Part Thirteen: Planning and Zoning Code

Chapter 1: General Provisions

Article 1301: Enactment, Scope, Interpretation

Section 1301.01 Title.
This ordinance shall be known as the Zoning Ordinance of the Town of Fayetteville, West Virginia, hereinafter referred to as "this ordinance" or "this code."

Section 1301.03 Authority.
Whereas, by act of the West Virginia State Legislature, as recorded in West Virginia Code, the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction into districts of such number, shape, and size as it may deem best suited to carry out the purpose of zoning.

Section 1301.05 Purpose.
The zoning ordinance is consistent with the Town of Fayetteville Comprehensive Plan and was developed to promote the health, safety, and general welfare of the public. Other purposes of the ordinance include:

(a) To plan so that adequate light, air, convenience of access, and safety from fire, flood, and other danger is secured;
(b) To ensure attractiveness and convenience is promoted;
(c) To lessen congestion;
(d) To preserve historic landmarks, sites, districts, and buildings; and
(e) To promote the orderly development of land.

Section 1301.07 Scope and Jurisdiction.
The provisions of this code shall apply to the construction, addition, alteration, moving, repair, and use of any building, structure, parcel of land, or sign within the Town of Fayetteville, except work located primarily on a public way or road, or on public utility towers and poles, and public utilities unless specifically mentioned in this code.

In fulfilling these purposes, this ordinance is intended to benefit the public as a whole and not any specific person or class of persons. Although, through the implementation, administration, and enforcement of this code, benefits and detriments will be enjoyed or suffered by specific individuals, such is merely a byproduct of the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the Town of Fayetteville hereby shall not be enforceable in tort.

Section 1301.09 Interpretation, Conflict, and Severability.
In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statue, or other provisions of law. Where the conditions imposed by, or pursuant to, these regulations are different from those imposed by any other provision of these regulations

or any other ordinance, rule, or regulation, statute, or other provision of law, the provisions which are more restrictive and which impose the higher or greater standards shall control. If any portion of this code is held invalid for any reason, the remaining herein shall not be affected.

Section 1301.11 Non-exclusionary Intent.
It is not the intent of this code to exclude any economic, racial, religious, or ethnic group from enjoyment of residence, land ownership, or tenancy within Fayetteville; nor is it the intent of this code to use public powers in any way to promote the separation within Fayetteville of economic, racial, religious, or ethnic groups, except as may be an incidental result of meeting the purposes outlined in this article.

Section 1301.13 Official Zoning Map.
The Fayetteville Zoning Ordinance shall include the ordinance and the accompanying zoning map, which shall be considered an integral part of the zoning ordinance. The Official Zoning Map shall be the map certified by the Town Recorder for the Town of Fayetteville. All subsequent amendments (i.e., rezoning) of the Official Zoning Map also shall be certified by the Town Recorder for the Town of Fayetteville.

Section 1301.15 Enactment.
Therefore, be it ordained by the Town Council of Fayetteville, West Virginia, for the purpose of accomplishing the objectives set out in the West Virginia Code, that the following be enacted as the Zoning Ordinance of Fayetteville, West Virginia.

Section 1301.17 Effective Date.
This act shall take effect [effective date here].

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Article 1305: Definitions

Section 1305.01 Interpretations.
For the purposes of this ordinance, the following words and phrases shall have the meanings respectively recognized to them by this section. Words used in the singular include the plural and the plural includes the singular. Where terms are not defined, they shall have their ordinary accepted meanings within the context within which they are used. Webster's Third New International Dictionary of the English Language, copyright 1986, shall be considered as providing ordinarily accepted meanings. Certain terms, phrases, words and their derivatives shall be construed as specified.

Section 1305.03 Definitions.

1. "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is inoperative and which has been abandoned on public property for any period over five (5) days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period over five (5) days; or any motor vehicle, or major part thereof, which is unattended, discarded, deserted, and unlicensed and is not in an enclosed building, a licensed salvage yard, or the actual possession of a demolisher, provided that a motor vehicle, or major part thereof, is not an abandoned motor vehicle if:
    i. The owner of the motor vehicle is storing the motor vehicle on the owner's property;
    ii. The motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner;
    iii. The owner owns other motor vehicles similar to the motor vehicle being stored; and
    iv. The owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.

2. "Abandonment" means the relinquishment of property or a 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.

3. "Accessory Building or Structure" means a detached building or structure customarily incidental and subordinate to the principal building or structure and located on the same lot.

4. "Accessory Use" means a use customarily incidental and subordinate to the principal use of the lot.

5. "Accessway" means a private vehicular facility for townhomes, multi-family dwellings, and condominiums serving more than four (4) dwelling units, and commercial

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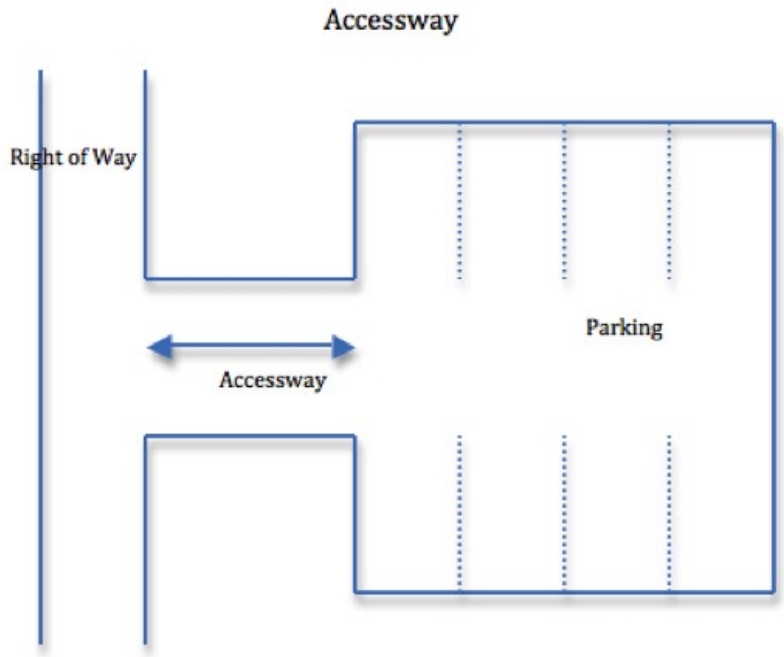
developments that extends from the curb-line of a public or private road to the parking lot.



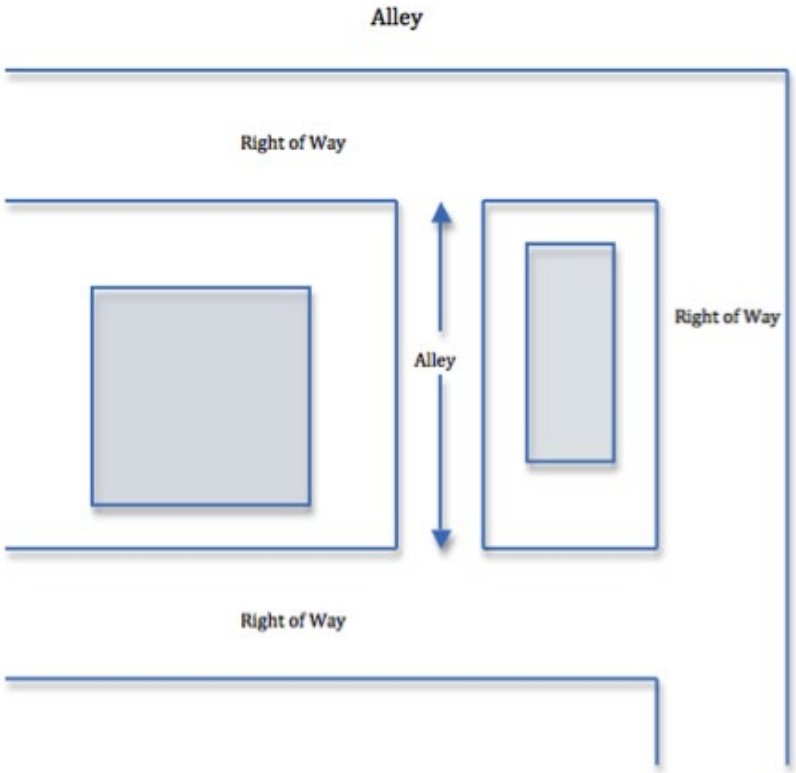
6. "Adult Business" means an adult bookstore, movie theater, or movie house, or other adult entertainment, as defined herein. In the event that an activity or business which might fall under a use category other than adult business is combined with or includes activities which constitute an adult bookstore, adult movie theater or movie house, or adult entertainment, as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this chapter applicable to adult business uses and not by provisions applicable to any other use category.
   i. "Adult Bookstore" means any commercial establishment in which is offered for sale as a substantial or significant portion of its stock-in-trade videocassettes, movies, books, magazines or other periodicals, or other media which are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities which, if presented in live presentation, would constitute adult entertainment.
   ii. "Adult Entertainment" means an establishment providing, either as a sole use or in conjunction with or in addition to other uses, entertainment consisting of the use of nudity or of live dancing, posing, displaying, acting, or other live presentation or use of persons whose actions are distinguished or characterized by emphasis on use of the human body in a manner intended to or resulting in arousal of sexual excitation or sexual titillation or a prurient interest or intended to or resulting in producing lustful emotions.
   iii. "Adult Movie Theater," "Movie House," or "Adult Mini-Theater" means any movie theater which on a regular continuing basis shows films rated X by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called adult films depicting sexual conduct, as defined by this code.

7. "Advertising" means any words, symbol, color, or design used to call attention to a commercial product, service, or activity.

8. "Airport" means any area of land or water designated, set aside, used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas designated, set aside, used, or intended for use, for airport buildings.

9. "Aggrieved or aggrieved person" means a person who:
   i. Is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or
   ii. Has demonstrated that he or she will suffer a peculiar injury, prejudice, or inconvenience beyond that which other residents of the county or municipality may suffer.

10. "Alley" means a right-of-way dedicated to public use, other than a street, road, crosswalk, or easement, designed to provide a secondary means of access for the special accommodation of the property it reaches.



11. "Alteration" means any change, addition, or modification in construction or occupancy of an existing structure.

12. "Amphitheater" means an outdoor gathering space typically for entertainment which is often constructed with tiers of seats or sloping surfaces that gradually rise outward from a central open space or stage. An amphitheater may include a bandshell-type structure to provide weather protection to a stage.

13. "Animal Hospital/Veterinary Office" means an establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment, and shall exclude the treatment or other care of humans.

14. "Automobile" means a road vehicle, typically with four wheels, able to carry a small number of people.

15. "Automobile Car Wash" means a use of a site for washing and cleaning of passenger vehicles, recreational vehicles, or other light duty equipment.

16. "Automobile Repair/Service" means any building, structure, improvements, or land used for the repair or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles, including but not limited to body, fender, muffler or upholstery work, oil change and lubrication, painting, tire service and sales, or installation of CB radios, car alarms, stereo equipment, or cellular telephones.

17. "Bakery" means an establishment primarily engaged in the retail sale of baked goods for consumption off-site.

18. "Bank/Financial Institution" means a bank, savings and loan, credit union, or other financial institution that provides retail banking services to individuals and businesses.

19. "Basement" means a space having one-half or more of its floor-to-ceiling height below the average level of the adjoining ground.

20. "Bed and Breakfast Inn I" means a private residence in which overnight accommodations are provided for not more than two (2) adults and one (1) child under the age of four (4) per bedroom nor more than four (4) adults and four (4) children under the age of four (4) per bathroom. These numbers shall include those owners or renters normally occupying the structure on a full-time basis. The residence may or may not be occupied by the owner during the guests' overnight stay.

21. "Bed and Breakfast Inn II" means a private residence in which overnight accommodations are provided for not more than ten (10) transient paying guests in up to ten (10) bedrooms at any time. The residence is occupied by the owner during the guests' overnight stay and is otherwise owner-occupied as defined herein.

22. "Board of Zoning Appeals" means the officially constituted body appointed to carry out duties and responsibilities in accordance with the Code of the State of West Virginia, Chapter 8A, Article 8, et seq., as amended.

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23. “Boardinghouse” or “Rooming House” means a dwelling, other than hotel, motel, or restaurant wherein no more than two (2) people are sheltered or fed for profit, and no cooking or dining facilities are provided in individual rooms.

24. “Boat and Marine Sales/Service” means the sales, service, and repair of new or used boats, boat trailers, marine hardware, and related products.

25. “Boat Storage” means an enclosed, partially enclosed, or open facility utilized for the wet or dry storage of boats.

26. “Brewery Pub” means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

27. “Broadcasting Studio” means the over-the-air distribution of audio or video signals to a large number of recipients ("listeners" or "viewers") within the technical reach of the signals.

28. “Building” means any structure having enclosing walls and roofs and requiring a permanent location on the land.

29. “Building Envelope” means the area formed by the front, side, and rear setback lines of a lot within which the principal building and accessory structures, unless otherwise specified, must be located.

30. “Building Height” means the vertical distance from the mean grade elevation taken at the fronting street side of a structure to the parapet or roof line of a flat roof, the eve of a pitched roof, or the deck line of a mansard roof. Towers, spires, steeples, and enclosed roof top mechanical equipment are not counted in height measurements.

31. “Building Material Facility” means an establishment that sells goods relating to construction such as lumber, appliances, electrical supplies, and plumbing supplies or has construction goods in outdoor storage.

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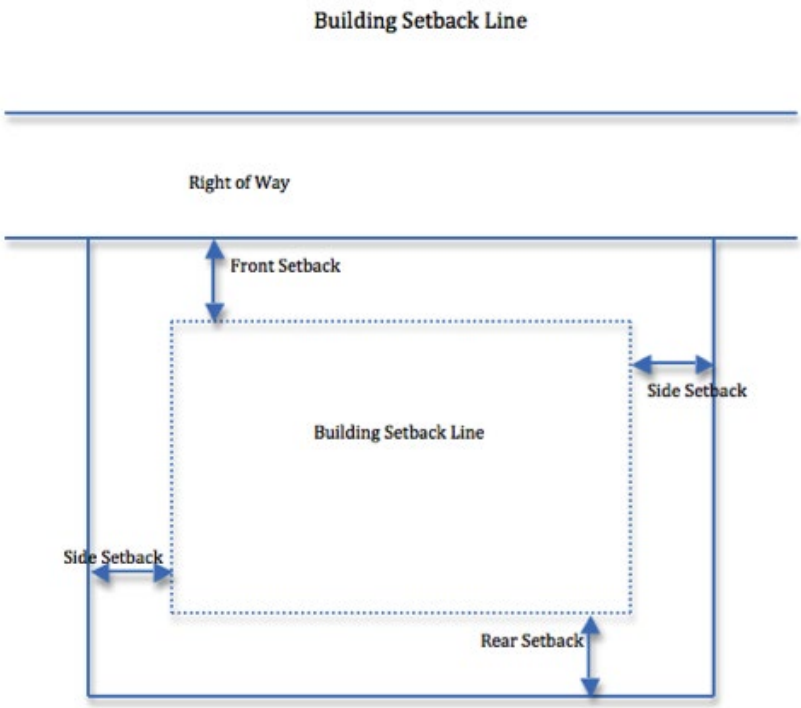
32. "Building Setback Line" means an established imaginary line within a property defining the minimum required distance between the face of any building or structure and an adjacent right-of-way or property line. The face of the building includes basements, decks, sunrooms, foyers, bay windows, porches, patios with footers, projecting eaves and overhangs, dormers, and any other solid projections and solid entrances. Walks, terraces, and uncovered steps or stoops attached to a structure are exempt. Building setback lines apply to all yard lines and all accessory buildings and structures, except for signs, fences, and walls.



33. "Bus & Transit Facilities" means a facility operated as a bus or rail passenger station or transfer center serving a publicly-owned or franchised mass transit operation. Typical facilities may include station platforms, bus bays, off-street parking, private access roads, and other passenger amenities.

34. "Bus/Other Transit Shelter" means a covered structure, located near a street and designed primarily for protection against the weather for bus or other transit passengers.

35. "Camp, Youth" means any land, building, structure, or programmed use thereon, used for any regular assembly of campers, under the age of eighteen (18), for programmed activities providing creative, recreational, or educational opportunities, and requiring trained leadership in the form of counselors, pertaining to the resources of the natural surroundings and area. A Youth Camp does not include campers or recreational vehicles.

36. "Campground" means a publicly or privately owned site designed, designated, maintained, intended, or used for the purpose of supplying a location for seasonal,

recreational, and temporary living purposes in cabins, tents, or recreational equipment/vehicles open to the public for free or for a fee.

37. "Canopy" means a roof-like structure either projecting from a building façade and open on three sides, or standing alone and open on four sides, and used for the purpose of protecting pedestrians and motorists from weather related elements.

38. "Catering Business" means the preparation and delivery of food and beverages for off-site consumption for a fee.

39. "Cemetery/Mausoleum" means the land used or intended to be used for the burial of human remains and dedicated for cemetery purposes.

40. "Centerline" means an imaginary line running parallel to street or easement right-of-way lines and equidistant from the lines on each side of the street or easement, or a line following the center of a physical feature such as a stream.

41. "Child Care Center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association, or organization, public or private, for the care of thirteen (13) or more children for child care services on a nonresidential basis and licensed by West Virginia Department of Health and Human Services.

42. "Child Care Facility" means 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 the West Virginia Department of Health and Human Services. No more than four (4) of the total number of children may be under twenty-four months of age.

43. "Child Care Home" means 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 (6) children, including children who are living in the household, who are under six years of age as determined by and licensed by the West Virginia Department of Health and Human Services. No more than two (2) of the total number of children may be under twenty-four months of age.

44. "Clear Sight Triangle" means an area of unobstructed vision at street intersections between two and one-half (2.5) and eight (8) feet above the road surface and within a triangular area at the street corner, which area is bounded by the street property lines of the corner lot and a line connecting points twelve (12) feet from the intersection of the property lines of such lot.

45. "Clinic" means an establishment providing medical, chiropractic, psychiatric or surgical services exclusively on an outpatient basis, including emergency treatment, diagnostic services, and opioid treatment services.

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46. "Community Facility, Private" means a building or structure and related facilities operated by a community-based group or organization on a nonprofit basis, the primary function of which is the provision of personal services to individuals, families, and groups. Services may include information, socializing, recreation, and counseling, but shall exclude the provision of sleeping quarters, except for one caretaker dwelling unit to be used for security and maintenance purposes.

47. "Comprehensive Plan" means the comprehensive plan for the Town of Fayetteville, West Virginia.

48. "Conditional Use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this ordinance.

