased and the property has been vacant for one (1) year, abandonment will be presumed and the non-conforming use shall not be allowed to re-establish. If the property has been abandoned, then any future use of the land, buildings, or structures shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district wherein the property is located as provided in this Zoning Ordinance, unless the property is a duly designated historic landmark, historic site, or historic district.
  - H. Abandonment of a non-conforming use shall be determined if one (1) or more of the following conditions exists, and shall be deemed to constitute intent on the part of the property owner to abandon the non-conforming use:
    - i. Utilities, such as water, gas, and electricity to the property have been disconnected.

- ii. The property, buildings, and grounds, have fallen into disrepair as evidenced by proper code violation documentation.
  - iii. The business license issued by the City of Fairmont has expired.
3. Non-conforming Buildings
- A. A non-conforming structure containing a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this Article.
  - B. Normal repair and maintenance may be performed to allow the continuation of non-conforming structures.
  - C. A non-conforming structure may not, under any circumstances, be enlarged or altered in a way which increases its non-conformity except as noted below.
  - D. Where the non-conforming setback of a building or structure exists, the non-conforming setback may be extended along the same building line as the existing non-conforming setback, provided that in so doing, the setback itself is not further reduced.
  - E. If a non-conforming, non-residential structure is damaged due to fire or other disaster event, it may be rebuilt only upon the issuance of a permit by the Board of Zoning Appeals upon a finding by the Board of Zoning Appeals that the estimated cost of repairs does not exceed 100% of the assessed value of the building or structure as determined by the Marion County Assessor as of the July 1, preceding the date of the fire or other disaster, together with any improvements thereto which can be established by credible documentary evidence and which may have been made after said date. An application to the Board of Zoning Appeals for permission to undertake to re-construct the structure must be filed prior to undertaking the repairs after the use has been destroyed or damaged, otherwise any structure shall conform to and be in accordance with all applicable rules, regulations and requirements of the particular district as provided in this Zoning Ordinance.
    - i. In addition to the finding, in the issuance of said permit, the Board of Zoning Appeals shall follow these standards:
    - ii. If the structure can be rebuilt on the same lot and meet all setback requirements, it shall be.
    - iii. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located, then it shall be placed on the lot in as conforming a manner as possible.
- iv. A nonconforming structure shall not be rebuilt in a manner, which increases its nonconformity.
  - v. The reconstruction of a non-conforming structure (at the same or smaller size) shall require the installation of sufficient parking, landscaping or buffering.
- F. Should a nonconforming structure be moved for any distance on the lot upon which it is located, if possible, it shall be moved so as to make the structure conforming. Otherwise, the structure, if moved shall be placed on the lot in as conforming a manner as possible.
  - G. A non-conforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if:
    - i. The replacement is a manufactured home which bears a valid seal indicating conformance with the 1976 National Manufactured Housing Construction and Safety Standards Act, and
    - ii. The replacement manufactured home is newer in age than the one it is replacing. The replacement manufactured home must receive a Certificate of Occupancy within six (6) months of the removal of the original manufactured home. The manufactured home must meet all district requirements.
  - H. Once a non-conforming structure has been removed or demolished, the redevelopment of the site must meet current Planning and Zoning Codes of the City of Fairmont.
4. Non-conforming Accessory Uses and Structures. No non-conforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.
5. Non-conforming Lots
- A. Except as provided in b and c of this Section, a nonconforming vacant lot existing and of official record as of the effective date of this Ordinance may be developed for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all applicable yard and setback requirements for the zoning district in which the lot is located.