49. "Continuing Care Facility" means one or more of the following facilities:
    i. Adult Assisted Living: Any facility, residence, or place of accommodation available for four (4) or more residents for the purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care. Such facility shall comply with the provisions of the West Virginia Code.
    ii. Nursing Home: Any institution, residence or place, or any part or unit thereof, however named, which is advertised, offered, maintained, or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four (24) hours, for four (4) or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation
    iii. Skilled Nursing Facility: An institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled, or sick persons.

50. "Convenience Store" means a business establishment that offers convenience goods for sale, such as pre-packaged or limited prepared food items, tobacco, and periodicals.

51. "Conversion" means the remodeling or alteration of a structure so as to accommodate more leasable or saleable units or a different use than what had originally been intended for the structure. This shall include the alteration of a non-residential structure into a dwelling unit or units, the modification of a single-family structure to accommodate more units than originally intended, the alteration of existing dwellings into a commercial use, and the alteration of an existing dwelling into a mixed commercial and residential use.

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52. "Conversion of Old School/Church" means the adaptive reuse of a former school or church for residential or commercial purposes not affiliated with the prior use.

53. "Correctional Facility" means a facility for the confinement or safe custody of persons so confined as the result of a legal process and includes attendance centers established for persons sentenced to serve periods of community service.

54. "Council" means the Town Council of the Town of Fayetteville, West Virginia.

55. "County" means Fayette County, West Virginia.

56. "Country Inn" means a commercial establishment involving the rental of up to twenty (20) bedrooms to overnight guests, and may include a restaurant serving overnight guests. The owner or manager of the premises shall reside on the premise while the County Inn is occupied.

57. "Cultural Service" means the use of a site for a library, museum, or similar facility.

58. "Distribution Facility" means any premises or part thereof, which is stocked with goods to be redistributed to retailers, wholesalers, or directly to the consumer.

59. "Distillery" means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

60. "Dog Day Care" means an organized, controlled, and monitored environment for a group of dogs to interact and play throughout the day. The purpose is to provide stimulation, exercise, and socialization for dogs. Overnight stays are not permitted, unless the use is combined with a kennel as defined herein.

61. "Drive-through Facility" means any portion of a building or structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions.

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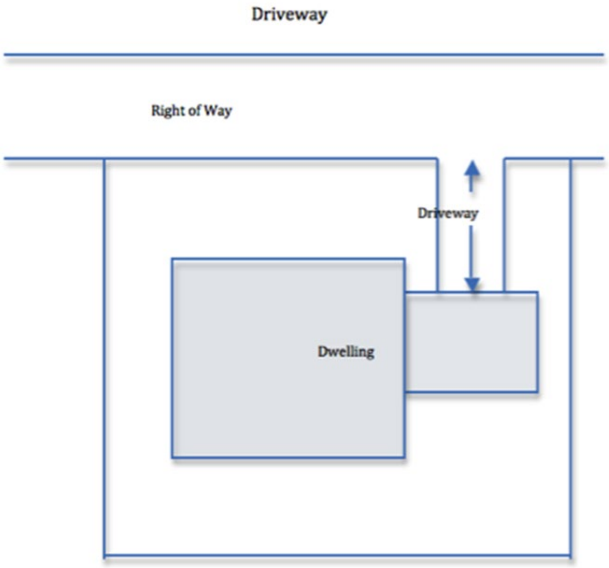
62. “Driveway” means a privately owned vehicular access from a street to properties abutting the street and serving no more than four (4) dwelling units.



63. “Dry Cleaner” means an establishment providing dry cleaning and laundering services where dry cleaning and laundering are done on or off the premises. A dry cleaner may also provide ancillary services such as tailoring.

64. “Dwelling” means a house, apartment building, or other building designed or used primarily for human habitation. The word "dwelling" shall not include boarding houses or rooming houses, tourist homes, motels, hotels, or other structures designed for transient residence.

65. “Dwelling, Conversion Apartment” means a dwelling unit created by the conversion of an existing single-family dwelling into a two (2), three (3), or four (4) family dwelling.

66. “Dwelling, Garage Conversion” means conversion of an existing garage to habitable space for residential use no smaller than five hundred (500) square feet of gross floor area.

67. ““Dwelling, Mixed Use” mean a building with commercial, office, or similar uses on the ground floor with access at the front of the building and residential uses above or behind the commercial, office, or similar uses and with residential access only at the side or rear of the building.

68. “Dwelling, Single-Family” means a detached, permanent structure, with more than one thousand (1000) square feet of gross floor area, on a permanent foundation, and designed for or occupied exclusively as a residence for only one family as defined herein.

69. "Dwelling Unit" means any dwelling or portion thereof used or intended to be used by one family and providing complete housekeeping facilities therefor.

70. "Educational Institution" means a college or university giving general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, and social or athletic activities, when located on the institution's land that is not detached from where classroom facilities are maintained.

71. "Emergency Services" means an area utilized for the maintenance, fueling, storage, dispatching, or parking of vehicles or equipment providing rescue or ambulatory services.

72. "Emergency Shelter" means a structure or part thereof, operated on a non-profit basis to temporarily house families or individuals who are victims of disaster, who are affected through action on the part of or on behalf of the municipality other than routine redevelopment related relocation activities, or who have bona fide emergency housing needs.

73. "Equipment Rental/Repair" means an establishment involved in renting or repairing tools and equipment, janitorial equipment, and similar items.

74. "Essential Utilities and Equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:
    i. Local Serving;
    ii. Nonlocal or transmission through the county or municipality; and
    iii. Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:
        A. Public Service Commission;
        B. Department of Environmental Protection; or
        C. Department of Health and Human Resources.

75. "Event" means a planned public or social occasion, including but not limited to activities such as community fairs, carnivals, parades, horse shows, horse trials, dog shows, sporting events, music or art festivals, and holiday celebrations. Excluded from the definition of events and from the regulations of this code, are the following: youth camps, any event sponsored by the Armed Forces of the United States or the State of West Virginia; any event sponsored by the forces of state or local police or fire departments; any event sponsored by an agency of the state, county, or local government; and activities that are part of the regular operations of a principal use, such as weddings at a church,

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annual fund raising or social events at a grange, and typical accessory events at educational, scientific, or institutional sites.

76. "Event, Mass Gathering" means an event, as defined herein, resulting in the assemblage of more than five hundred (500) persons on any one parcel or any special event, as defined herein, or any event where camping or overnight lodging are is offered.

77. "Event, Special" means an event, as defined herein, resulting in the assemblage of one hundred and fifty (150) to five hundred (500) persons; the arrival of seventy-five (75) or more vehicles at the location of the event, whether held on private property, public property, or public roads, where neither camping nor overnight lodging is offered; and any events with a significant emphasis on the sale, marketing, or promotion of products or services to be consumed, utilized, or provided off the premises, except for temporary uses permitted under Section 1321.31 of this code.

78. "Existing Use" means the use of land, buildings, or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one (1) year, provided, that in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

79. "Exterior Architectural Features" means the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way, or place.

80. "Extractive Industry" means a heavy industry use that involves the extraction of minerals for sale or other commercial purpose, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

81. "Factory-built Home" includes mobile homes and manufactured homes:
    i. "Manufactured Home" means a home that meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States Department of Housing and Urban Development (HUD).
    ii. "Mobile Home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-

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term residential use and built prior to enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI)--A119.1 standards for mobile homes.

82. "Factory-built Home Rental Community" means a parcel of land under single or common ownership upon which two (2) or more factory-built homes are located on a continual, non-recreational basis together with any structure, equipment, road, or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes or premises occupied solely by a landowner and members of his or her family.

83. "Family" means an individual, or two (2) or more persons related by blood, marriage, or adoption, or foster relationship; or no more than four (4) unrelated persons and persons related by blood, marriage, adoption, or foster relationship to any of those four (4) unrelated individuals, living together as a stable nonprofit housekeeping unit and sharing common living, dining, and kitchen areas, subject to the requirements of the building code.

84. "Farm/Construction Equipment and Supply Sales" means an establishment engaged in the on-premises lease, rental, or retail sale of new or used construction or farm equipment, with or without incidental service for minor repairs and maintenance.

85. "Farmer's Market" means the offering for sale of fresh agricultural products directly to the consumer at an open-air market designated as a community activity.

86. "Fence" means an artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected to enclose, screen, or separate an area.

87. "Flea Market" means an outdoor or enclosed commercial activity, open to the general public that offers goods for sale, trade, or barter, regardless of whether they are new, used, antique, or homemade.

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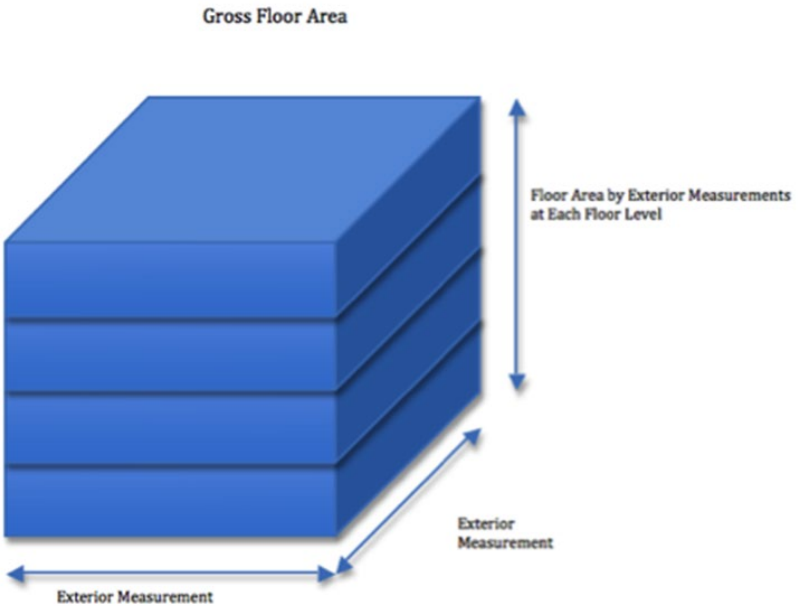
88. “Floor Area, Gross” means the total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.



89. “Freight Terminal” means any premises used by a freight company which is the origin or destination point of goods being transported for the purpose of storing, transferring, loading, and unloading such goods.

90. “Frontage” means the side of a lot abutting on the street right-of-way or side of a building regarded as the front.

91. “Funeral Home/Mortuary” means a building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of human remains for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; and (e) facilities for cremation.

92. “Garage, Community” means a group of private garages, detached or under one roof, arranged in a row or around a common means of access and erected for use of residents in the immediate vicinity.

93. “Garage, Private” means a garage not conducted as a business or used for the storage space for more than one commercial vehicle which shall be owned by a person residing on the premises.

94. “Garden Center” means an establishment primarily engaged in selling containerized trees, shrubs, and other plants; seeds; bulbs; mulches; soil conditioners; fertilizers;

pesticides; and garden tools and other supplies to the general public and where no trees, shrubs, or plants are grown on the premises.

95. "Gas Station" means a building, place of business, land area, or other premises, or portion thereof, used or intended to be used for the retail dispensing of gasoline, oil and grease, and other vehicle fuels, and including, as an accessory use, the sale and installation of batteries, tires, lubricants, and other automobile accessories and retail items. Minor repair service may also be rendered.

96. "Gas Station, Large" means a gas station (as defined in this ordinance) exceeding any of the following criteria: four (4) fuel pump islands, a total of eight (8) fuel pumps, or a gas station combined with a convenience store.

97. "Governmental Operations" means emergency services, municipal buildings, and post offices.

98. "Greenhouse, Noncommercial" means a building or 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.

99. "Greenhouse, Commercial" means a building used for the growing of plants, all or part of which are sold at retail or wholesale.

100. "Group Residential Facility" means a facility which is owned, leased, or operated by a behavioral health service provider and which:
    i. Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled;
    ii. Is occupied as a residence by not more than eight (8) individuals who are developmentally disabled and not more than three (3) supervisors or is occupied as a residence by not more than twelve (12) individuals who are behaviorally disabled and not more than three (3) supervisors;
    iii. Is licensed by the Department of Health and Human Resources; and
    iv. Complies with the State Fire Commission for residential facilities.

101. "Group Residential Home" means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence, and complying with all applicable requirements of the state of West Virginia.

102. "Health Club" means a building or portion of a building designed and equipped for the conduct of sports, exercise, or other customary and usual recreational activities, operated for profit or not-for-profit. The sale of sports nutrition products, non-alcoholic beverages, packaged health foods, exercise clothing, and sports videos and magazines is permitted as an accessory use to such facilities.

103. "Historic District" means a geographically definable area, designated as historic on a national, state, or local register, possessing a significant concentration, linkage, or

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continuity of sites, buildings, structures, or objects, united historically or aesthetically by plan or physical development.

104. "Historic Landmark" means a site, building, structure, or object designated as historic on a national, state, or local register.

105. "Historic Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archaeological value, regardless of the value of any existing structure, and designated as historic on a national, state, or local register.

106. "Home-Based Business (Low-Impact)" means an accessory use intended to allow businesses that generate limited customer visitation or merchandise deliveries to operate such business from a residence.

107. "Home-Based Business (No-Impact)" means an accessory use intended to allow businesses that rely solely on electronic or off-premise transactions to perform such operations from a residence. The use involves no customer, client, or patient traffic, whether vehicular or pedestrian and no pickup, delivery, or removal functions to or from the premises in excess of those normally associated with residential use.

108. "Hospital" means an institution designed for the diagnosis, treatment, and care of human illness or infirmity and providing health services, primarily for inpatients, and including related facilities, laboratories, outpatient departments, training facilities, and staff offices.

109. "Hostel" means an establishment, other than a dwelling, bed and breakfast, or hotel/motel use, that provides dormitory sleeping accommodations or shared guest rooms as low-cost public travel accommodations to recreational travelers. Hostels typically have shared kitchen and sanitary facilities for use by transient guests.

110. "Hotel/Motel" means a building or group of buildings in which lodging is provided and offered for compensation. The building may also include dining rooms, kitchens, serving rooms, ballrooms, and other facilities and services intended primarily for the accommodation of its patrons.

111. "Irregular Lot" means a lot of such shape or configuration that technically meets the area, frontage, and width-to-depth requirements of this code but has unusual elongations, angles, and curvilinear lines.

112. "Junk" means any worn, cast-off, or discarded article or material which is ready for destruction or which has been collected or stored for sale, resale, salvage, or conversion to some other use.

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113. "Kennel" means any establishment wherein cats and dogs are kept or boarded. Business may be conducted in conjunction with a dog day care. Such kennel must follow the registration process set forth in the West Virginia Code.

114. "Landowner" means the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if authorized under the lease to exercise the right of the landowner, or other person having a proprietary interest in land.

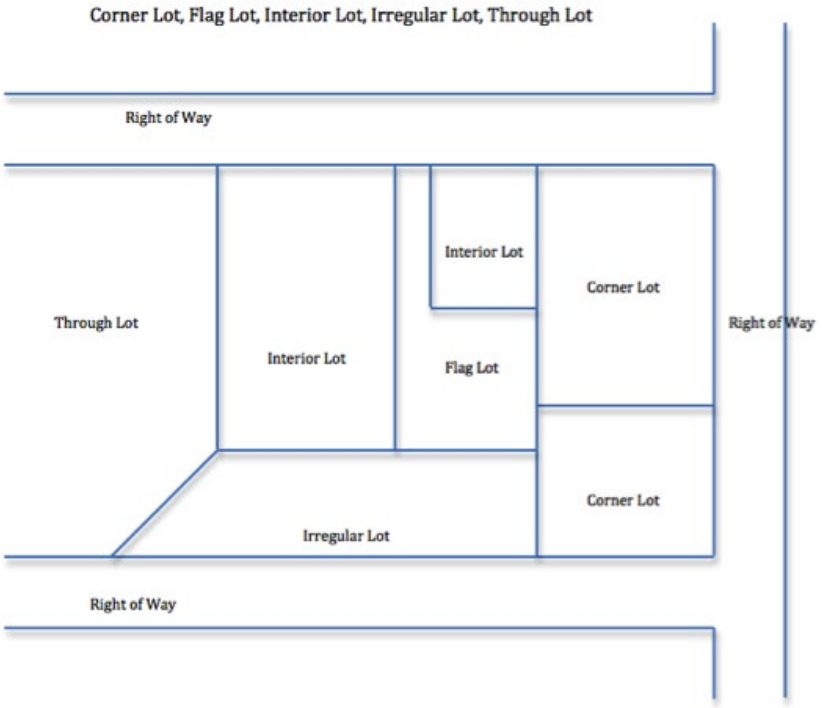
115. "Landscaping" means the bringing of the soil surface to a smooth finished grade, installing sufficient trees, shrubs, ground cover, and grass to soften building lines, provide shade, and generally produce a pleasing visual effect of the premises.

116. "Laundromat" means a business that provides washing, drying, or ironing machines for hire to be used by customers on the premises.

117. "Liquor Store" means an establishment operated under the authority of the West Virginia Code, Chapter 60, Article 3A primarily engaged in the retail sale of packaged alcoholic beverages, such as ale, beer, wine, or whiskey, for off-premises consumption.

118. "Loading Space" means a space or berth available for the loading and/or unloading of goods from commercial vehicles.

119. "Lot" means a designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit.



120. "Lot Area" means the total area within the lot lines of a lot, excluding any public rights-of-way.

121. "Lot, Corner" means a lot at the junction of and abutting two or more intersecting streets, where the interior angle of intersection is less than one hundred and thirty-five (135) degrees. A lot abutting a curved street or streets shall be considered a corner lot if the tangents to the curve at the points of intersection of the lot lines with the street intersect at an interior angle of less than one hundred and thirty-five (135) degrees.

122. "Lot Coverage" means the total area covered, measured from the outside of the exterior walls, by all principal and accessory buildings on a lot. Open porches, decks, balconies and similar features that are not covered by a roof shall not be counted.

123. "Lot, Flag" means a polygonal-shaped lot with the appearance of a frying pan or flag and staff in which the handle is most often used as the point of access. The handle, when less than the minimum width for a building lot in the zoning district in which it is located, is not to be used in computing the minimum required lot area or delineating the minimum required building envelope.

124. "Lot, Interior" means a lot where the side property lines do not abut a street.

125. "Lot, Irregular" means a lot of such shape or configuration that technically meets the area, frontage, and width-to-depth requirements of this code but has unusual elongations, angles, and curvilinear lines.

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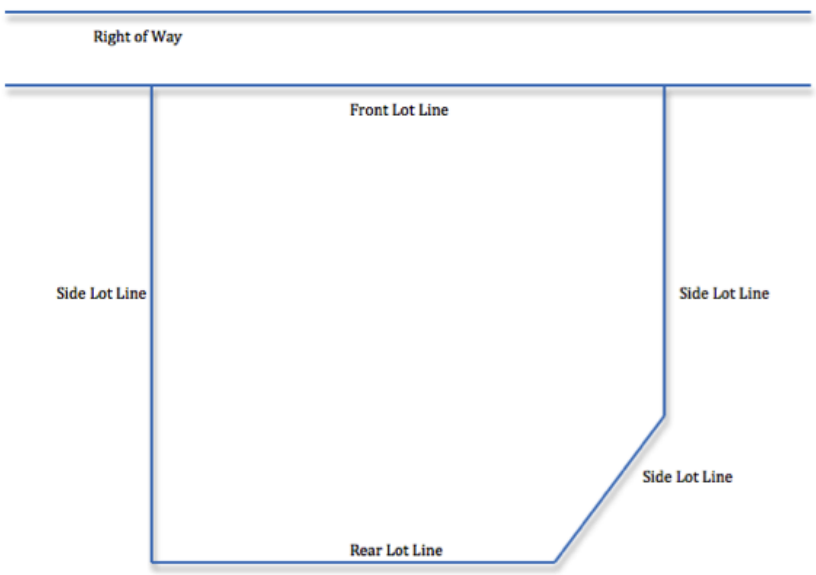
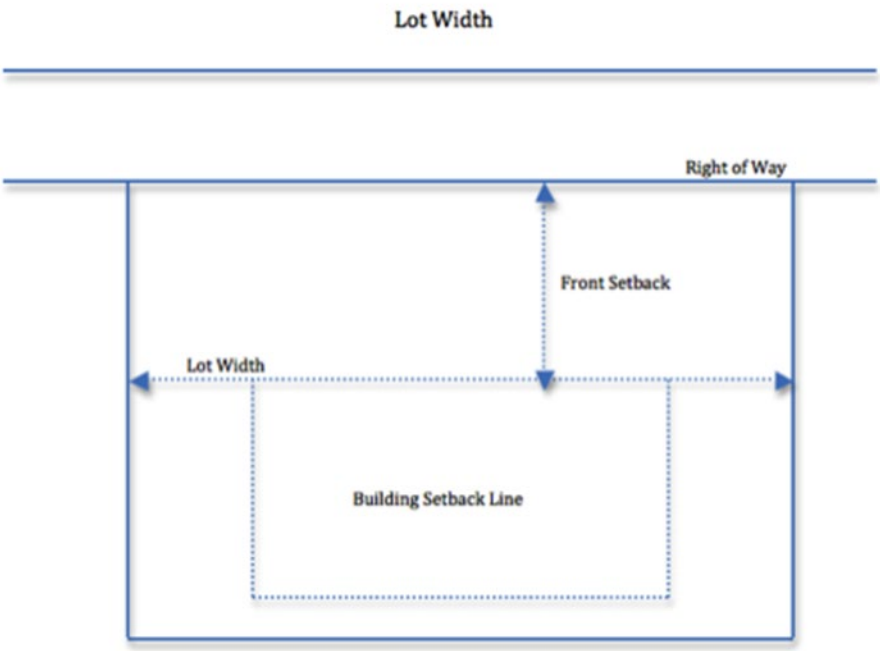
126. "Lot Line" means the property boundary line of any lot held in single or joint ownership that divides one lot from another or from a street or any other public or private space.
    i. "Front Lot Line" means, in the case of an interior lot, a line separating the lot from the street, public right-of-way, or future right-of-way; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.
    ii. "Rear Lot Line" 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 (10) feet in length within the lot and parallel to and at the maximum distance from the front lot line.
    iii. "Side Lot Line" means any lot line other than a front or rear lot line.

Front Lot Line, Rear Lot Line, and Side Lot Line



127. "Lot Measurements" are measured as follows:
    i. Lot Depth: The mean distance from the right-of-way line of the lot to its opposite rear line measured in a direction parallel to the side lines of the lot. Lot depth for triangular lots shall be the mean distance from the street line to the point of intersection of the side yards.
    ii. Lot, Minimum Width: The minimum lot width at the building setback line.
    iii. Lot Width: The distance measured between side lot lines, at the required building setback line. In a case where there is only one side lot line, lot width shall be measured between such side lot line and the opposite rear lot lines or street line.



128. "Lot, Through" means an interior lot in which the front line and rear line both abut upon streets. Where a single lot under individual ownership extends from a street to a street, the widest street shall be deemed the street upon which the property fronts.

129. "Lumberyard" means an establishment where processed wood timbers and products are stored for bulk and retail sale.

130. "Manufacturing (Light)" means the manufacturing, compounding, processing, assembling, packaging, or testing of goods or equipment, including research activities, conducted entirely within an enclosed structure and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust, or pollutants.

131. "Medical Adult Day Care Center" means an ambulatory healthcare facility which provides an organized day program of therapeutic, social, and health maintenance and restorative services and whose general goal is to provide an alternative to twenty-four

(24) hour long term institutional care to elderly or disabled adults who are in need of such services by virtue of physical and mental impairment.

132. “Medical Cannabis Growing Facility" means a place where medical cannabis is permitted to be grown, as provided for in the West Virginia Code, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.

133. "Medical Cannabis Processing Facility" means a place where medical cannabis is permitted to be processed, refined, or otherwise converted into a legally permitted state, as provided for in the West Virginia Code, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.

134. "Medical Cannabis Organization" means a dispensary, grower or processor. The term does not include a health care medical cannabis organization as defined in the West Virginia Code, Chapter 16A, as amended.

135. "Medial Cannabis Organization, Health Care" means a vertically integrated health system approved by the West Virginia Bureau for Public Health to dispense medical cannabis or grow and process medical cannabis, or both, in accordance with a research study under the West Virginia Code, Chapter 16A, as amended. A "vertically integrated health system" is a health delivery system in which the complete spectrum of care, including primary and specialty care, hospitalization and pharmaceutical care, is provided within a single organization.

136. “Mineral” means gas; oil; coal; other gaseous and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state in the West Virginia Code.

137. “Multi-Family Housing” includes the following forms of dwellings:
    i. “Dwelling, Apartment” means a building containing several and separate dwelling units, having common corridors and stairways and having shared exit and entrance facilities, and not exceeding three (3) stories.
    ii. “Dwelling, Condominium” means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Yard requirements shall apply to structures only and not individual ownership units.
    iii. “Dwelling, Town House” or “Rowhouse” means 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. For purposes of determining the

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required yard for townhouse developments, setbacks shall only apply from the perimeter of the main building to the perimeter of the parent parcel upon which the building is situated.

iv. "Dwelling, Two-Family" means a freestanding building containing two (2) dwelling units, each of which has direct access to the outside.

138. "Municipal Building" means any building, structure, or lot used by the town, a municipal-related use, or a municipal authority created by the town. These uses shall include an administrative facility, firehouse, and emergency medical service facility.

139. "Night Club" means an establishment for evening entertainment, generally open until the early morning that serves liquor and usually food and offers patrons music, comedy acts, floor shows, or dancing but is not characterized as a forum for sexually oriented material.

140. "Nonconforming Building" or "Nonconforming Structure" means a building, structure, or part thereof, manifestly not designed to comply with the applicable use or extent of use provisions in this ordinance or amendments heretofore or hereafter enacted, where such building or structure lawfully existed prior to the enactment of such ordinance or amendment, or prior to the application of this ordinance or amendments to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

141. "Nonconforming Lot" a lot or parcel of land that was of record and lawfully established and maintained but which, because of the enactment of this code or amendment heretofore or hereafter enacted, no longer conforms to the land-use standards or use regulations of the zone in which it is located.

142. "Nonconforming Sign" means a sign which was lawfully erected in compliance with applicable regulations of the Town and maintained prior to the effective date of this zoning ordinance and which fails to conform to current standards and restrictions of the zoning ordinance.

143. "Nonconforming Use" means a use, whether of land or of structure, which does not comply with the applicable use provisions in this ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

144. "Nonintoxicating Beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater.

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145. "Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

146. "Office Supply Services" or "Office Supply Establishment" means a place of business where stationery and other supplies typically used in offices are the main items offered for sale.

147. "Open Space" means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

148. "Owner-occupied" means a person who maintains his or her principal residence by being physically present and spending the night on the property for more than 208 nights of each calendar year and who is an "owner" of the property:
    i. The sole owner of record of the property, as reflected in a deed recorded in the County Clerk's Office;
    ii. A tenant in common or joint tenant with right of survivorship, as reflected in a deed recorded in the County Clerk's Office; or
    iii. An owner of at least twenty-five (25%) percent of a business entity shown as the owner of record, as reflected in a deed recorded in the County Clerk's office. The ownership interest shall be shown by a duly executed resolution of the business entity, or such other method as determined by the Zoning Officer.

149. "Parcel Delivery Facility" means an establishment engaged in the delivery, receipt, and transmittal of documents, packages, and parcels.

150. "Park" means land set aside for open space and recreation purposes.

151. "Parking Lot" means an area utilized to meet the parking requirements of this ordinance, including the parking aisles that provide access to the parking spaces, but not including any streets or driveways that provide access to the parking lot.

152. "Parking Structure" means a building with multiple stories of off-street parking spaces where vehicles are temporarily stored with or without a nominal fee, in association with occupational, retail, entertainment, recreational, municipal, educational or residential uses.

153. "Patio" means an area consisting of natural or man-made material constructed at or near grade level, intended for use as an outdoor living area, and not enclosed by a permanent roof or awning.

154. "Permit" means a document issued by the governing body authorizing an applicant to undertake certain activities.

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155. "Permitted Use" means any use, other than conditional or accessory uses, allowed within a zoning district, subject to the restrictions applicable to that zoning district.

156. "Personal Service" means a business providing services to a person, their apparel or personal effects commonly carried on or about their person, including, but not limited to, shoe repair, tailoring, watch repair, beauty shops, barber shops, tanning and nail salons, and dry-cleaning and laundry pick-up stations where cleaning is not performed on site.

157. "Pet Shop" means an establishment where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

158. "Pharmacy" means an establishment in which prescription or nonprescription drugs or devices are compounded, dispensed, or distributed.

159. "Photographic Studio" means a business used as a place of work for a photographer.

160. "Places of Worship/Religious Institution" means a building wherein persons regularly assemble for acts of religious devotion and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes a church, synagogue, temple, mosque, or other such place for worship and religious activities. Customary accessory uses include a wide range of religious activities, including a caretaker's residence; fellowship halls, parish halls and similar buildings; rooms used for meetings, religious education, and similar functions; a gymnasium; a playground; the sale of items associated with the practice of religion; and faith-based social services such as homeless shelters, group homes, and soup kitchens.

161. "Planning Commission" means the planning commission for the Town of Fayetteville.

162. "Porch" means a covered but unenclosed projection from the main wall of a building that may or may not use columns or other ground supports for structural purposes. Uncovered portions are a deck.

163. "Post Office" means a building or structure used and maintained by the Postal Service of the United States of America for the purpose of collecting or distributing mail to the public.

164. "Principal Building or Structure" means a building or structure in which the principal use is conducted. In all residential districts, any dwelling is the principal building on the lot on which it is located.

165. "Principal Use" means the primary use of land, buildings, or structures, whether permitted by right or conditional, which exists independently of any other use on the property.

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166. "Private Club" means any corporation or unincorporated association meeting the definition of private club in West Virginia Code Section 60-7-2(a), and licensed and in compliance with West Virginia Code, Chapter 60, Article 7, to sell liquor, beer, and wine.

167. "Professional Services" means any office of recognized professions, other than medical, such as lawyers, architects, engineers, real estate brokers, insurance agents, and others who are qualified to perform services of a professional nature and other offices used primarily for accounting, corresponding, research, editing, or other administrative functions, but not including banks or other financial institutions or personal services.

168. "Public Area" means any public place, public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water.

169. "Public Place" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

170. "Reception Facility" means a facility within an existing structure or outdoor area for hosting receptions, meetings, conferences, private parties, or similar activities, limited only to weddings, wedding receptions, birthday events, anniversary events, reunion events, and family gatherings, and not involving charging admission or held primarily to view a performance.

171. "Recreation, Commercial Indoor" means indoor facilities for leisure-time activities, including facilities open to the public and those requiring membership; including, but not limited to, such establishments as bowling alleys, ice rinks, sportsman's clubs, billiard and pool halls, video and other coin-operated electronic games, trampolines, ball pits, indoor skating facilities, and similar recreational diversions.

172. "Recreation, Commercial Outdoor" means outdoor facilities for leisure-time activities, including outdoor facilities open to the public and those requiring membership; including, but not limited to, swimming pools, miniature golf, golf practice facilities, tennis courts, , archery range, playing fields, golf courses, and similar recreational diversions.

173. "Recreation, Municipal" means developed or undeveloped open spaces and/or structures and facilities which are provided by a governmental body for public use for the purposes of play, amusement or relaxation. Such uses may include, but not limited to, sports facilities, parks, swimming pools, assembly buildings, passive areas, gardens and related amenities.

174. "Recreational Vehicle" means any travel trailer or other vehicular portable structure designed to be used as a temporary occupancy for travel or recreational use. For example, any motor home, truck slide-in camper, fifth wheel trailer, tent trailer, animal trailer, trailer used for transporting recreational vehicles, any type of 3- or 4-wheeled sport racing vehicle, boat, boat trailer, raft, aircraft, dune buggie, snowmobile, jet ski, all-terrain vehicle and vehicle dollie are included.

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175. "Recycling Facility" means a facility that accepts recyclable material from the public by donation, redemption, or purchase and separates or recovers reusable materials that can be sold to or reused by a manufacturer as a substitute for or a supplement to, virgin raw materials. The term does not include transfer facilities, municipal waste landfills, composting facilities or resource recovery facilities.

176. "Research and Development" means research, development, and testing laboratories that do not involve the mass manufacture, fabrication, processing, sale of products, or, a structure or complex of structures designed or used primarily for research development functions related to industry and similar fields of endeavor.

177. "Restaurant (Carry Out)" means an establishment that provides ready-to-eat food to be consumed off the premises.

178. "Restaurant (Fast Food)" means a restaurant where most customers order and are served their food at a counter or in a motor vehicle in packages prepared to leave the premises, or able to be taken to a table or counter to be consumed. This facility may or may not include a drive-through facility.

179. "Restaurant (Sit Down)" means a commercial establishment where food and beverages are prepared, served, and consumed primarily within the principal building and where food sales constitute more than sixty (60) percent of the gross sales receipts.

180. "Retail Store" means a business having as its primary function the supply of merchandise or wares to the end consumer. Such sales constitute the "primary function" of the business when such sales constitute the majority of the gross sales of the business. Two classes of retail stores:
    i. Retail Store/Shop <25,000 square feet gross floor area.
    ii. Retail Store/Shop >25,000 square feet gross floor area.

181. "Right-of-way" means a strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a street, trail, waterline, sanitary sewer, and/or other public utilities or facilities.

182. "Satellite Signal Receiving Station" means devices commonly parabolic in shape, mounted at a fixed point on a structure, or on rooftops, for the purpose of capturing electronic television or internet signals transmitted via satellite communication facilities and serving the same or similar function as the common television antenna. Such devices are accessory structures.

183. "School, Commercial" means a school establishment to provide for the teaching of industrial, clerical, managerial or artistic skills. This definition applies to schools that are owned and operated privately for profit.

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184. "School, Pre-school to 12" means a school offering educational instruction in grades pre-kindergarten through twelve (12), licensed by the West Virginia Department of Education. Schools can be both public and private.

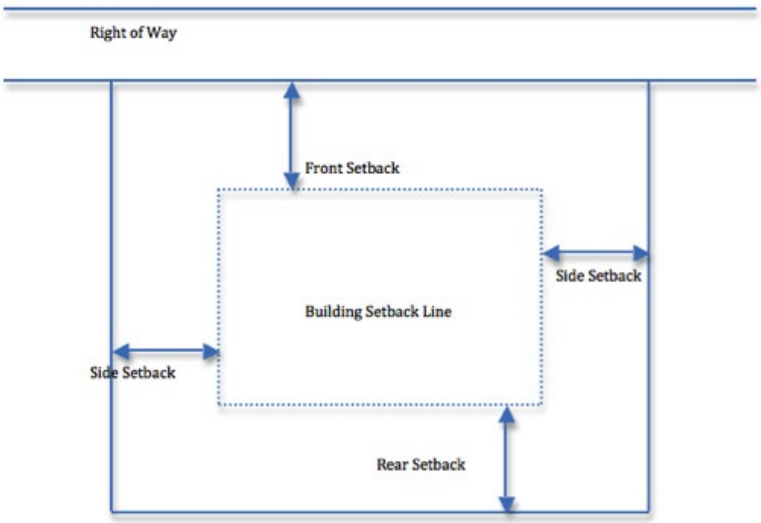
185. "Screening" means the use of plant materials, fencing and/or earthen berms to aid in the concealment of such features as parking areas and vehicles within them, and to provide privacy between two (2) or more different land uses which abut one another.

186. "Self-Storage Facility" means a building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time.

187. "Senior Independent Housing" means a single family or multi-family development intended for, operated for and designed to accommodate residents 55 years of age or older. Senior independent housing communities are designed for seniors who are able to live independently or need assistance with daily care. Senior independent housing can also include continuing care facilities.

188. "Setback" means the minimum distance by which any building or structure must be separated from a street right-of-way or lot line.
    i. Front Setback: the shortest distance between the building setback line and the front lot line.
    ii. Rear Setback: the shortest distance between the building setback line and the rear lot line.
    iii. Side Setback: the shortest distance between the building setback line and the side lot line.

Front Setback, Rear Setback, and Side Setback



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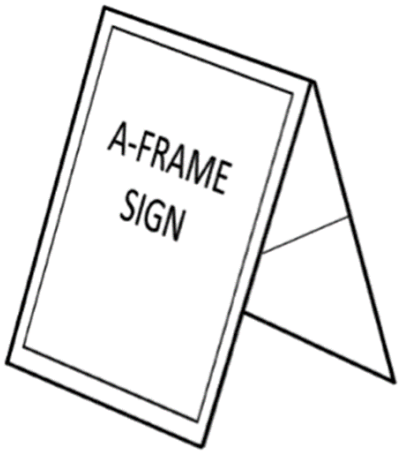
189. "Sewage Treatment Facility" means a facility designed to receive the wastewater from domestic sources and to remove materials that damage water quality when discharged into receiving streams or bodies of water.

190. "Shopping Center" means a group of retail and other commercial establishments that is planned, owned, and managed as a single property.