- B. A non-conforming vacant lot shall not be developed if it could be combined with an adjoining lot (said lot being owned by the same person and any or all future assigns) on or after the effective date of these regulations in order to create a single lot. Where an owner owns adjoining property, construction may occur across the lot lines if that is the only way the yard requirements may be met without a variance. If said combination, however, results in the creation of a single lot that is more than one and one-half (1 ½) times the minimum lot width or area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as non-conforming. For the purposes of this Section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
- C. Notwithstanding subsection (b) hereof, a non-conforming lot may be developed if, at the effective date of this Zoning Ordinance or any subsequent date upon which the lot became non-conforming,
  - i. The subdivision in which the lot was located had received preliminary plat approval; or
  - ii. The subdivision in which the lot was located had received final plat approval; or
  - iii. The lot was in a subdivision which constituted a vested right.
- 6. Non-conforming Parking, Landscaping and Screening
  - A. Expansions to the parking area or loading areas which increase the total area more than fifty (50) percent shall be required to comply with all applicable parking and loading area landscaping and screening.
  - B. Expansion of buildings by more than fifty percent (50%) of the original structure shall require all landscaping, lighting, and screening requirements to be met.
- 7. Non-Conforming Limited Video Lottery and Private Clubs. Limited video lottery and private clubs which are legal non-conforming uses as defined by this Ordinance may continue according to this Section but shall not be permitted to expand within the building it occupies.
- 8. Burden of Establishing Status. The burden of establishing legal, pre-existing non-conforming status rests on: the property owner or party seeking to continue the non-conforming use or occupancy; any person applying for a Building Permit or, any other person asserting such status. Such persons shall

provide sufficient proof in a form acceptable to the Planning Director of the following:

- A. The date of construction of the building or structure or the date the use was established;
- B. The continuous operation of the nonconforming use; and,
- C. Such other proof as may be deemed necessary by the Planning Director.

#### 8.4 ENFORCEMENT GENERALLY

1. The Building Inspector, Deputy Building Inspector, code enforcement officer, other code official, and any other municipal officer authored to investigate and enforce the provisions of law shall have authority to enforce the provisions of this Zoning Ordinance.
2. Subject to any and all right of appeal, whenever reasonable grounds exist to believe that a violation of the provisions of this Zoning Ordinance has occurred or exists, the investigating officer may forthwith summons, by issuance of a citation, the owner, tenant, occupant, and/or other persons or persons responsible to appear before the Judge of the Municipal Court for the City of Fairmont and to answer said charge on or before a date therein stated.
3. Each day a violation continues to exist or remains unabated shall be deemed a separate offense.

#### 8.5 VIOLATION DEEMED COMMON NUISANCE

The governing body hereby declares that any building erected, raised or converted, or land or premises used in violation of any provisions of this Zoning Ordinance or any rule, regulation or requirement adopted or established hereunder shall be a common nuisance and the owner, tenant, occupant, and/or other persons or persons responsible shall be liable for maintaining a common nuisance.

#### 8.6 INJUNCTION

1. The Planning Commission, City of Fairmont Board of Zoning Appeals, or any designated enforcement official may seek an injunction in the Circuit Court of Marion County, West Virginia, to restrain the owner, tenant, occupant, other persons or persons responsible, or unit of government from violating the provision of this Zoning Ordinance or any rule, regulation or requirement adopted or established hereunder.
2. The Planning Commission, City of Fairmont Board of Zoning Appeals, or any designated enforcement official may also seek a mandatory injunction in the Circuit Court of Marion County, West Virginia, directing the owner, tenant, occupant, other persons or persons responsible, or unit of government to remove a structure erected in violation of the provisions of this Zoning Ordinance or rule, regulation or requirement

adopted or established hereunder.

3. If the Planning Commission, City of Fairmont Board of Zoning Appeals, or any designated enforcement official is successful in any suit brought under this Section, the respondent shall bear the costs of the action.

#### 8.7 PENALTY

1. Any owner, tenant, occupant, other person or persons responsible who violate any provision of this Zoning Ordinance is guilty of a misdemeanor and upon conviction, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

#### 8.8 CERTIFICATE OF USE AND OCCUPANCY

1. No person shall use or permit the use of any building or part thereof hereafter erected, created or changed or converted wholly or partly in its use or structure until the Building Inspector has issued a certificate of use and occupancy stating that the building and premises comply with the provisions of the Zoning Ordinance. Nothing in this Section shall prevent the continuance of the legal nonconforming use of any premises or of any existing building.
2. A record of all certificates of use and occupancy shall be kept on file on the Office of the Building Inspector and copies shall be furnished on written request.
3. No permit for the erection of any building shall be issued before application has been made for a certificate of use and occupancy. Such certificates shall be issued within ten (10) days after the completed erection or alteration has been approved. No building or premises may be occupied until the certificate has been issued.
4. All non-conforming uses under the provisions of this Ordinance, for which no variance has been granted by the City of Fairmont Board of Zoning Appeals, or for which application for a certificate of use and occupancy was not submitted prior to April 1, 1981 shall be presumed to have arisen subsequent to that date. For purposes of determining the number of boarders or roomers maintained in dwelling within any district the Building Inspector may require such proof as he deems necessary.