191. "Sign" means any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant, or any other device, figure or character, or delineation) with the essential purpose to communicate, designed to communicate, or where context results in communication, and such communication is aimed at persons in a public right-of-way.

   i. "A-Frame Sign" means a two-faced sign with supports that are connected at the top and separated at the base with an internal angle between the two faces of no more than a 45-degree angle, forming an "A" shape not more than four (4) feet high. These are also referred to as "sandwich board" signs. They are included in the term "portable sign."



   ii. "Animated Sign" or "Moving sign means a sign or part of a sign that is designed to rotate, move or appear to rotate or move. Such a sign is sometimes referred to as a "moving sign." Animated signs include signs with moving graphic features such as scrolling text or images that appear to move; moving sign change features such as fly-in, wipe-off, fading, dissolving, traveling, or expanding displays or any other full message sign change taking longer than 0.3 seconds; and static electronic message displays displayed less than seven (7) seconds. Animated signs also include signs propelled by vehicle, watercraft, or aircraft where the primary purpose of the vehicle, watercraft, or aircraft at the time of sign display is to propel the sign.
   iii. "Awning Sign" means a sign placed directly on the surface of an awning.
   iv. "Banner" means a temporary sign of flexible material affixed to a framework or flat surface. Banners are not flags for the purposes of this ordinance.

v. "Beacon" means any light with one (1) or more beams directed into the atmosphere or directed at one (1) or more points not on the same zone lot as the light source; also, any light with one (1) or more beams that rotate or move.

vi. "Canopy Sign" means a sign attached to a canopy.

vii. "Chalkboard Sign" means a single-faced, framed slate or chalk-board that can be written on with chalk or similar markers.

viii. "Changeable Message Sign" means a sign or part of a sign that is designed so that characters, letters or illustrations can be manually or physically changed or rearranged without altering the face or surface of the sign.

ix. "Electronic message display" means a sign that is either light emitting or light reflective and that is capable of changing the displayed message through electronic programming. Electronic message displays are divided into four categories:

A. "Static electronic message display" means an electronic message display that is not an animated sign.

B. "Static electronic message display with transition features" means an electronic message display that remains static except for no more than a two (2) second transition feature such as fading, dissolving or a single instance of fly-in, wipe-off, expansion, or traveling that occurs no more often than every seven (7) seconds.

C. "Electronic message display, partially animated" means an electronic message display with animated or moving text or graphics.

D. "Electronic message display, fully animated" means an electronic message display with full animation features.

x. "Feather Sign/Feather Flag/Teardrop Flag/Wind flag" means a lightweight, portable flag made of cloth, plastic or similar material mounted along one edge on a single, vertical, flexible pole, the physical structure of which at may resemble a sail, bow, or teardrop.

xi. "Flag" means a piece of cloth or similar material, typically oblong or square, attachable by one (1) edge to a pole or rope and used as a symbol or decoration; this includes pennants.

xii. "Flashing Sign" means sign that includes lights that flash, blink, turn on and off intermittently, or otherwise vary light intensity during the display of a message.

xiii. "Freestanding Sign" or "Ground Mounted Sign" or "Pole Sign" means any non-portable sign supported by a fence, retaining wall, or by pole, upright structural members or braces on or in the ground and not attached to a building.

xiv. "Geological signs" are signs made of or that appear to be made of geological formations, including but not limited to standalone rocks or mountainsides, and convey a message that is etched, carved, painted, or similarly incorporated into the sign's material.

xv. "Illegal Sign" means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.

xvi. "Inflatable/tethered signs" are signs which are filled with a gaseous substance to convey a message or to draw attention to a message or location.

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xvii. "Marquee Sign" means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering in use.

xviii. "Minor Sign" means a wall or freestanding sign not exceeding one (1) square foot in area, not exceeding four (4) feet in height, and not illuminated.

xix. "Monument Sign" means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.

xx. "Neon Sign" means a sign containing exposed tubes filled with light-emitting gas.

xxi. "Off-premises Sign" means a commercial sign not accessory to the principal use on a lot, or a sign that is the principal use of a lot.

xxii. "Pennant" means a geometric shaped flag made of flexible materials, suspended from one (1) or two (2) corners fastened to a string, which is secured or tethered so as to allow movement and used as an attention-getting form of media.

xxiii. "Person-assisted Sign" means a sign that includes an individual who holds, moves, wears, or otherwise directs attention to a commercial sign.

xxiv. "Portable Sign" means any temporary sign not affixed to a building, structure, vehicle, or the ground. It does not include a flag or banner.

xxv. "Projecting Sign" means a sign attached to and projecting more than twelve (12) inches from the face of a wall or building, but does not project above the parapet or eave line of the building and is a minimum of eight (8) feet above any walk surface or finish grade.

xxvi. "Roof Sign" means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.

xxvii. "Temporary Sign" means any sign intended to be displayed for a limited period of time, not to exceed thirty (30) days.

xxviii. "Vehicle or Trailer Sign" means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

xxix. "Wall Sign" means any sign that is attached, painted, drawn, marked, etched, or scratched onto a wall or against a flat vertical exterior surface of a structure, including portions of doors which do not contain windows.

xxx. "Wicket Sign" means a sign with an H- or U-shaped frame that is put into the ground or placed above the ground.

xxxi. "Window Sign" means any sign visible outside the window, including windows on doors, and attached to or within 18 inches in front of or behind the surface of a window or door.

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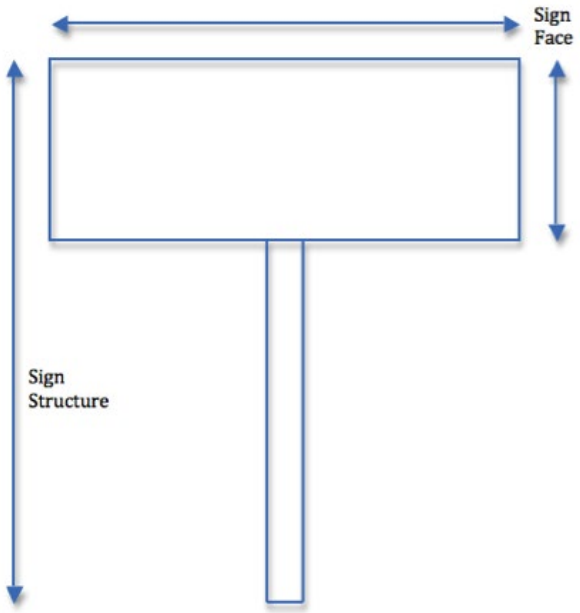
192. "Sign Face" means the portion of a sign structure bearing the message.



193. "Sign Height" means the maximum vertical distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:
    i. Existing grade prior to construction; or
    ii. The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating primarily for the purpose of mounting or elevating the sign.

194. "Sign Structure" means any structure bearing a sign face.

195. "Solar Energy System" means energy conversion system, including appurtenances, which converts solar energy to a usable form of energy to meet all or part of the energy or heating requirements of the on-site user, or which is to be sold to a utility company to be used by others, or sold directly to other users. A Solar Energy System may be groundmounted (i.e., placed on top of the ground surface) or roof-mounted (i.e., placed on or as an integral part of a building).
    i. Small solar energy system: Solar energy systems installed for personal use in residences, commercial properties and institutions.
    ii. Large solar energy system: Solar energy systems installed on large parcels of land for the purpose of generating revenue or utility-scale systems installed to benefit the community or an entire institution.

196. "Special Flood Hazard Area" means the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood.

197. "Sports Arena" means a central stage, ring, area, or the like, used for sports and surrounded by seats for spectators.

198. "Street" means 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.

199. "Structure" means anything constructed, erected, or situated by man that requires location on the ground or being attached to something having location on the ground; but not including vehicles, recreational vehicles, campers, tents less than thirty-six (36) square feet in gross floor area, retaining walls, fences not over eight feet in height, yard and play equipment, utility lines and underground facilities.

200. "Studio, Dancing, Music, or Art" means a facility used for the rehearsal or performance of performing arts, such as music, dance, or theatre; teaching classes in creative arts, such as painting, drawing, sculpting, potting, or beading or other ways of creating art; or for the display or sale of art in general or during special events. Food and alcoholic beverages may be served and fees charged as accessory uses during special events.

201. "Tattoo/Body Piercing Studio" means any room or space where tattooing or body piercing is practiced or where a business, or part thereof, involves body piercing or tattooing.

202. "Tavern/Drinking Establishment I" means an establishment engaged in the preparation and retail sale of alcoholic beverages, including only beer and wine, for consumption on the premises and which may offer food for consumption on premises as an accessory use.

203. "Tavern/Drinking Establishment II" means an establishment engaged in the preparation and retail sale of alcoholic beverages, including liquor, beer, and wine, for consumption on the premises and which may offer food for consumption on premises as an accessory use. This term also includes bar.

204. "Temporary Structure" means any structure which is erected to be in place for not more than twelve (12) months, including but not limited to tents, air-supported structures, portable bandstands, reviewing stands, bleachers, mobile office units, construction sheds, sales offices for lots, or dwellings or other structures of a similar character.

205. "Theater" means an establishment offering to the public movies or live performances.

206. "Theater, Drive-in" means an open lot or part thereof, with its appurtenant facilities devoted primarily to the showing of movies or to theatrical productions, usually on a paid admission basis, to patrons seated in motor vehicles or on outdoor seats.

207. "Trailer, Camping and Recreational Equipment" means travel trailers, utility trailers, pickup coaches, motorized homes, and recreational vehicles and equipment as follows:

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a. "Travel Trailer" means a portable structure built on a chassis, designed to be towed and used as a temporary dwelling for travel, recreational, and vacation purposes, and permanently identified as a travel trailer by the manufacturer of the trailer.
b. "Pickup Coach" means a structure designed primarily to be mounted on a pickup or other truck chassis with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational, and vacation purposes.
c. "Motorized Home" means portable dwelling designed and constructed as an integral part of a self-propelled vehicle.
d. "Boat" means a vessel designed to travel on water.
e. "Utility Trailer" means a portable structure built on a chassis, designed to be towed and used for the purposes of hauling a boat, lawnmower, farm equipment, recreational equipment, or similar equipment, measuring not more than sixteen (16) feet in length, and not used primarily for commercial purposes.

208. "Travel Plaza" means a public facility, located next to a large thoroughfare such as a highway, expressway, or freeway at which drivers and passengers can rest, eat, or refuel without exiting onto secondary roads

209. "Truck Terminal" means a facility where trucks load and unload goods, products, cargo and/or other materials to be broken down or aggregated in different size loads and reshipped to other destinations.

210. "Unit of Government" means any federal, state, regional, county or municipal government or governmental agency

211. "Urban Agriculture" means land used for beekeeping, community gardens, composting, home agriculture, and other small-scale, plant-based agricultural activities.

212. "Use" means any purpose for which a building, structure, or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business or operation performed in a building or structure or on a tract of land.

213. "Utility" means a public or private distribution service to the public that is regulated by the public service commission.

214. "Variance" means a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

215. "Vehicle" means any device in, upon, or by which any person or property is or may be transported or drawn upon a street, excepting tractors, agricultural machinery, devices moved by human power or used upon stationary rails or tracks. This definition includes automobiles as defined herein.

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216. “Vehicle Sales/Rental and Service” means the rental, sales and service of automobiles, motorcycles and trucks.

217. “Video Gaming or Lottery Establishment” means an establishment at which any form of gambling of chance is permitted or played, including “video lottery” machines licensed by the West Virginia Lottery Commission pursuant to the Code of West Virginia, but excluding establishments that only sell lottery tickets.

218. “Warehouse” means a structure primarily used for the storage of goods and materials.

219. “Wholesale Establishment” means 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.

220. “Winery” means an establishment where wine is manufactured or in any way prepared in accordance with the West Virginia Code.

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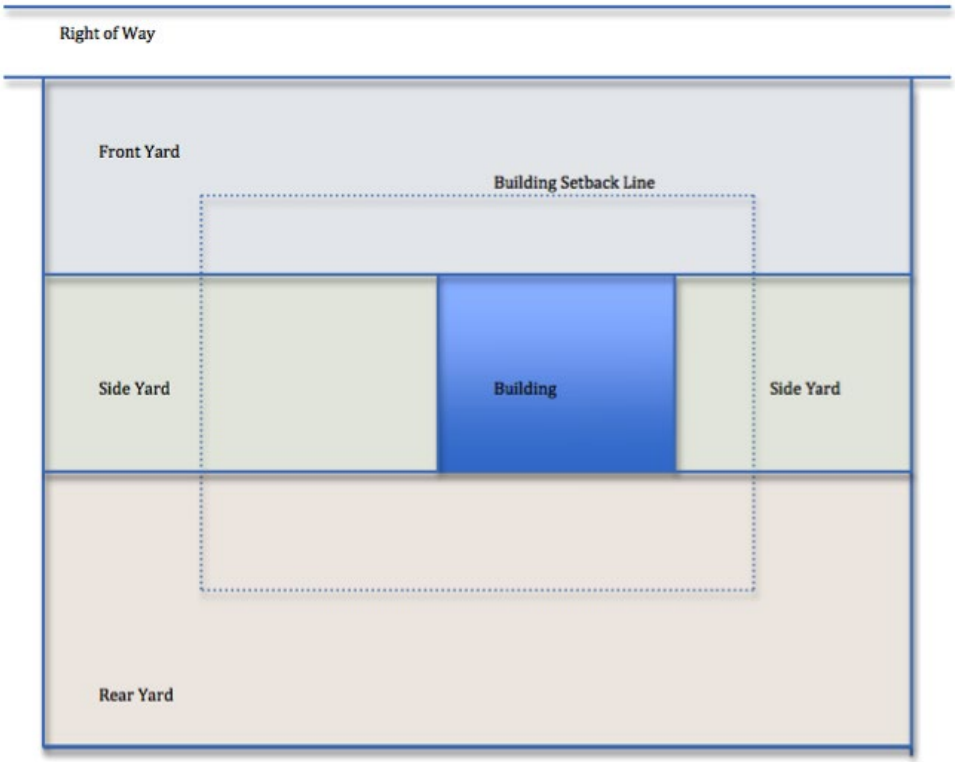
221. “Yard” means space that lies between the principal building or buildings and the nearest lot line. The minimum required yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this code. Yards are further classified as front, rear, and side:
    i. "Yard, Front" means 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. On corner lots, each yard abutting a street is a front yard. Lots adjacent to two intersecting streets, each yard adjacent to those streets is a front yard.
    ii. "Yard, Rear" means 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. On corner lots, the rear yard is opposite one front yard, as determined by the zoning officer.
    iii. "Yard, Required" means the open space between a lot line and the yard line and the façade of a building within which no structure may be located except as permitted by this code.
    iv. "Yard, Side" means a space extending from the front yard to the rear yard between the principal building façade and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building façade.

Front, Rear, and Side Yard



222. "Zoning" means 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.

223. "Zoning Map" means a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

224. "Zoning Officer" means that person appointed by the governing body and who has any other authority this Zoning Ordinance may confer upon him or her to administer the Zoning Ordinance and to issue zoning permits.

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Article 1307: Establishment of Districts

Section 1307.01 Classification of districts.

(a) The following zoning districts have been developed for the Town of Fayetteville:
   1. Single Family Residential (R-1)
   2. Multi-family Residential (R-2)
   3. Mixed Use (MU)
   4. General Commercial (C-1)
   5. Conservation (C)
   6. Neighborhood Commercial (NC)
   7. Historic Overlay (HO)
   8. Scenic Overlay (SO)

(b) The boundaries of all zoning districts are shown on the zoning map, which is the official zoning map for the Town of Fayetteville. The map is part of this ordinance and is included at the end of this code in Appendix 1.

(c) The use table provides a quick reference to uses permitted by right or conditional in each district. The use table is part of this Zoning Ordinance and is attached at the end of this code in Appendix 2.

(d) The district boundaries on the Town of Fayetteville Zoning Map are intended to follow property lines; centerlines of roads, water courses, or railroads; other identifiable physical features; or measured distances from property lines, centerlines or identifiable physical features. When the zoning officer cannot determine the location of a zoning district boundary by reference to the zoning district map, the zoning officer shall refuse action; and the Board of Zoning Appeals shall interpret the location of the district boundary with reference to the scale of the map, the comprehensive plan, and the purposes set forth in all relevant provisions of this code, provided that no boundary shall be changed by the Board of Zoning Appeals. When a district boundary line divides a lot held in single or separate ownership at the effective date of this code, the permitted use on the lot is limited to those uses permitted in the zoning district in which the largest part of the lot is located, and the smaller part of the lot located in a another zoning district will be subject to the code provisions where the largest portion of the lot is located.

(e) Unless a use is allowed as a "permitted use by right," "conditional use," "accessory use," "nonconforming use," or "temporary use," then such use is prohibited.

(f) *Zoning of Annexed Lands*. Zoning classification for any land annexed into the Town shall be established by ordinance, pursuant to Chapter 8A, Article 7, simultaneously with the adoption of the annexation resolution required by West Virginia Code, Chapter 8, Article 6, as amended. Town Council shall hear zoning recommendations from the Planning Commission for the subject area during the required hearing for annexation. Prior to any hearings, the Fayetteville Planning Commission shall submit its written recommendations, to be consistent with the comprehensive plan, to Town Council at least thirty (30) days prior to the hearing for annexation.

(g) Prior to the annexation hearing and formal zoning designation of any parcel(s) of land being annexed, the Town shall, at least thirty (30) days prior to the enactment of the zoning map amendment:
   1. Give written notice, by certified mail, to the landowner(s) whose property is directly involved in the proposed amendment; and

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2. Publish a notice of the proposed amendment to the Zoning Map as a Class II-0 legal advertisement, pursuant to West Virginia Code Chapter 59.

(h) After the required thirty (30) day notice period ends, and the property owner(s) have been notified by certified mail, the Town Council shall hold a public hearing regarding the zoning designation of the newly annexed land. After the hearing Town Council can, by ordinance, designate the zoning districts for the annexed land.

Section 1307.03 Establishment of Overlay District.

In addition to the zoning districts, this ordinance establishes an overlay district. The overlay district shall be superimposed where applicable over the basic districts. The overlay district is designed to reflect two or more zone districts regulating the same area. The uses permitted by the underlying district are to be allowed subject to the additional regulations imposed by the overlay district.

Section 1307.05 Application of regulations.

(a) No building or land shall be used or occupied, and no building or part shall be erected, moved, or altered unless in conformity with the regulations specified for the district in which it is located.

(b) No yard or other open space provided around any building for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for any other building, and no yard or other space on one lot shall be considered as providing a yard or open space for a building on any other lot.

(c) Uses in each category shall be according to the definitions set forth in Section 1305.03 of this code. For those uses not defined in this ordinance their meanings shall be according to the common meaning of the term.

(d) Only one principal use per lot in any district shall be permitted.

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Article 1309: Single-family (R-1) Zoning District

Section 1309.01 Purpose.
The purpose of the Single-family Residential District is to provide for single-family residential uses and neighborhoods for residents who prefer larger lot sizes and to preserve the character of the district by discouraging the intrusion of the commercial and industrial uses that often have an adverse effect upon residential development.

Section 1309.03 Permitted Uses in the Single-family Residential Zoning District (R-1).

(a) The following shall be uses permitted by right in the Single-family Residential District. Asterisked uses have supplemental regulations in Article 1323.
1. Bed and Breakfast Inn I*
2. Boarding House and/or Rooming Housing
3. Child Care Home*
4. Dwelling, Single Family*
5. Essential Utilities and Equipment
6. Factory-built Home*
7. Garage, Private
8. Group Residential Facility
9. Group Residential Home
10. Home-based Business (No-Impact)*
11. Park
12. Places of Worship/Religious Institution
13. Recreation, Municipal
14. School, Preschool-12

(b) The following shall be conditional uses in the Single-family Residential District. Asterisked uses have supplemental regulations in Article 1323.
1. Conversion of Old School/Church
2. Greenhouse, Noncommercial*
3. Home-based Business (Low-Impact)*
4. Solar Energy System, Small

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Section 1309.05 Single-family Residential District (R-1) Lot Requirements.

Section 1309.05: Single-family Residential District (R-1) Lot Requirements	
Minimum Lot Area	10,000 square feet
Minimum Lot Width	75 feet
Maximum Structure Height	35 feet
Building Setback Requirements	
Minimum Front Setback	Average of the two adjacent lots* Minimum of 25 feet for vacant lots**
Minimum Side Setback	8 feet
Minimum Rear Setback	25 feet

*Only the setbacks on the lots that abut each side of the site and are on the same street may be used. Setbacks across the street or along a different street may not be used.
** When one abutting lot is vacant, the average is of the setback of the abutting non-vacant lot and the required setback for the vacant lot. When the subject lot is a corner lot, the average is of the setback of the abutting non-vacant lot and the required setback of the subject lot.

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Article 1311: Multi-family (R-2) Zoning District

Section 1311.01 Purpose.
The purpose of the Multi-family Residential District is to provide for multi-family residential uses for residents who prefer different types of dwellings, such as condominiums and townhomes.

Section 1311.03 Permitted Uses in the Multi-family Residential Zoning District (R-2).

(a) The following shall be uses permitted by right in the Multi-family District. Asterisked uses have supplemental regulations in Article 1323.
1. Bed and Breakfast Inn I*
2. Boarding House and/or Rooming House
3. Essential Utilities and Equipment
4. Garage, Community
5. Garage, Private
6. Group Residential Facility
7. Group Residential Home
8. Home-based Business (No-Impact)*
9. Hostel*
10. Laundromat
11. Multi-family Housing*
12. Park
13. Places of Worship/Religious Institution
14. Recreation, Municipal

(b) The following shall be conditional uses in the Multi-family District. Asterisked uses have supplemental regulations in Article 1323.
1. Bed and Breakfast Inn II*
2. Greenhouse, Noncommercial*
3. Home-based Business (Low-Impact)*
4. Solar Energy System, Small

Section 1311.05 Multi-family Residential (R-2) Lot Requirements.

Section 1311.05: Multi-family Residential (R-2) Lot Requirements	
Minimum Lot Area	4,000 square feet
Minimum Lot Width	75 feet
Maximum Structure Height	40 feet
Building Setback Requirements	
Minimum Front Setback	25 feet
Minimum Side Setback	8 feet
Minimum Rear Setback	25 feet

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Article 1313: Mixed Use (MU) Zoning District

Section 1313.01 Purpose.
The purpose of the Mixed Use District is to promote a diverse mix of residential, business, commercial, office, and educational activities to encourage the development of a compact, pedestrian-orientated district.

Section 1313.03 Permitted Uses in the Mixed Use Zoning District (MU).

(a) The following shall be uses permitted by right in the Mixed Use District. Asterisked uses have supplemental regulations in Article 1323.

1. Bakery
2. Bank/Financial Institution
3. Bed and Breakfast Inn I*
4. Boarding House and/or Rooming House
5. Brewery Pub
6. Catering Business
7. Child Care Home*
8. Clinic
9. Community Facility, Private
10. Convenience Store
11. Cultural Service
12. Drive-through Facility*
13. Dry Cleaner
14. Dwelling, Mixed Use*
15. Dwelling, Single Family*
16. Emergency Shelter
17. Essential Utilities and Equipment
18. Event, Special*
19. Factory Built Home*
20. Farmers Market
21. Funeral Home/Mortuary
22. Garage, Private
23. Governmental Operations
24. Group Residential Facility
25. Group Residential Home
26. Home-based Business (No-Impact)*
27. Laundromat
28. Liquor Store
29. Office Supply Services or Establishment
30. Park
31. Personal Service
32. Pet Shop
33. Pharmacy
34. Photographic Studio
35. Places of Worship/Religious Institution

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36. Professional Services
37. Recreation, Commercial Indoor
38. Recreation, Municipal
39. Restaurant, Carry Out
40. Restaurant, Sit Down
41. Retail Store/Shop <25,000 SF
42. School, Preschool-12
43. Senior Independent Housing
44. Studio, Dancing, Music, or Art
45. Tattoo Parlor/Body Piercing Studio
46. Theater
47. Winery

(b) The following shall be conditional uses in the Mixed Use District. Asterisked uses have supplemental regulations in Article 1323.

1. Bed and Breakfast Inn II*
2. Bus & Transit Facilities
3. Bus/Other Transit Shelter
4. Conversion of Old School/Church
5. Continuing Care Facility
6. Dog Day Care*
7. Dwelling, Conversion Apartment
8. Dwelling, Garage Conversion
9. Flea Market
10. Greenhouse, Noncommercial*
11. Health Club
12. Home-based Business (Low Impact)*
13. Hotel/Motel
14. Medical Adult Day Care Center
15. Parking Structure
16. Solar Energy System, Small
17. Tavern/Drinking Establishment I
18. Tavern/Drinking Establishment II
19. Video Gaming or Lottery Establishment*
20. Wireless Telecommunications Facilities*

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Section 1313.05 Mixed Use (MU) Lot Requirements.

Section 1313.05 Mixed Use (MU) Lot Requirements	
Minimum Lot Area	No minimum*
Minimum Lot Width	No minimum*
Maximum Structure Height	40 feet
Building Setback Requirements	
Minimum Front Setback	No minimum*
Minimum Side Setback	No minimum*
Minimum Rear Setback	No minimum*
Maximum Lot Coverage	80%*

**Any residential dwelling in the mixed-use district shall follow the lot requirements for single family or multifamily use.*

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Article 1315: General Commercial (C-1) Zoning District

Section 1315.01 Purpose.
The purpose of the General Commercial District is to encourage larger scale commercial development that services the needs of the general public.

Section 1315.03 Permitted Uses in the General Commercial District (C-1).

(a) The following shall be uses permitted by right in the General Commercial District. Asterisked uses have supplemental regulations in Article 1323 of this code.

1. Animal Hospital/Veterinary Office
2. Automobile Car Wash
3. Automobile Repair/Service*
4. Bakery
5. Bank/Financial Institution
6. Bed and Breakfast Inn I*
7. Boat and Marine Sales/Services*
8. Boat Storage
9. Brewery Pub
10. Broadcasting Studio
11. Building Material Facility
12. Bus & Transit Facilities
13. Bus/Other Transit Shelter
14. Campground*
15. Catering Business
16. Child Care Center*
17. Child Care Facility*
18. Clinic
19. Community Facility, Private
20. Continuing Care Facility
21. Convenience Store
22. Correctional Facility
23. Cultural Service
24. Distillery
25. Distribution Facility
26. Dog Day Care*
27. Drive-through Facility*
28. Dry Cleaner
29. Educational Institution
30. Emergency Shelter
31. Equipment Rental/Repair
32. Essential Utilities and Equipment
33. Event, Special
34. Extractive Industry
35. Factory-built Home
36. Farm Equipment/Construction Equipment and Supply Sales

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37. Farmers Market
38. Freight Terminal
39. Funeral Home/Mortuary
40. Garage, Private
41. Garden Center
42. Gas Station
43. Gas Station, Large
44. Governmental Operations
45. Greenhouse, Commercial
46. Group Residential Facility
47. Group Residential Home
48. Health Club
49. Hospital
50. Hotel/Motel
51. Kennel
52. Laundromat
53. Liquor Store
54. Lumberyard
55. Manufacturing (Light)
56. Medical Adult Day Care Center
57. Medical Cannabis Dispensary*
58. Medical Cannabis, Health Care Organization
59. Multi-family Housing*
60. Office Supply Services or Establishment
61. Parcel Delivery Facility
62. Park
63. Parking Structure
64. Personal Service
65. Pet Shop
66. Pharmacy
67. Photographic Studio
68. Places of Worship/Religious Institution
69. Private Club
70. Professional Services
71. Recreation, Commercial Indoor
72. Recreation, Commercial Outdoor
73. Recreation, Municipal
74. Recycling Facility
75. Restaurant, Carry Out
76. Restaurant, Fast Food
77. Restaurant, Sit Down
78. Retail Store/Shop < 25,000 SF
79. Retail Store/Shop > 25,000 SF
80. School, Commercial
81. School, Preschool-12

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82. Self-storage Facility*
83. Senior Independent Housing
84. Shopping Center
85. Sports Arena
86. Studio, Dancing, Music, or Art
87. Tattoo Parlor/Body Piercing Studio
88. Tavern/Drinking Establishment I
89. Tavern/Drinking Establishment II
90. Theater
91. Theater, Drive-in
92. Travel Plaza
93. Truck Terminal
94. Vehicle Sales/Rental and Service*
95. Video Gaming or Lottery Establishment*
96. Warehouse
97. Wholesale Establishment
98. Winery
99. Wireless Telecommunications Facilities*

(b) The following shall be conditional uses in the General Commercial District. Asterisked uses have supplemental regulations in Article 1323 of this code.

1. Adult Business*
2. Airport
3. Bed and Breakfast Inn II*
4. Factory-built Home Rental Community*
5. Flea Market
6. Night Club
7. Research and Development
8. Sewage Treatment Facility
9. Solar Energy System, Large
10. Solar Energy System, Small

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Section 1315.05 General Commercial (C-1) Lot Requirements.

Section 1315.05 General Commercial (C-1) Lot Requirements	
Minimum Lot Area	No minimum
Minimum Lot Width	No minimum
Maximum Structure Height	50 feet
Building Setback Requirements	
Minimum Front Setback	No minimum
Minimum Side Setback	No minimum unless adjacent to residential use, then must be 25 feet
Minimum Rear Setback	No minimum unless abuts residential use, then must be 25 feet
Maximum Lot Coverage	80%

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Article 1317: Conservation Zoning (C) District

Section 1317.01 Purpose.
The purpose of the Conservation District is to provide for the preservation of open space for the Fayetteville Town Park and the National Park Service New River Gorge National River. This district provides for the preservation of permanent open space for its natural beauty and scenic value and prohibits substantial development of the land through the construction of buildings or structures that would impact the preservation of the land's natural resources.

Section 1317.03 Permitted Uses in the Conservation District (C).

(a) The following shall be uses permitted by right in the Conservation District. Asterisked uses have supplemental regulations in Article 1323 of this code.
   1. Amphitheater
   2. Bed and Breakfast Inn I*
   3. Camp, Youth*
   4. Essential Utilities and Equipment
   5. Group Residential Facility
   6. Group Residential Home
   7. Park
   8. Places of Worship/Religious Institution
   9. Recreation, Municipal
   10. Senior Independent Housing
   11. Water Treatment Plant

(b) The following shall be conditional uses in the Conservation District. Asterisked uses have supplemental regulations in Article 1323 of this code.
   1. Cemetery/Mausoleum

Section 1317.05 Conservation (C) Lot Requirements.

Section 1317.05 Conservation (C) Lot Requirements	
Minimum Lot Area	40,000 square feet
Minimum Lot Width	150 feet
Maximum Structure Height	35 feet
Building Setback Requirements	
Minimum Front Setback	80 feet
Minimum Side Setback	50 feet
Minimum Rear Setback	50 feet

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Article 1318: Neighborhood Commercial (NC) Zoning District

Section 1318.01 Purpose.
The purpose of the Neighborhood Commercial District is to provide for an area with a mix of uses that are residential in nature in addition to compatible commercial uses, enabling developable areas to be creatively utilized.

Section 1318.03 Permitted Uses in the Neighborhood Commercial (NC) District.

(a) The following shall be uses permitted by right in the Conservation District. Asterisked uses have supplemental regulations in Article 1323 of this code.

1. Amphitheater
2. Bed and Breakfast Inn I*
3. Bed and Breakfast Inn II*
4. Camp, Youth*
5. Child Care Center*
6. Child Care Facility*
7. Country Inn
8. Dwelling, Mixed Use
9. Dwelling, Single-family*
10. Emergency Shelter
11. Essential Utilities and Equipment
12. Event, Mass Gathering
13. Event, Special
14. Farmer's Market
15. Garage, Private
16. Greenhouse, Noncommercial
17. Group Residential Facility
18. Group Residential Home
19. Home-based Business (No Impact)*
20. Park
21. Personal Service
22. Photographic Studio
23. Places of Worship/Religious Institution
24. Professional Services
25. Reception Facility
26. Recreation, Municipal
27. Restaurant (Carry Out)
28. Restaurant (Sit Down)
29. Studio, Dancing, Music, or Art
30. Tattoo Parlor/Body Piercing Studio

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(b) The following shall be conditional uses in the Neighborhood Commercial District. Asterisked uses have supplemental regulations in Article 1323 of this code.

1. Bakery
2. Brewery Pub
3. Catering Business
4. Cultural Service
5. Dog Day Care*
6. Educational Institution
7. Farmer's Market
8. Flea Market
9. Garage, Community
10. Health Club
11. Home-based Business (Low Impact)*
12. Kennel
13. Medical Adult Day Care
14. Multi-family Housing
15. Parking Structure
16. Private Club
17. Recreation, Commercial Indoor
18. Recreation, Commercial Outdoor
19. Research and Development
20. Retail Store/Shop <25,000 square feet
21. School, Commercial
22. School, Preschool-12
23. Senior Independent Housing
24. Shopping Center
25. Solar Energy System, Small
26. Tavern/Drinking Establishment I
27. Tavern/Drinking Establishment II
28. Theater
29. Video Game or Lottery Establishment*
30. Winery
31. Wireless Telecommunications Facilities

Section 1318.05 Neighborhood Commercial (NC) Lot Requirements.

Section 1318.05 Neighborhood Commercial (NC) Lot Requirements	
Minimum Lot Area	4,000 SF
Minimum Lot Width	75 feet
Maximum Structure Height	40 feet
Building Setback Requirements	
Minimum Front Setback	50 feet
Minimum Side Setback	50 feet
Minimum Rear Setback	50 feet

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Article 1319: Historic District Overlay (HO) District

Section 1319.01 Purpose.
The purpose of the Historic Overlay District is to preserve the historic character of specific neighborhoods through the types of uses permitted to operate within them.

Section 1319.03 Application.
The Historic Overlay (HO) District is created as a special zoning district to be overlaid on to the existing underlying "fixed" zoning districts. Where conflict exists between the provisions of the HO District and the underlying zoning district, the more stringent requirements shall be followed. Only land identified on the zoning map in the Historic Overlay is regulated by this article.

Section 1319.05 Prohibited Uses.
All uses permitted within the underlying "fixed" zoning districts shall be permitted the same within the Historic Overlay District, except that the following uses shall be prohibited:

(a) Tavern/Drinking Establishments II
(b) Private Club
(c) Restaurant, Fast Food

Section 1319.07 Lot Requirements.
The Historic Overlay District imposes a set of requirements in addition to those of the underlying zoning "fixed" district. All applicable use and bulk and area regulations of the underlying zoning district shall apply.

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Article 1320: Scenic Overlay (SO) District

Section 1320.01 Purpose.
The purpose of the Scenic Overlay District is to preserve and protect the scenic viewsheds of the New River Gorge National River. The overlay will provide for a buffer between private property and the National Park Service property by limiting development and tree removal. The overlay will also promote architecture and design that enhances the natural beauty of the area and considers the impact of development on the scenic viewsheds.

Section 1320.03 Application.
The Scenic Overlay (SO) District is created as a special zoning district to be overlaid onto the existing, underlying "fixed" zoning districts. The Scenic Overlay shall apply to all properties within two hundred (200) feet from the boundary of the New River Gorge National Park. The boundary shall be the edge of lands that are owned by the National Park Service. Within the first one hundred (100) feet of the boundary of the New River Gorge National Park, no new development shall occur. Between one hundred (100) feet and two hundred (200) feet of the boundary of the New River Gorge National Park, all development is limited by the provisions of this Article.

Where conflict exists between the provisions of the Scenic Overly District and the underlying zoning district, the more stringent requirements shall apply. Only land within the setbacks indicated on the zoning map, as measured from the boundary of the New River Gorge National Park, is considered the Scenic Overlay District regulated by this Article.

Section 1320.05 Permitted Uses in the Scenic Overlay Zoning District (SO).

(a) The following shall be uses permitted by right in the Scenic Overlay Zoning District. Asterisked uses have supplemental regulations in Article 1323.
    1. Bed and Breakfast Inn I*
    2. Boarding House and/or Rooming Housing
    3. Child Care Home
    4. Dwelling, Single Family
    5. Essential Utilities and Equipment
    6. Factory-built Home*
    7. Garage, Private
    8. Group Residential Facility
    9. Group Residential Home
    10. Home-based Business (No-Impact)*
    11. Park
    12. Recreation, Municipal
    13. School, Preschool-12

(b) The following shall be conditional uses in the Scenic Overlay Zoning District. Asterisked uses have supplemental regulations in Article 1323.
    1. Conversion of Old School/Church
    2. Greenhouse, Noncommercial
    3. Home-based Business (Low-Impact)*

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4. Solar Energy System, Small

Section 1320.07 Lot Requirements.
All applicable lot requirements of the underlying zoning district shall apply within the Scenic Overlay District, with the following exceptions:

(a) Building height shall be measured as the vertical distance from the basement floor to the parapet or roof line of a flat roof, the eve of a pitched roof, or the deck line of a mansard roof; and
(b) No height exceptions, as found within Section 1321.11 of this code or otherwise, are permitted.

Section 1320.09 Viewsheds.

(a) Buildings; outdoor living areas, such as decks; terraces; swimming pools; trash storage; and similar viewshed concerns shall be screened with landscaping and located on the site in such a way that best preserves viewsheds from the National Park Service lands. Landscaping required by this Article shall consist of native plant species, which are plants indigenous to a given area in geologic time, including those plants that have developed, occur naturally, or have existed for many years in the area.
(b) Buildings shall be sited in the least visually prominent location of a site.
(c) Buildings shall not be located at the top of a ridgeline or silhouetted against the sky
(d) The scale of new building shall be compatible with existing, adjacent structures.