#### 8.9 BOARD OF ZONING APPEALS

1. Board of Zoning Appeals Created. There is hereby created a board of zoning appeals to hear appeals on zoning issues to be known as the City of Fairmont Board of Zoning Appeals.
2. Membership; Eligibility Requirements.

- A. The City of Fairmont Board of Zoning Appeals shall have five (5) members to be appointed by the governing body.
  - B. The members of the City of Fairmont of Board of Zoning Appeals shall be:
    - i. Residents of the City of Fairmont for at least three (3) years preceding his or her appointment;
    - ii. Cannot be a member of the Planning Commission; and
    - iii. Cannot hold any other elective or appointive office in the City of Fairmont.
  - C. The members shall be appointed for the following terms: One (1) for a term of one (1) year; two (2) for a term of two (2) years; and two (2) for a term of three (3) years. The terms shall expire on the first day of January of the first, second and third years, respectively, following their appointment. Thereafter, members shall serve three (3) year terms. If a vacancy occurs, the governing body shall appoint a member for the unexpired term.
  - D. The governing body may appoint up to three (3) additional members to serve as alternate members of the City of Fairmont Board of Zoning Appeals. The alternate members must meet the same eligibility requirements as set out in subsection 2 of this Section. The term for an alternate member is three (3) years. The governing body may appoint alternate members on a staggered term schedule.
  - E. An alternate member shall serve on the Board when one (1) of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.
  - F. The City of Fairmont Board of Zoning Appeals shall establish written rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of regular board member.
  - G. The members and alternate members of the City of Fairmont Board of Zoning Appeals shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
3. Meeting of the Board of Zoning Appeals.
    - A. The City of Fairmont Board of Zoning Appeals shall meet at least quarterly and may meet more frequently at the written request of the chairperson or by two (2) or more members.

- B. Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two (2) days before the special meeting.
  - C. Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.
4. Quorum. The City of Fairmont Board of Zoning Appeals must have a quorum to conduct a meeting. A majority of the members of the Board shall constitute a quorum. No action of the Board is official unless it is authorized by a majority of the members present at a regular or properly called special meeting.
  5. Officers. At its first regular meeting of each year, the City of Fairmont Board of Zoning Appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.
  6. Powers and Duties of the City of Fairmont Board of Zoning Appeals. The City of Fairmont Board of Zoning Appeals shall have the following powers and duties:
    - A. Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official charged with the enforcement this Zoning Ordinance or rule and regulation adopted pursuant thereto;
    - B. Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations as specified in the Zoning Ordinance;
    - C. Hear and decide conditional uses of the Zoning Ordinance upon which the board is required to act under the Zoning Ordinance;
    - D. Authorize, upon appeal in specific cases only as provided in this ordinance, a variance to the Zoning Ordinance;
    - E. Reverse, affirm or modify the order, requirement, decision or determination appealed from so long as the action of the Board taken on appeal is consistent with the rules, regulations and requirements of this ordinance;
    - F. Authorize, upon appeal the substitution of one legal non-confirming use existing at the effective date of this Ordinance for another similar non-confirming use, provided however that no substitution shall be made in any General Residential district, however, in any other residential district no substitution shall be permitted to any use prohibited in a Neighborhood Mixed Use district or lesser restrictive district and in any Commercial district no substitution shall be permitted to any use prohibited in an Industrial district.

Provided further that upon substitution all applicable Landscaping and Architectural Requirements of this Code shall be satisfied.