Section 1320.11 Grading and Tree Removal.
No clearing of native plant species, as defined within this article, in the form of trees or shrubs, shall be permitted within twenty-five (25) feet of any lot line that abuts the National Park Service boundary or within any required landscaped buffer area, except for dying or diseased vegetation.

Section 1320.13 Design Guidelines.

(a) Reflective materials shall be avoided. Highly reflective roofing material shall not be used. Non-reflective glass shall be used on all exterior openings.
(b) Construction shall utilize indigenous materials, such as wood and stone.
(c) All materials shall be of earth tone colors.

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Article 1321: General Regulations

Section 1321.01 Purpose.
The purpose of this Article is to provide for special situations that must be regulated in such a manner as to promote orderly development and to protect the public health, safety, and general welfare of the community. The following supplemental regulations have been deemed necessary to clarify and carry out the overall intent of this ordinance.

Section 1321.03 Accessory buildings, uses, and structures.

(a) All accessory buildings, uses, and structures shall require a Zoning Permit. Accessory buildings, accessory uses, and accessory structures shall be permitted in all districts, provided each is customarily incidental and subordinate to the principal use. A principal structure or use must be established on the lot prior to the issuance of a Zoning Permit for an accessory structure.
(b) No use conducted in an accessory building or structure shall be in violation of the permitted uses in that district.
(c) All permanent accessory buildings, uses, and structures shall comply with side setback requirements for the district and may be located only in rear yards. All permanent accessory buildings, uses, and structures shall be setback from the rear lot line by ten (10) feet.
(d) No accessory buildings, uses, or structures shall be more than seventy-five (75) percent of the height of the principal structure and in no circumstances be higher than the applicable zoning district's maximum height requirement.
(e) Accessory buildings and structures shall not be larger than the principal structure. Accessory buildings and structures are included in the maximum lot coverage percentage allowed per lot.
(f) No accessory structure shall be constructed and used as a dwelling, except garage apartments and one residential unit for a caretaker may be permitted in conjunction with any active industrial establishment or in conjunction with a place of worship or religious institution.

Section 1321.05 Additional principal buildings.

(a) *Residential*.
    1. Individual lots or subdivided parcels ten (10) acres or less in size shall have no building or buildings used for living purposes in addition to the principal building on the same lot, except garage apartments where permitted in a zoning district. Such garage apartments may only be occupied by persons employed on the premises.
    2. Undivided land parcels of ten (10) acres or greater in size shall be limited to one (1) residential structure per ten (10) acre unit of undivided land area. This provision does not apply to factory-built home rental communities.
(b) *Nonresidential*. More than one principal building may be located upon the lot or tract of nonresidential properties, but only when such buildings conform to all setback requirements. Additional principal buildings may include a caretaker's residence used in

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conjunction with an active industrial establishment or a caretaker's residence used in conjunction with a place of worship or religious institution.

Section 1321.07 Clear sight triangle.
In a clear sight triangle, the entire area shall remain clear of obstructions to sight, including but not limited to fences, hedges, other landscaping, and signs, above a plane established two and one-half (2.5) feet in elevation to a height of eight (8) feet from grade level at the intersection of any street, alley, or other public right-of-way centerline.

Section 1321.09 Fencing, walls, and hedges.
Subject to the following conditions, fences and walls may be erected, and hedges and other plantings may be grown along the boundaries of a lot:

(a) *Clear sight triangle.* Fences, hedges, other plantings, or walls at street corners shall not interfere with any clear sight triangle. The height of such objects is restricted to two and one-half (2.5) feet within the clear sight triangle. No fence, hedge, other plantings, or walls shall otherwise impose a threat to the public safety, including by obstructing the view of motorists to oncoming traffic or pedestrians.

(b) *Height Restrictions.* Fences, walls, hedges, and other plantings used for the purpose of screening shall not exceed four (4) feet in height from the front building line of the main structure extending to the front lot line, and shall not exceed six (6) feet in height extending behind the front building line of the main structure, excluding porches, stairs, and trees.

(c) *Fences and Walls.*
1. Fences and walls shall be durably constructed and well maintained.
2. Fences and walls that have deteriorated shall be replaced or removed immediately.
3. Fence and walls shall not be constructed out of fabric, junk, junk vehicles, appliances, tanks, barrels, razor wire, barbed wire, or electric fencing.
4. The finished side of the fence shall be oriented towards the front of the lot or the direction of the adjacent property owner, unless the fence is not visible from adjoining property.

(d) *Landscaped buffer areas.*
1. The use of a ten (10) foot landscaped buffer area of screen plantings shall remain the preferred method of buffering. However, where a buffer strip is considered to be impracticable or inappropriate, an opaque fence at least six (6) feet in height, in the rear or side yard, or four (4) feet in the front yard so as to restrict a clear view beyond said buffer yard may be substituted in whole or in part for a natural buffer, provided the fence's specifications are approved by the Zoning Officer.
2. Landscaped buffer areas must be continually maintained by the landowner. Any plant material that does not survive shall be replaced within six (6) months. All landscaping shall be kept free of refuse and debris.
3. Landscaped buffer areas may be required by the Board of Zoning Appeals as a condition of a conditional use permit.
4. At least fifty (50) percent of the screen planting specimens shall be evergreens, distributed evenly along the length of the barrier.

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5. All species within the screen planting shall be indigenous or otherwise well-suited to the town, except that trees with large leaves which could clog storm drains and trees that are brittle; are disease-prone; have low, spreading branches or shallow root systems; drop large fruit or much sap; or are otherwise messy, shall be avoided.
6. Hedges shall be kept trimmed so that branches do not extend into public roads, or upon the lands of an adjoining owner more than eighteen (18) inches over the dividing line.
7. A screen planting shall not be required where the lot abuts an area of existing natural vegetation that effectively screens the lot from casual observation to a height of at least eight (8) feet.

(e) *Property adjacent to dwellings and zoned or existing single-family residential property.* Landscaped buffer areas shall be provided between any new development adjacent to single-family residential property (existing or zoned) or adjacent to any dwelling, which landscaping shall be at least ten (10) feet wide and at least five (5) feet high, subject to height limitations contained within this section.

(f) *Parking lot screening.* A landscaped buffer area of at least ten (10) feet in width shall be required of nonresidential uses between parking areas and abutting residential property lines.

1. At least one (1) tree for each forty (40) linear feet shall be planted in the landscaping strip in addition to other planting materials.
2. One interior island shall be provided for every ten (10) spaces. Each interior island shall not be less than five (5) feet in width and eighteen (18) feet long. The location of the interior islands should be staggered to avoid a regimented appearance. At least one (1) tree and shrubs or ground cover must be used to cover the entire area within each interior island.
3. Landscaped areas shall be protected from the encroachment of vehicles by use of curbing or other approved barriers.
4. The landscaped areas shall not obstruct sight distances for motorists or pedestrians, nor shall such landscaping create any potential hazard to public safety.

(g) *Ground-mounted and monument signs.* All permanent ground-mounted or monument signs shall be installed with a minimum surround of three (3) feet of regularly maintained floral and shrubbery landscaping in every direction.

Section 1321.11 Height exceptions.

(a) Special industrial structures such as cooling towers, elevator bulkheads, fire towers, water tanks, and water towers, which require a greater height than provided in the district, may be erected to a greater height than permitted, provided that:

1. The structure shall not occupy more than twenty-five percent (25%) of the lot area;
2. The setback requirements of the district in which the structure is erected shall be increased by one (1) foot for each foot of height over the maximum height permitted; and
3. The structure is necessary to comply with state or federal statutes or regulations.

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(b) The height limitations of this code shall not apply to flagpoles, church spires, belfries, chimneys, antennas, or water tanks.

Section 1321.13 Lighting.

(a) All lighting shall be low intensity and shielded, not allowing any upward distribution of light, except for feature lighting. All lighting shall be erected and maintained so that direct light from bare, unshaded bulbs is confined to the property and does not cast a direct glare from the bare, unshaded bulb onto adjacent properties or public rights-of-way.
(b) Flood lighting shall be prohibited in the Single-family and Multi-family Districts and within two hundred (200) feet of the boundary line of the Single-family and Multi-family Districts. Flood lighting is prohibited in all other districts except for use in loading areas, but shall not include wallpack lighting.
(c) Feature lighting, such as up-lighting of trees or other plant material or seasonal lighting, shall be so arranged to reflect away from any residential structure. Such lighting shall not create a glare on adjacent streets or properties.
(d) All nonessential lighting shall be turned off outside of business operating hours, leaving only the necessary lighting for security. Nonessential lighting includes lighting for display, aesthetics, parking, and signage.
(e) Security lighting is lighting installed for the purposes of the security of a building, walkway, private roadway or street, or equipment yard. Security lighting shall be directed towards such buildings, walkways, private roadways and streets, and equipment yards.
(f) Lighting is required for all off-street parking areas and off-street loading areas and for driveways providing ingress and egress for all nonresidential and multi-family developments. Any parking lot light fixtures must direct light downward at a forty-five (45) degree angle and not project at an angle or up toward the sky
(g) Where practicable, electrical service to outdoor lighting fixtures shall be underground.

Section 1321.15 Lot lines and irregular lots.

(a) *Corner lots.* Corner lots shall have no rear lot line.
(b) *Flag Lots.* When the handle of a flag lot is less than the minimum width for a lot in the zoning district in which it is located, the handle is not to be used in delineating the minimum required lot width. The minimum lot width shall be taken from the front building setback line. However, the handle shall be used in computing the required minimum lot size, except that in no case shall the area of the handle constitute more than fifty (50) percent of the entire lot. Additionally, no structures whether primary or accessory shall be placed in the handle.
(c) *Lot Width*. In a case where there is only one side lot line, lot width shall be measured between such side lot line and the opposite rear lot lines or street line.
(d) *Irregular Lots*. Front setbacks for irregular lots shall be measured from the front lot line adjacent to the street right of way with the greatest frontage in linear feet.
(e) *Pie-Shaped Lots.* Setbacks on pie-shaped lots shall be measured at the closest point between the building and the angled lot line.
(f) *Rear lot line (Irregular).* In the case of a lot having no street frontage or a lot of an odd shape, only the one lot line farthest from any street shall be considered a rear lot line.

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Section 1321.17 Parking.

(a) *Ingress and Egress*.

1. Adequate ingress and egress to the parking facility shall be provided by clearly defined driveways.
2. In no event shall vehicles be permitted to back directly into the public street from the off-street parking area, except for parking areas for single- and two-family dwellings.

(b) *Driveways.*

1. Driveways should be located to minimize traffic conflicts with traffic entering the street from either the same or the opposite side of the street.
2. For residential uses, only one (1) driveway access per unit is permitted, except for u-shaped driveways. A lot with at least one hundred (100) feet of frontage along a street may be permitted one (1) additional driveway access.
3. Nonresidential properties in any zoning district with frontages of six hundred (600) feet or less on any individual street are permitted one (1) driveway intersection per street.
4. Nonresidential properties in any zoning district with frontages greater than six hundred (600) feet may be permitted a maximum of two (2) driveways per street frontage, provided that such driveways are at least three hundred (300) feet apart and that one (1) driveway is clearly marked for egress only and one (1) driveway is clearly marked for ingress only.
5. Regardless of frontage, a development may be restricted to a single driveway depending on usage and interior and exterior traffic patterns.
6. All access driveways shall be designed to conform to West Virginia DOT specifications with regard to roads.

(c) On any lot, no wall, fence, hedge, tree, shrub, or other obstruction shall be allowed which dangerously obscures the view of approaching traffic along the street, or at any intersection, including driveways.

(d) In a residential district, no more than forty (40) percent of the front yard may be used for parking, including driveways. Vehicles may not be parked or stored upon any lawn or landscaped area.

(e) Off-street parking spaces, with proper and safe access from a street, shall be provided on all nonresidential lots, either within a structure or in the open, to serve the uses upon that lot.

(f) *Parking Requirements*.

1. The following minimum number of off-street parking spaces per use shall be provided for the uses indicated below as shown in Table 1321A: Minimum Parking Spaces Required.
2. For uses not specified in this table the number of parking spaces shall be determined by the Zoning Officer on the basis of similar requirements, number of persons employed, and number of visitors. Appeals to the determination of parking spaces may be made to the Board of Zoning Appeals.
3. All square footage is in gross floor area.

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4. For any nonconforming use which is hereafter damaged or partially destroyed, and which is lawfully reconstructed, re-established, or repaired, off-street parking and loading facilities equivalent to those maintained at the time of such damage or partial destruction shall be restored, provided, that parking or loading facilities in excess of those required by this code do not need to be restored.
5. Parking requirements may be satisfied using on-street parking in front of buildings or public lots within three hundred (300) feet of primary building entrances.
6. Requirements for Places of Worship or Religious Institutions can be reduced if a public parking lot is located within (300) feet or the church has a signed agreement with neighboring businesses.
7. *Combination of uses*. Where there is a combination of uses on a lot, the required number of parking spaces shall be the sum of that found for each use, dividing the gross floor area proportionately between the different uses. The required parking space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use at the same time, except that one half (1/2) of the parking space required for places of worship or religious institutions, theaters, or assembly halls with peak attendance at night or on Sunday may be assigned to a use which will be closed at night or on Sunday.

Table 1321A: Minimum Parking Spaces Required (GFA=Gross Floor Area)	
Use	*Minimum Number of Parking Spaces*
Residential Uses	
Single family Residential	2 spaces per dwelling unit
Multi-family Residential	1 per bedroom (minimum of 2 parking spaces)
Continuing Care Facility	1 space for every 2 beds, computed on the basis of the maximum bed capacity of the structure
Senior Independent Housing	1.5 space for 1 bedroom unit 2 spaces for 2 bedroom unit 2.5 spaces for 3 or more bedroom unit
Educational, Institutional, Social and Fraternal Uses	
Assembly (Places of Worship, theaters, auditoriums, etc)	1 space per 4 fixed seats, 1 space per 60 square feet of the main assembly where no fixed seats are used
Community Facility	1 space per 100 square feet and 1 space per employee
Cultural Service	Parking or storage for all vehicles used in operation, plus 4 spaces for first 1,000 square feet and 1 additional space for every 150 square feet
Educational Institution	1 space for every 5 seats occupied at maximum capacity in an assembly hall, auditorium, or stadium of greatest capacity on the campus; or if none exists, 1 space for each person employed plus 5 spaces for each classroom
Park	5 spaces per acre of outdoor area

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School, K-12	2 spaces per classroom; 5 per classroom in high schools
School, Commercial	6 spaces per classroom
Business and Industrial	
Bed and Breakfast Inn	1 space per guest room and 1 space per nonresident employee, in addition to the residential parking requirements
Child Day Care Facilities	1 space per employee and 1 additional space for every 10 children enrolled; 1 designated drop off/pick-up space is permitted
Clinics	1 space for each exam room and 1 space for each employee
Commercial (Retail, Office)	1 space for each 200 square feet
Hospital	1 space for every 2 beds
Hotels, Motels, etc.	1 space per guest room and 1 space for each 2 employees; and 1 space per 3 persons to the maximum capacity of the largest banquet or meeting room
Industrial	1 space for every employee, 1 space per vehicle used in operation of industry, 5 customer/visitor parking spaces
Restaurant/Tavern or Drinking Establishment I or II /Night Club	1 space per 100 square feet plus 1 space per employee
Restaurant, Carry Out	1 space per 2 employees
Restaurant, Fast Food	1 space per 2.5 seats plus 1 space per 2 employees

(h) Parking Space Dimensions

1. For angle parking, stalls shall be between nine (9) feet in width and eighteen (18) feet in length.
2. For parallel parking, stalls shall be a minimum of eight (8) feet in width and twenty (20) feet in length.
3. For compact space parking, stalls shall be not less than seven (7) feet wide and sixteen (16) feet long, reserved for the parking of only one compact automobile.
4. The minimum width of aisles providing access to stalls, varying with angle of the parking, shall be as follows in *Table 1321B: Parking Standards*:

Table 1321B: Parking Standards

Angle of Parking	*Minimum Aisle Width (Double-Sided Parking)*	*Minimum Aisle Width (Single-Sided Parking)*
Parallel	12’	12’
45	12’-8”	12'-8”
60	16’	16’
75	20’	18’
90	24’	18’

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5. The required parking area shall be measured exclusive of interior drives or maneuvering areas.
6. Parking spaces for use by persons with disabilities shall meet Americans with Disabilities Act of 1990 (ADA) standards.

7. On property other than single and two-family residential property, parking may be allowed in the front, side, and rear yards, but no closer than fifteen (15) feet from a side or rear lot line or street right-of-way, provided that a landscaped buffer area is placed between the parking and adjacent lots.
8. All parking areas shall be designed to be accessible year-round.
9. Parking spaces shall be clearly delineated by suitable markings. Short-term visitor parking spaces shall be differentiated from long-term employee spaces by suitable markings or signage.

Section 1321.19 Performance standards.

No use of land or structure in any district shall involve any element, or cause any condition that may be dangerous, injurious, or noxious to any other property or person. Furthermore, every use of land or structure in any district must observe the following performance requirements:

(a) No activities shall be permitted that carry objectionable substances onto neighboring properties due to erosion by wind or water.
(b) No activity shall cause electrical disturbances adversely affecting radio, television, or other communication equipment in the surrounding area.
(c) Noise, which is determined to be objectionable because of volume or frequency, shall be muffled or otherwise controlled, except for fire sirens and related apparatus used solely for public safety purposes.
(d) No gases or fumes toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
(e) No glare shall be seen from any street or any residential area.
(f) No intense earth-shaking vibration shall be created or maintained by any industry beyond the property on which it is located.

Section 1321.21 Private swimming pool.

Private swimming pools are permitted accessory uses to dwellings in residential districts only when located in rear yards. Swimming pools and protective barriers, required by the building code or otherwise installed, must adhere to setback requirements within the zoning district where the pool is located.

Section 1321.23 Off-street loading requirements.

In connection with any building or structure which is to be erected or substantially altered and which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, off-street loading berths shall be provided not less than the minimum requirements specified in this section:

(a) Areas provided for the loading and unloading of delivery trucks and other vehicles and for the servicing of shops by refuse collection, fuels, and other service vehicles shall be arranged so that they may be used without:

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1. Blocking or interfering with the use of accessways, automobile parking facilities, or pedestrian ways, or
2. Backing out into a street.

(b) All required loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into any traffic lane. No loading berth for vehicles of more than two (2) ton capacity shall be located less than one hundred (100) feet from any residential district. No permitted or required loading berth shall be located within fifty (50) feet of any property line.

(c) All off-street loading areas shall be adequately buffered from adjacent streets and properties and landscaped in accordance with the provisions of this code.

(d) All loading facilities shall be located within the building setback line.

Section 1321.25 Orientation of principal structures.