- G. Promulgate and adopt written rules and regulations concerning:
    - i. The filing of appeals, including the process and forms for appeal;
    - ii. Application for variances and conditional uses;
    - iii. The giving of notice; and
    - iv. The conduct of hearings necessary to carry out the board's duties under the terms of this article.
  - H. Keep minutes of its proceedings;
  - I. Keep an accurate and complete audit record of all its proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four (24) hours of demand, for three (3) years;
  - J. Record the vote on all actions taken;
  - K. Take responsibility for the custody and preservation of all papers and documents of the Board. All minutes and record shall be filed in the office the of the Board and shall be public records;
  - L. With consent of the governing body, hire employees necessary to carry out the duties and responsibilities of the Board: provided, that the governing body sets the salaries; and
  - M. Supervise the fiscal affairs and responsibilities of the Board.
7. Variance.
    - A. A variance is a deviation from the minimum standards of the rules, regulations and requirements of the Zoning Ordinance. A variance shall not include, involve or permit a land use that is otherwise prohibited in the zoning district nor shall it include, involve or permit the changing of the zoning classifications of a parcel of land.
    - B. The City of Fairmont Board of Zoning Appeals may grant a variance to the Zoning Ordinance if it finds that the variance:
      - i. Will not adversely affect the public health, safety or welfare or the rights of adjacent property owners, residents or the neighborhood;
      - ii. 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;

- iii. Would eliminate an unnecessary hardship and permit a reasonable use of the land;
  - iv. Will allow the intent of the Zoning Ordinance to be observed and substantial justice done; and
  - v. Is the minimum variance that will accomplish this purpose.
8. Appeal to Board of Zoning Appeals.
- A. An appeal from any order, requirement, decision or determination made by the administrative official charged with the enforcement of this Zoning Ordinance shall be filed with the City of Fairmont Board of Zoning Appeals.
  - B. The appeals shall:
    - i. Specify the grounds for appeal;
    - ii. Be filed within thirty (30) days of the date of the original order, requirement, decision or determination made by the administrative official, which time period shall be jurisdictional in nature;
    - iii. Be on the form prescribed by the Board.
  - C. Upon request of the City of Fairmont Board of Zoning Appeals, the administrative official shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.
9. Notice and Hearing of Appeal.
- A. Within ten (10) days of receipt of the appeal by the City of Fairmont Board of Zoning Appeals, the Board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five (45) days of receipt of the appeal by the Board.
  - B. At least fifteen (15) days prior to the date set for the hearing on the appeal, the Board shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.
  - C. In addition to any other filing fee which may be required, prior to the hearing, the party taking the appeal shall reimburse the Board for the actual cost of public notice and written notice to interested parties.
  - D. At the hearing, any party may appear in person, by agent, or by an attorney licensed to practice in this state.
  - E. Every decision by the Board shall be in writing and state specific findings of fact and conclusions of law on which the Board based its decision. If the Board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the Board and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the Board shall pay any additional costs for court filing fees, service of process and reasonable attorney's fees required to permit the person appealing the board's decision to return the matter to the circuit court for the completion of the appeal.
10. Expiration of Conditional Use or Variance Approval. An issued Conditional Use or Variance shall expire after one (1) year from the date of approval by the Board of Zoning Appeals unless one of the following occurs:
- A. A Building Permit is issued relating to the Conditional Use or Variance, in which case the Conditional Use or Variance expiration date is extended through the time of the active Building Permit. The expiration date shall continue to be extended provided there is no more than a one (1) month lapse for active Building Permits issued for the Conditional Use or Variance and provided that at least thirty percent (30%) of the total construction documents or development plan that was approved is completed within one (1) year of the issuance of the Building Permit.
  - B. A Certificate of Occupancy is issued for the Conditional Use at the location in which it was approved for.
  - C. Extension. The holder of a Building Permit for a Conditional Use or Variance may apply to the Board of Zoning Appeals at any time for alteration, change, amendment to extension of the application or development plan upon which such permit was based.
    - i. Upon receipt of such application, the Board of Zoning Appeals shall proceed as in the case of original applications for a Building Permit for a Conditional Use or Variance.
  - D. Cease of Use. If a Conditional Use lawfully operating ceases operation for a period of one (1) year or more regardless of any intent to resume operation, it may not recommence operation in that location without first applying for a Conditional Use via the public hearing process and approval of the Board of Zoning Appeals in the districts where indicated, in accordance with the procedure and requirements set forth in this Article and any other requirements described by this ordinance.
11. Stays; Exception. When an appeal has been filed with the City of Fairmont Board of Zoning Appeals, all proceedings and work on the premises in question

shall be stayed, unless the official from which the appeal was taken certifies in writing to the Board that a stay would cause imminent peril to life or property. If the written certification is filed, proceedings or work on the premises shall not be stayed. Nothing in this Section prevents obtaining an injunction.

12. Petition for Writ of Certiorari. The final decision of the City of Fairmont Board of Zoning Appeals shall be subject to review by the Circuit Court of Marion County, West Virginia, by certiorari, as provided by West Virginia Code §8A-9-1 et seq.

#### 8.10 AMENDMENTS

1. Amendments to the Zoning Ordinance by the Governing Body.

- A. After the enactment of this Zoning Ordinance, the governing body may provide for the amendment of this Zoning Ordinance without holding an election.

- B. Before amending the Zoning Ordinance, the governing body with the advice of the Planning Commission must determine whether the amendment is consistent with the adopted Comprehensive Plan. If the amendment is inconsistent with the Comprehensive Plan, then the governing body with the advice of the Planning Commission must find:

- i. That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and
- ii. That those changes have substantially altered the basic characteristics of the area.

2. Amendments to the Zoning Ordinance by Petition.

- A. After the enactment of this Zoning Ordinance, the Planning Commission or the owners of fifty (50) percent or more of the real property in the area to which the petition relates may petition to amend the Zoning Ordinance. The petition must be signed and be presented to the City Planner for presentation to the Planning Commission or to the City Clerk.

- B. Within sixty (60) days after a petition to amend the Zoning Ordinance is received by the City Planner for the Planning Commission or the City Clerk for the governing body, then the Planning Commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed Zoning Ordinance as a

Class I legal advertisement, with the date of publication being at least fifteen (15) as prior to the public hearing.

- C. If the petition to amend the Zoning Ordinance is from the owners of fifty (50) percent or more of the real property in the area, then before amending the Zoning Ordinance, the governing body with the advice of the Planning Commission, must determine whether the amendment is consistent with the adopted Comprehensive Plan. If the amendment is inconsistent with the Comprehensive Plan, then the governing body with the advice of the Planning Commission must find:

- i. That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted; and
- ii. That those changes have substantially altered the basic characteristics of the area.

3. Supplemental Notice to Adjoining Property Owners. Any person(s) firm or corporation presenting a petition for a change in this Zoning Ordinance shall, at the time of filing of the petition, provide the City Planner or the City Clerk with a list of the names and mailing addresses of the owners of all properties located within the same block as the property to be rezoned or within a radius of 200 feet of all boundaries of the property to be rezoned. If the number of property owners is 100 or less, "Notice of Proposed Zoning Amendment " shall be served upon them by the petitioner by United States First Class Certified Mail, return receipt requested. If the number of property owners is greater than 100, notification of the petition shall be by publication of "Notice of Proposed Zoning Amendment" as a Class II legal advertisement, in an official newspaper in general circulation in the City of Fairmont, with the date of first publication being at least thirty (30) days prior to the scheduled public hearing. Said notice shall describe the nature and location of the proposed change(s) and shall specifically identify the parcels included by reference to the Marion County Tax Map and parcel numbers and shall include the date, time and place of the requisite public hearing. In addition, the City Planner shall conspicuously post, or cause to be posted, the aforementioned notice on two (2) properties within the area of the desired change.

4. Planning Commission Recommendation to Governing Body. Upon adjourning the public hearing, the Planning Commission shall make its recommendation and present its findings and report to the governing

body within sixty (60) days. The Planning Commission's findings, recommendation and report shall include, at a minimum, a factual analysis and determination of the following:

- A. The need and justification for the proposed amendment;
  - B. The effect of the proposed amendment on the property, the surrounding properties and the City as a whole;
  - C. The relationship of the proposed amendment to the Comprehensive Plan and to the general planning program of the City;
  - D. Whether there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the Comprehensive Plan was adopted;
  - E. Whether those changes have substantially altered the basic characteristics of the area.;
  - F. Whether the proposed amendment should be adopted; and
  - G. Whether all notice requirements have been met.
  - H. The recommendation and report shall be advisory only, and shall not be binding on the governing body. If the Planning Commission does not submit its recommendation and report within sixty (60) days of the public hearing, the governing body shall proceed to act on the petition in prescribed time without further awaiting the recommendations of the Planning Commission.
5. Consideration by the Governing Body. Upon completing the first reading of any ordinance proposing an amendment to this Ordinance, the governing body shall set a public hearing to be held within thirty-one (31) days of the first reading. After holding the public hearing, the governing body shall render a decision within thirty-one (31) days of the public hearing.
6. Reconsideration of Proposed Amendment. Neither the governing body nor the Planning Commission shall consider or reconsider a petition presenting the same amendment to this Ordinance within a period of one (1) year from the date of the final determination on the initial petition; provided however, the Planning Commission may recommend to the governing body that a proposal be reconsidered within a period of less than one (1) year upon finding:
- A. That there have been major changes of an economic, physical or social nature within the area since the initial consideration; and
  - B. That those changes have substantially altered the basic characteristics of the area; and
- C. That the conditions were not considered by the Planning Commission or the governing body in previous deliberations.