All principal structures shall be required to have a front door facing the street unless the Zoning Officer determines that the prevailing condition of the developed lots fronting the same street warrant a different orientation, or another orientation is necessary for emergency services access.

Section 1321.27 Storage, general.

(a) No lot or premise shall be used as a storage area for inoperable automobiles, appliances, or the storage or collection of any other miscellaneous items unless permitted in this code or by state statute. No lot or premise shall be used as a garbage dump or a dead animal rendering plant nor may manure, rubbish, or unauthorized miscellaneous refuse be stored in the open.

(b) *Hazardous materials*. Any storage of hazardous material that is ancillary to a permitted use or a conditional use shall meet the following conditions:

1. All storage shall comply with all state, federal, and local regulations, including Part 11, Health and Sanitation Code of the Town of Fayetteville.
2. Such material shall be listed and made known to the Chief of the Town of Fayetteville Volunteer Fire Department.

Section 1321.29 Storage of trailers, camping and recreational equipment.

Trailers and camping and recreational equipment may be parked or stored subject to the following requirements:

(a) Trailers and camping and recreational vehicles shall not be parked so as to obstruct a clear sight triangle or to prevent adequate sight distance entering or leaving a property.

(b) Trailers and camping and recreational equipment shall not be occupied or used for living, sleeping, or housekeeping purposes while parked or stored on a residential property for longer than the two (2) weeks.

(c) Not more than one of each of the following can be stored on a property at any given time: boat, boat trailer, camp trailer, utility trailer.

(d) As exception to subsections (b) and (c), a permit may be issued for parking and occupying a trailer on land owned by the occupant or occupants during the construction of a house thereon for a period not exceeding one hundred and eighty (180) days and is renewable for an additional period not exceeding one hundred and eighty (180) days. However, if material progress with house construction is not made within forty-five (45)

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days from the issuance of a permit or if construction work ceases for a consecutive period of forty-five (45) days, such permit shall be void.

Section 1321.31 Temporary uses.

(a) The following uses are permitted temporarily, for up to four (4) consecutive weeks in one (1) calendar year, and require a permit from the Zoning Officer: seasonal sales of items such as pumpkins, Christmas trees, and fireworks in the Mixed Use and General Commercial districts.

(b) Temporary use permits may be issued by the Zoning Officer for a period not exceeding one (1) year, for nonconforming uses incident to housing and construction projects, including such structures and uses as storage of building materials and machinery, the processing of building materials, and a real estate office located on the tract being offered for sale; provided, such permits are conditioned upon agreement by the owner or operator to remove the structure or structures or use upon expiration of the permit. Such permits may be renewed yearly upon application to the Zoning Officer for an additional period of one (1) year.

Section 1321.33 Yard requirements.

(a) All yards required to be provided under this code shall be open to the sky and unobstructed by any building or structure except for accessory buildings or structures in the rear yard and within the building setback line, and fences, and the following which may project into the required yards as established in this code:
    1. Steps and stoops not exceeding twenty-four (24) square feet;
    2. Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, and the ordinary projection of chimneys and flues into the rear or side yard not exceeding three and one-half (3.5) feet in width and placed so as not to obstruct light or ventilation; and
    3. Sills, eaves, belt courses, cornices, and ornamental features not exceeding two (2) feet in width.

(b) Where any main wall of a structure located on an irregularly shaped lot does not parallel the lot line which the wall faces, minimum setback and yard requirements shall still apply to every point of the wall.

(c) For purposes of determining the required yard for townhouse developments, setbacks shall only apply from the perimeter of the main building to the perimeter of the parent parcel upon which the building is situated.

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Article 1323: Supplemental Regulations

Section 1323.01 Purpose.
The purpose of this article is to establish standards and policies for specific uses in all districts that require particular considerations. These regulations will supplement general development standards by establishing uniform criteria for each use – whether a permitted use by right or a conditional use – and are set forth to achieve compatibility with the principal uses permitted in a zoning district. The provisions for this article shall apply in addition to any other applicable zoning regulations.

Section 1323.03 Adult business.

(a) *Purpose*. It is the purpose of this Section to regulate sexually oriented businesses in order to promote the health, safety, moral and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Town. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(b) *Findings and rationale*. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Town Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2000); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); California v. LaRue, 409 U.S. 109 (1972); and Fantasy Ranch, Inc. v. City of Arlington, No. 04-11337, 2006 WL 2147559 (5th Cir. 2006); N.W. Enters. v. City of Houston, 352 F.3d 162 (5th Cir. 2003); Baby Dolls Topless Saloons, Inc. v. City of Dallas, 295 F.3d 471 (5th Cir. 2002); BGHA, LLC v. City of Universal City, 210 F. Supp. 2d (W.D. Tex. 2002), ajf'd 340 F.3d 295 (5th Cir. 2003); LLEH, Inc. v. Wichita County, 289 F.3d 358 (5th Cir. 2002); Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995); Woodall v. City of El Paso, 49 F.3d 1120 (5th Cir. 1995); J&B Entertainment, Inc. v. City of Jackson, 152 F.3d 362 (5th Cir. 1998); SDJ, Inc. v. City of Houston, 837 F.2d 1268 (5th Cir. 1988); TK's Video, Inc. v. Denton County, 24 F.3d 705 (5th Cir. 1994); Heideman v. South Salt Lake City, 342 F.3d 1182 (I 0th Cir. 2003); Lady J. Lingerie, Inc. v. City of Jacksonville, 973 F. Supp. 1428 (M.D. Fla. 1997), ajf'd 176 F.3d 1358 (11th Cir. 1999); Ctr for Fair Public Policy v. Maricopa County, 336 F.3d 1152 (9th Cir. 2003); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Reliable Consultants, Inc. v. City of Kennedale, Case No. 4:05-CV-166-A (N.D. Tex., May 16, 2005); Sensations, Inc. v. City of Grand Rapids, 2006 WL 2504388 (W.D. Mich., Aug. 28, 2006); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005);

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Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Cove, California - 1991; Houston, Texas - 1983; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997, 2004; Greensboro, North Carolina - 2003; Kennedale, Texas - 2005; Effingham, Illinois - 2005; Amarillo, Texas - 1977; El Paso, Texas -1986; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Town Council finds:

i) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter and sexual assault and exploitation.

ii) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

iii) Each of the foregoing negative secondary effects constitutes a harm, which the Town has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Town's rationale for this Ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Town's interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Town. The Town finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.

(c) In the event that an activity or business which might fall under a use category other than adult business is combined with or includes activities which constitute an adult bookstore, adult movie theater or movie house, or adult entertainment, as defined herein, then such activity or business shall constitute an adult business and shall be governed by provisions applicable to adult business uses.

(d) No adult business shall be located within one thousand (1,000) feet of another adult business.

(e) No adult business shall be located within five hundred (500) feet of a residential district or any property on which a dwelling is situated.

(f) No adult business shall be located within five hundred (500) feet of a school, park, library, child day care center, or place of worship.

(g) An adult business shall not operate in the same building as another adult business.

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(h) All doors, windows, and other apertures shall be located, covered, or screened in such a manner as to prevent viewing the interior of the establishment from a public street or sidewalk.
(i) The prescribed distances in this section shall be measured along a straight line beginning at a point or points from any public entrance of an adult business existing or to exist as disclosed under any filed application to operate an adult use.
(j) No exterior signage, building element, advertisement, display, or other promotional material shall be pornographic in nature or convey any such idea or element to specified anatomical areas, as defined in this code.

Section 1323.05 Auto repair/service. Vehicle sales, rental, and service. Boat and marine sales and service.

(a) All motor vehicle service stations shall be so arranged and all gasoline pumps shall be so placed, as to require all servicing on the premises and outside the public way; and no gasoline pump shall be placed closer than fifty (50) feet to any side property line.
(b) No inoperative motor vehicles shall be kept on the premises of motor vehicle service stations for longer than two (2) weeks.
(c) All waste material shall be stored within a structure or enclosed within fencing so as not to be visible from off the property.
(d) 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, except that new and used vehicles and boats currently being offered for sale, rent, or lease may be located in the front yard, subject to yard, setback, and other requirements of this code.
(e) Activities involving excessive noise shall be conducted entirely within the confines of a building sufficiently sound-insulated to effectively confine the noise.
(f) No vehicle, boat, or marine repair, service, sales, and rental uses shall be located less than one hundred (100) feet from a residential district.
(g) Vehicles awaiting service shall have documentation of their status of actually awaiting service and may be stored outside for a period not to exceed two (2) weeks.
(h) Vehicles that shall not be stored outside are:
    1. Inoperable vehicles not awaiting service.
    2. Inoperable vehicles being scrapped or used for replacement parts for another vehicle being repaired; or
    3. Operable vehicles not awaiting service and not used or stored in connection with the business.

Section 1323.06 Bed and Breakfast Inn I.

(a) The purpose of these regulations is to protect the integrity of the residential area and to provide for the peace and tranquility of those areas for the local residents.
(b) Upon submission of the application for the permit to operate, the Zoning Officer shall inspect the structure to see that it complies with the regulations hereinafter set forth and to determine the number of occupants that may occupy the structure.
(c) The application fee for the permit shall be One Hundred Dollars ($100.00) and any other cost applicable thereto.

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(d) Upon issuance of a permit, the owner shall immediately file for the appropriate business license with the Town and with the State of West Virginia and shall not operate as until obtaining the appropriate licenses.

(e) All permits shall be subject to the following regulations:

1. There must be off-street parking and no vehicles may be parked on the street by the persons renting the structure.
2. The structure must have working smoke and heat detectors/alarms in the general area of the kitchen, location of furnaces or other heating devices, and by the entrance into each bedroom.
3. The structure must have working carbon monoxide detectors/alarms in the bedrooms, living room/family room and kitchen if the structure uses natural gas or propane gas for any purpose, other than propane tanks for gas grills located outside of the structure.
4. The structure must have a working, two (2) pound minimum, ABC rated fire extinguisher located in a visible and readily accessible area (i.e. kitchen or hallway).
5. The owner of the structure or authorized agent of the owner shall be within thirty (30) miles of the structure for which the permit was issued during the entire time that the structure is rented. The owner or authorized agent shall be the contact person in the event of violations of these regulations or of any other ordinance or statute. The telephone number where the owner or authorized agent may be reached must be provided to Town Hall and to the Town Police Department and immediate notification of any change therein shall be given by the owner or authorized agent.
6. Signs for residences used as vacation rentals are subject to the sign regulations for signs accessory to dwellings.
7. The owner or the owner's designated agent shall be responsible for the collection and payment of all licensing fees, sales taxes, and business and occupation taxes and the failure to timely pay any of these shall result in the immediate revocation of the permit if the same is not paid within ten days of written notification. Notification shall be effective by placing the notice in the United States mail, postage prepaid, to the address of the owner as disclosed on the permit or any modification thereto, said notice to be effective even if the owner does not receive the same.
8. The owner or authorized agent shall notify the renters of the parking regulations and that violation of municipal ordinances could result in the cancellation of the rental of the premises and that failure to obey orders of the Police Department Officers or Fire Department Officers could result in their being required to immediately vacate the structure. Return of any fees for the rental of the structure under these circumstances is a matter strictly between the owner and the renter, and the Town shall not be responsible to either party for loss of use of the structure.

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(f) *Termination of permit for violation*. There is hereby established the following point system for violations of rules, regulations, ordinances, or statutes:

Violation	Points/Result
Brandishing a deadly weapon	6 (rental cancelled)
Discharge of a firearm	12 (rental cancelled)
Shooting an arrow from any type of device	12 (rental cancelled)
Possession of use of illegal fireworks	8
Trash, garbage, etc. outside of structure not corrected within two (2) hours	5
Trash, garbage, etc. outside of structure not corrected within six (6) hours	12 (rental cancelled)
Failure to have working smoke/fire detectors/alarms	permit immediately suspended until violation corrected; two violations within six (6) month period results in two (2) year suspension of permit
Failure to have working carbon monoxide detectors/alarms	permit immediately suspended until violation corrected; two violations within six (6) month period results in two (2) year suspension of permit
Failure to have working fire extinguishers	permit immediately suspended until violation corrected; two violations within six (6) month period results in two (2) year suspension of permit

1. The accumulation of twenty-four (24) points within a period of six (6) months shall result in the suspension of the Conditional Use Permit for a period of one year. In the event that there are more than two (2) suspensions within any two (2) year period, the Permit shall be terminated and may not be reissued for a period the five (5) years for that property.
2. The Zoning Officer shall be responsible for notifying the owner of a termination and of accumulated points and shall be responsible for termination of the permit.
3. Termination shall be by written notice to the owner at the address disclosed on the permit or address thereafter supplied to the Zoning Officer. The termination shall be effective upon placing the notice in the United States Mail, postage prepaid, to the aforesaid address of the Owner.

Section 1323.07 Bed and Breakfast Inn II.

(a) The bed and breakfast shall have a minimum gross floor area of twenty-five hundred (2,500) square feet and rooms may not be subdivided into less than two hundred (200) square feet.
(b) The bed and breakfast shall not change the residential character of the dwelling and shall not detract from the residential character of the neighborhood.
(c) Meals shall only be provided to overnight guests. There shall be no separate cooking facilities in any guest room.
(d) Employment may not exceed two (2) full time employees, not including the owner.

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Section 1323.08 Campground.

(a) Individual lots for temporary placement of camping and recreational equipment within campgrounds shall have an area of not less than three thousand (3,000) square feet each with a minimum width of forty (40) feet and a minimum depth of seventy-five (75) feet.
(b) The total number individual lots for temporary placement of trailers and camping and recreational equipment shall not exceed twelve (12) per acre.
(c) Margins alongside of the side and rear property line shall be densely planted to trees and shrubs for a depth of not less than twenty-five (25) feet.

Section 1323.09 Camp, Youth.

(a) A youth camp shall not provide overnight accommodations for more than twenty-five (25) youth camp participants, including staff, parents, and guardians.
(b) Youth camping is permitted up to fifty-two (52) nights per calendar year.
(c) Individuals over twenty-one (21) years of age shall not comprise more than fifty (50%) percent of the campers on any overnight.
(d) Youth camping shall only occur on parcels that are a minimum of five (5) acres, with suitable buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands.
(e) Youth camping shall occur outdoors, in temporary structures, or within existing permanent structures. New permanent structures shall not be constructed for youth camping.
(f) Youth camping events shall cause no alteration to land including, but not limited to, grading, filling, or paving.

Section 1323.10 Child day care.

(a) All childcare providers, whether state or privately operated, shall obtain a license from the West Virginia Secretary of State and the Department of Health and Human Resources. Each facility shall also be inspected by the Building Inspector and Fire Marshal to ensure the safety of children and employees.
(b) A facility shall provide a minimum of (35) square feet of usable space per child. Any rooms or areas that have not been approved for the use of children shall be inaccessible. No activity space may be created in the basement of a structure unless expressly approved by the Fire Marshal.
(c) A secured outdoor activity area must be provided by the facility 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 is afforded outdoor playtime every day, weather permitting.
(d) The outdoor activity area noted above shall be fenced with a six (6) foot high fence. All play equipment shall be located in the fenced area.
(e) Parks may be used to meet outdoor activity requirements if located immediately adjacent to the facility.
(f) In no instance shall vehicles picking up or dropping off children idle in the street right of way or otherwise block public traffic patterns.

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(g) Child day care businesses operated from a residence shall be operated by a permanent resident. No changes to the exterior of residences may be made for a child day care business operated from a residence except changes necessary for safety improvements.

Section 1323.11 Dog day care.

(a) The hours of operation shall be limited daily any time between 7 a.m. and 9 p.m.
(b) Dogs may be groomed, trained, exercised, and socialized, but not kept or boarded overnight, bred, sold, or let for hire unless the use is combined with a kennel as defined herein.
(c) There shall be no more than thirty (30) dogs on the premise at one time.
(d) *Indoor and outdoor recreational areas.* Indoor recreational area shall be at least one hundred (100) square feet per dog, and outdoor recreational area shall be at least one hundred and fifty (150) square feet per dog.
(e) *Sight-obscuring fencing.* Fencing for outdoor recreational areas shall provide full containment for the dogs and be secured at all times. The fence structure shall be deep enough and secured to the ground to prevent escape and high enough to prevent dogs from jumping or climbing over. The fence shall comply with all fence provisions in this code.
(f) If a grooming facility is on site, the facility must be physically separated from primary enclosure areas and food storage.
(g) Dogs shall display all required licensing, vaccination, and identification tags. Current records of required licensing and vaccination shall be kept by the dog day care.

Section 1323.13 Drive-through facility.

(a) Drive-through windows must be located within the side or rear of the building and shall be limited to one (1) lane. Acknowledging industry trends, two (2) menu boards may be permitted if they are accessed with a single queue lane.
(b) The vehicular entrance and approach to the use shall be clearly delineated by markings, striping, or signage.
(c) Drive-up windows and drive-throughs shall have the following minimum queue spaces:
    1. Bank Teller Lane: 3
    2. Automated Teller Machine: 2
    3. Restaurant Drive-Through: 4
    4. Car Wash Stall, Automatic: 4
    5. Car Wash Stall, Self-service: 2
    6. Gasoline Pump Island: 1
    7. All Other Retail Uses: 3
(d) Queue spaces must be in addition to the required parking spaces and must not be located within a required driveway, internal circulation system, or parking aisle.
(e) Each queue space shall be a minimum of ten (10) feet by twenty (20) feet in size.
(f) Each queue lane shall be clearly defined and designed so as not to conflict or interfere with other pedestrian or vehicular traffic using the site.
(g) The access points to the accessory drive-through facility from the public way shall be constructed a sufficient distance from roadway intersections to prevent traffic conflicts,

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overflow, and congestion. When possible, the accessory drive-through facility shall exit onto a secondary street.

(h) The stacking lanes and service area shall be located to the side or rear of the buildings.
(i) The exit from the accessory drive-through facility shall have unobstructed lines of vision clear of vegetation and signage.
(j) Traffic circulation onto, within, and off of the lot shall be clearly marked. Any drive-through use shall be designed:
    1. With adequate capacity for waiting vehicles, and
    2. To avoid conflicts with traffic onto, around, and off of the site.
(k) The Town may have any plans reviewed by an engineer and place additional restrictions on a drive-through use based on the engineer's review.

Section 1323.15 Dwelling.

Minimum Floor Area. No single-family dwelling shall be constructed or modified to contain less than one thousand (1000) square feet of gross floor area. No multi-family dwelling unit shall be constructed or modified to contain less than six hundred (600) square feet of gross floor area per unit. There is no minimum gross floor area for seasonal occupancy.

Section 1323.17 Dwelling, townhome.

No more than four (4) townhouse units are permitted within each row of buildings.