**8.11 FEES**

1. The following fees shall be charged for permits, reviews, petitions, or applications related to the Zoning Code.

<b>Table 8.11.A: Fees</b>	
Permit, Review, Petition, or Application	Amount
<b>General</b>	
Zoning Permit	\$20
<b>Plan Review</b>	
Zoning Plan Review	Residential Only 1 to 2 dwelling units - \$20
	Residential 3 or more dwelling units - \$5.00 per 1,000 SF of site (minimum \$20 / maximum \$600)
	Commercial - \$7.50 per 1,000 SF of site (minimum \$40/ maximum \$1,200)
<b>Signs</b>	
Billboard	\$75.00 + \$1 per square foot
	\$100.00 annual inspection
Electronic Message Center / Dynamic	\$75.00 + \$1 per square foot
	\$75.00 re- inspection
	\$100.00 annual inspection
All other signs or other similar types of outdoor display regulated by this article	\$25.00 + \$1 per square foot
Exempt Signs	No Fee
<b>Board of Zoning Appeals</b>	
Conditional Use Permit	\$85 per use
Variance	\$85 per variance request
Appeal	\$85 per item appealed
<b>Planning Commission</b>	
Zoning Code Text Amendment	\$300
Rezoning (Map Amendment)	\$300
Minor Subdivision	\$40
Major Subdivision	\$70 + \$2 per lot proposed
Right-of-Way Abandonment	\$500
Major Site Plan Review	No fee

2. Zoning Permit. If a building permit fee is charged, the zoning permit fee is waived.
3. Unauthorized Improvements and Permit Fee. If a zoning permit is required and was not obtained prior to improvements being made which are not explicitly exempt from a zoning or building permit, the permit fee shall be tripled for the application.
4. Zoning Plan Review. This fee shall be waived if site plan or other plan reviews are not required by the zoning code for the improvements or if only a Zoning Permit is required for the improvements. Square footage shall be total square footage of the parcel(s) included for the plan. The Planner may choose to subtract areas not to be disturbed at any point of the construction which shall remain natural green space, particularly forested areas, from the total square footage.
5. Conditional Use Permit. This fee shall be charged for each use requested, even if multiple conditional uses are listed on the same application. For example, if an application submits for a Bar and Limited Video Lottery (which are two separately defined uses) and both uses are Conditional Uses for the location, this fee shall be charged twice for the same application.
6. Variance. This fee shall be charged for each variance request on the application. For example, if an applicant requests a setback variance for a side yard to be reduced and for a variance to the number of required parking spaces, the fee shall be charged twice for the same application.
  - A. Exception for multiple fees. Occasional a regulation within the zoning code may be duplicated. If it is determined that a regulation is purely duplicative and not different from another section of zoning code, the fee and variance request pertaining to the duplication of code may be considered a single variance request. For example, if both the zoning district regulations and the site standards regulations require a 5-foot setback for accessory structures, this can be considered duplicative. However, if the zoning district requires a 20-foot setback and the site standards regulations require a 5 foot setback, these would not be considered duplicative if a variance to both is requested. All determinations shall of this shall be decided by the zoning administrator or Director of Planning.
7. Appeal. This fee shall be charged for each order, requirement, decision or determination that is being appealed. This shall be charged for each portion of the zoning code to which the applicant is seeking to challenge the determination of. For example, if the applicant to appealing the determination of whether a use is permitted or prohibited and the number of

required trees and bushes required based on the proposed site plan, this fee shall be charged twice.