(a) To break up the mass of attached units, the front façade of each attached unit shall be treated differently, with different building materials or different architectural designs or treatments. These treatments shall blend in with the character of the surrounding neighborhood.
(b) Fifteen (15) percent of the property must be dedicated to open space in addition to open space required by setbacks and other site requirements. Maintenance of open space will be the responsibility of either a homeowner's association or the owner of the complex.
(c) Trash receptacles and equipment must be screened.

Section 1323.18 Event, mass gathering.

(a) A permit is required for each mass gathering event.
(b) The applicant must be the owner or co-owner of the property or an individual with written authorization from the owner or co-owner. The applicant or a representative of the applicant must be present on the property at all times during the mass gathering event.
(c) Mass gathering events shall occur outdoors, in temporary structures, or existing permanent structures. New permanent structures shall not be constructed for mass gathering events.
(d) Mass gathering events shall cause no alteration to land including, but not limited to, grading, filling, or paving.
(e) The duration of each mass gathering event shall not exceed three (3) consecutive days, provided activities shall only occur between the hours of 10:00 a.m. and 11:59 p.m.
(f) Within any single calendar year, a parcel may host no more than six (6) mass events.
(g) A parking plan must be submitted as part of the permit process. Adequate on-site parking areas shall be provided to accommodate the number of vehicles expected. Off-site parking areas are permitted if the applicant provides written authorization from the

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property owner for those sites. The applicant shall post signs safely directing people to the parking sites. There shall be no parking on any public roads.

(h) Local emergency medical services (EMS) must be notified of all mass events. The holder of the mass event shall provide EMS with the number of people projected to attend.
(i) All garbage must be removed from site within seven (7) days.
(j) A licensed security agent or an off-duty certified police officer is required on-site for all mass gathering events.
(k) All lighting and sound shall be aligned so as to minimize impact on nearby residents and shall conform to requirements of this code and other applicable city ordinances.
(l) The site shall provide potable water supply and proper sanitation facilities. If temporary sanitation facilities are provided, such as portable toilets, the temporary sanitation facilities shall be removed within seventy-two (72) hours of the end of the mass gathering event.
(m) The sale of alcohol is permitted in the form of beer or wine, but shall not include liquor. All sales of alcohol shall be regulated by the West Virginia Alcohol Beverage Control Administration.
(n) The owner of the property must procure a liability insurance policy. Proof of the liability insurance in the minimum amount of $2,000,000 per occurrence shall be submitted with the permit application.
(o) All mass gathering events must notify the following agencies: the Town of Fayetteville Police Department, a West Virginia licensed EMS provider, licensed garbage removal company, licensed towing company, the County Health Department (approval or permit required), West Virginia Division of Highways (approval or permit required), and County Homeland Security. Proof of notification must be submitted with the permit application.

Section 1323.19 Event, special.

(a) A permit is required for each special event.
(p) The applicant must be the owner or co-owner of the property or an individual with written authorization from the owner or co-owner. The applicant or a representative of the applicant must be present on the property at all times during the special event.
(b) Special events shall occur outdoors, in temporary structures, or existing permanent structures. New permanent structures shall not be constructed for special events.
(c) Special events shall cause no alteration to land including, but not limited to, grading, filling, or paving.
(d) The duration of each special event shall not exceed four (4) consecutive days, provided activities shall occur only between the hours of 7:00 a.m. and 11:59 p.m.
(q) A parking plan must be submitted as part of the permit process. Adequate on-site parking areas shall be provided to accommodate the number of vehicles expected. Off-site parking areas are permitted if the applicant provides written authorization from the property owner for those sites. The applicant shall post signs safely directing people to the parking sites. There shall be no parking on any public roads.
(r) All garbage must be removed from site within seven (7) days.
(s) All lighting and sound shall be aligned so as to minimize impact on nearby residents and shall conform to requirements of this code and other applicable city ordinances.

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(t) The site shall provide potable water supply and proper sanitation facilities. If temporary sanitation facilities are provided, such as portable toilets, the temporary sanitation facilities shall be removed within seventy-two (72) hours of the end of the special event.
(u) The sale of alcohol is permitted in the form of beer or wine, but shall not include liquor. All sales of alcohol shall be regulated by the West Virginia Alcohol Beverage Control Administration.
(e) The owner of the property must procure a liability insurance policy. Proof of the liability insurance in the minimum amount of $1,000,000 per occurrence shall be submitted with the permit application.
(f) Local emergency medical services (EMS) shall be notified of all events. The holder of the event shall provide EMS with the number of people projected to attend.

Section 1323.20 Factory-built homes.
Factory built homes shall not be positioned vertically, stacked with one over the other, in whole or in part.

Section 1323.21 Home occupation, low impact.
The business activity must satisfy the following requirements:
(a) Customer, client, patient, or other traffic shall be restricted to 8 a.m. to 9 p.m.
(b) No more than twelve (12) visits to the home-based business shall be allowed per day, except as necessary to operate child day care facilities in accordance with the West Virginia Code; such visits may be addressed in a conditional use permit. A "visit" is a stop at the business premises by one automobile transporting one or more customers, clients, patients, packages/parcels, or other business associates. A visit does not include the operator of the business, members of the operator's family, or a business employee.
(c) The business or commercial activity shall not change the residential character of the dwelling and shall not detract from the residential character of the neighborhood.
(d) The home-based business shall not employ individuals living outside the dwelling to physically work at the dwelling, except Bed and Breakfast Inns may employ two (2) nonresident employees to physically work at the Bed and Breakfast Inn.
(e) The business or commercial activity may not use any equipment or processes that create excessive noise, vibration, glare, fumes, or odors, or any electrical or electronic interference, including interference with radio or television reception detectable in the surrounding neighborhood. Some noise is acceptable during daylight hours for activities such as woodworking, glassblowing, or pottery making, when conducted within an enclosed building.
(f) The business or commercial activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with the use of a dwelling in the neighborhood.
(g) The business activity may not occupy more than twenty-five (25%) percent of the gross floor area of the main dwelling, whether located in the main dwelling or located in an accessory structure.
(d) There shall be no outside appearance of a business use, including, but not limited to, parking or lights; however signs, as permitted in Article 1325: Sign Regulations are allowed so long as the signs meet all requirements in that section.

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(h) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met by off-street parking.
(i) The business may not involve any illegal activity.

Section 1323.22 Home-based business, no impact.
The business activity must satisfy the following requirements:
(a) The home-based business shall only employ individuals residing in the dwelling.
(b) A home-based business shall not change the residential character of the dwelling and shall not detract from the residential character of the neighborhood.
(c) The business activity shall be compatible with the residential use of the property and surrounding residential uses.
(d) A home-based business shall not display or sell retail goods or stockpile inventory of a substantial nature.
(e) There shall be no outside appearance of a business use, including, but not limited to, parking or lights, except that signs, as permitted in Article 1325: Sign Regulations are allowed so long as the signs meet all requirements in that article.
(f) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
(g) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
(h) The business activity may not occupy an area exceeding twenty-five (25%) percent of the gross floor area of the main dwelling, whether located in the main dwelling or located in an accessory structure. Home-based businesses may be conducted in an accessory structure.
(i) No traffic shall be generated by such home-based business in excess of that normally associated with residential use.
(j) The business may not involve any illegal activity.

Section 1323.23 Hostels.
(a) An owner, manager, or operator must be present when the hostel is occupied.
(b) Unaccompanied minors under the age of eighteen (18) shall not be permitted in the facility.
(c) Temporary outdoor facilities (e.g., tents, trailers, portable structures, etc.) are prohibited.
(d) No guest shall stay for a period exceeding thirty (30) consecutive days.

Section 1323.24 Medical cannabis organizations.
The following supplemental provisions apply to all medical cannabis organizations or as otherwise specified herein.
(a) No medical cannabis organization shall be located within one thousand (1000) feet of a school, day care, park, place of worship or religious institution, educational institution, or community facility.
(b) No medical cannabis organization shall be located within five hundred (500) feet of another medical cannabis organization.

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(c) No medical cannabis organization shall be located within fifty (50) feet of property being used for a residential use or property within a residential zoning district.
(d) No more than one (1) medical cannabis dispensaries is permitted within the Town of Fayetteville. No medical cannabis processing facilities and no medical cannabis growing facilities are permitted within the Town of Fayetteville.
(e) Medical cannabis dispensaries shall not be open to the public for business outside of the hours of 9:00 a.m. to 9:00 p.m.
(f) There shall be no emission of dust, fumes, vapors, or odors into the environment from the premises of a medical cannabis organization.
(g) The only medical cannabis uses permitted under this ordinance are those expressly defined and permitted herein. Medical cannabis organizations may not be combined with other uses.
(h) Medical cannabis organizations shall possess all applicable state licenses.

Section 1323.25 Noncommercial greenhouses.

(a) Noncommercial greenhouses shall only be located in the rear yard and shall be located twenty-five (25) feet from the rear lot line.
(b) The noncommercial greenhouse shall not create offensive odors or dust.
(c) The maximum size of a noncommercial greenhouse is three hundred (300) square feet.

Section 1323.26 Reception Facility.

(a) No activities that involve charging admission or are solely performance activities are permitted as part of this use.
(b) The owner or his or her designated representative shall be physically present on the property at all times during receptions.
(c) All outdoor receptions, temporary structures, and parking areas associated with a reception shall be located one hundred and fifty (150) feet from any property line, unless the owners of properties adjacent to said property lines agrees otherwise in writing, which agreement shall be provided as part of the application.
(d) All outdoor receptions shall end no later than 11:00 p.m.
(e) Lighting may be used for the duration of the reception only and may not shine or produce glare on adjacent properties.
(f) Landscaped buffer areas required under Section 1321.09 shall consist of screen plantings.
(g) Parking shall be in compliance with this code. No parking by patrons shall be permitted on any public road. The owner(s) shall ensure that ingress and egress during the reception to the venue does not cause congestion on any public road.
(h) The owner(s) shall be responsible for the following: (1) sanitation (municipal waste and recycling) facilities at the reception commensurate with the number of patrons attending and (2) sanitary sewer facilities at the reception commensurate with the number of patrons attending.
(i) The operation of the use shall at all times comply with all federal, state, and local laws and regulations.

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Section 1323.27 Satellite signal receiving stations.

(a) *Purpose*. The purpose of these provisions is to provide for the safety and location of satellite signal receiving stations. No provisions of this ordinance shall be interpreted to impair the installation, maintenance, or use of satellite signal receiving stations used to receive video programming.

(b) Satellite signal receiving stations shall be for the personal use of residents, occupants, and their guests only.

(c) Satellite signal receiving stations shall contain no graphic message or advertising other than to identify the name of the company that provided the satellite.

(d) Only one satellite signal receiving station is permitted per tenant, unless there is documentation provided to the Zoning Officer from the installer or satellite company that suggests that more than one satellite is necessary in order to receive the signals for the use and enjoyment of the tenant.

(e) Satellite signal receiving stations shall comply with all other provisions of this code not otherwise in conflict with this section pertaining to accessory structures for the particular zoning district in which such stations are to be installed unless there is documentation provided to the Zoning Officer from the installer or satellite company that suggests that deviations are necessary in order to receive the signals for the use and enjoyment of the tenant. In no case shall satellite signal receiving stations be closer than five (5) from any property line.

(f) Satellite signal receiving stations shall be designed to withstand a wind force of up to seventy (70) miles per hour without the use of supporting guy wires.

Section 1323.29 Self-storage facilities.

(a) No activities other than rental of storage units and pick-up and deposit of dead storage shall be allowed on the premises.

(b) Examples of prohibited activities include but are not limited to the following:

1. Auctions, commercial wholesale, or retail sales, or miscellaneous or garage sales;
2. The servicing, repair, or fabrication of motor vehicles, boats, trailers, lawn mowers, appliances, or other similar equipment;
3. The operation of power tools, spray-painting equipment, table saws, lathes, compressors, welding equipment, kilns, or other similar equipment;
4. The establishment of a transfer and storage business; and
5. Any use that is noxious or offensive because of odors, dust, noise, fumes, or vibrations.

(c) Building height shall not exceed eighteen (18) feet.

(d) Outdoor storage shall be limited to recreational vehicles, boats, and trailers. Junk vehicles shall not be stored in self-storage facilities.

(e) Trash, radioactive, or highly toxic substances; garbage; refuse; explosives or flammable materials; hazardous substances; animal carcasses or skins; or similar items are prohibited.

(f) The interior traffic aisles, required off-street parking areas, loading areas, and accessways shall be paved with a hard surface and shall be kept clear of stored items.

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Section 1323.35 Urban agriculture.

(a) Definitions for this section.
   1. "Beekeeping" means the keeping or propagation of honeybee hives for collection of honey or other bee products.
   2. "Community Garden" means a neighborhood-based development with the primary purpose of providing space for members of the community to grow plants for beautification, education, recreation, community distribution, or personal use.
   3. "Composting" means accumulating a mixture of various decaying organic substances, such as dead leaves or manure, intended to be used for fertilizing soil.
   4. "Fowl" means any chicken, duck, goose, turkey, guinea fowl, or pigeon.
   5. "Home Agriculture" means the gardening or production, including by means of hydroponics, principally for use or consumption of the property owner or resident, of plants or their products including but not limited to fruits of all kinds including grapes, nuts, and berries; vegetables; floral, ornamental, and other noncommercial greenhouse products; and bees and apiary products.
   6. "Hydroponics" means the cultivation of plants in nutrient solution rather than soil.
   7. "Livestock" means any hog, pig, goat, cow, horse, pony, emu, alpaca, or other hoofed animal.

(b) *Beekeeping*. Beekeeping is permitted as an accessory use to a dwelling. No more than three (3) hives are permitted on a lot, each with only one swarm. Hives shall be setback twenty-five (25) feet from property lines.

(c) *Community gardens*. The responsibility of managing, maintaining, and operating community garden sites shall be that of the landowner or designated public or civic entity, nonprofit organization, or other community-based organization. Processing and storage of plants or plant products are prohibited on site. Garden tools and supplies may be stored within an accessory structure.

(d) *Composting*. Composting is permitted.

(e) *Incidental sales*. Any sale resulting from beekeeping, composting, or other small-scale agricultural activities shall constitute a home-based business, subject to all applicable provisions of this code.

(f) *Location*. Beekeeping and composting shall not take place in the front yard.

(g) *Prohibitions*.
   1. Livestock and fowl shall not be kept within the Town.
   2. Roosters shall not be kept within the Town.

Section 1323.37 Video gaming or lottery establishment.

(a) No public entrance to a gambling establishment within the Town shall be located within one thousand (1,000) feet of the closest public entrance of any other gambling establishment, church, place of worship or religious institution, library, public park, public playground, school, child daycare center, nursing or personal care home, continuous care facility, or rehabilitation facility that is located within or outside the Town.

(b) The distance prescribed in subsection (a) hereof shall be measured along a straight line beginning at a point or points from any public entrance or entrances of a gambling establishment existing or proposed to exist.

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Article 1324: Telecommunications

Section 1324.01 Purpose.
This ordinance seeks to ensure the citizens of the Town of Fayetteville have access to wireless telecommunication technology, to protect the residents of the Town of Fayetteville from the proliferation of freestanding towers, and to provide a process and standards for the construction, maintenance, and modification of wireless telecommunication facilities through the following:

a. Establishing clear guidelines, standards, and time frames for the exercise of authority for wireless telecommunications facilities through the Town of Fayetteville's zoning, planning, and design standards;
b. Allowing competition in telecommunications service;
c. Encouraging the provision of advanced telecommunications services to the largest number of businesses, institutions, and residents of the Town of Fayetteville;
d. Encouraging the location, design, and construction of wireless telecommunication facilities that will have minimal impact on the location, minimal visual impact on the scenic resources, and minimize the total number of towers and tower sites throughout the Town of Fayetteville.
e. Permitting reasonable access to the public rights-of-way for telecommunications facilities on a competitively neutral basis;
f. Ensuring that all telecommunications carriers providing facilities or services comply with federal, state, and local regulations;
g. Encouraging the use of existing structures as an alternative to new wireless telecommunications facility construction, including the collocation of new and existing wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community; and
h. Protecting the scenic and visual character of the community.

Section 1324.03 Definitions.
The following definitions apply only to this Article. Terms used within this Article and defined in Article 1305: Definitions shall have their defined meaning.

1. "Alternative support structure" means man-made trees, clock towers, steeples, light poles, flag poles, power transmission towers, buildings, signs, and similar alternative design mounting structures that partially or fully camouflage or conceal the presence of antennas or towers.
2. "Antenna" means a communication apparatus designed for the purpose of emitting electromagnetic radiofrequency (RF) signals for the delivery of personal wireless telecommunication services and other wireless telecommunication services.
3. "Applicant" means any authorized person or entity that submits an application under this Article. Shall include persons or entities authorized in writing, by property owner, to act as an agent, employee, consultant, or contractor pursuant to this Article.
4. "Base station" means the structure or equipment at a fixed location that enables wireless telecommunications licensed or authorized by the FCC, between user

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equipment and a communications network.

i. Includes, but is not limited to, equipment associated with wireless telecommunications services, such as private, broadcast, and public safety services, as well as unlicensed wireless telecommunication services and fixed wireless telecommunication services, such as microwave backhaul.
ii. Includes, but is not limited to, radio transceivers, antennas affixed to the base station, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
iii. Includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the Town of Fayetteville, supports or houses equipment described in paragraphs (i) and (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
iv. Does not include any structure that, at the time a completed eligible facilities modification application is filed with the Town of Fayetteville under this Article, does not support or house equipment described in paragraphs (i) and (ii) above.
v. The term does not encompass a “tower” as defined in this Section, or any equipment associated with a tower.

5. "Camouflage” means the same as “stealth,” “conceal,” or “concealment.”
6. "Collapse Zone" means an area where a tower may collapse based on the site and design specifications and which is certified and stamped by an engineer licensed in the State of West Virginia.
7. "Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes, whether there is an existing antenna on the structure.
8. “Conceal” or “Concealment” means when eligible support structures, transmission facilities, alternative support structures, and equipment are designed to look like a feature other than a wireless telecommunications tower or base station and which has similar design and coloration features as the surrounding environment. This term shall also mean “camouflage,” or “stealth.”
9. "Designated Scenic Resources" means a specific location, view or corridor identified as a scenic resource in the comprehensive plan or by a local, state, or federal agency or government and consists of:
   i. A three dimensional area extending out from a particular viewpoint on a public right of way, within a public recreational area, or within a component of a state or national park system, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
   ii. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as

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seen from a viewpoint on a public right of way, within a public recreational area or within a component of a state or national park system.

10. “Eligible facilities request” means a request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:
    i. collocation of new transmission equipment,
    ii. removal of transmission equipment, or
    iii. replacement of transmission equipment.
11. “Eligible support structure” means any tower or base station, as defined in this Section, provided that such tower or base station is in existence at the time the eligible facilities request application is filed with the Town of Fayetteville.
12. “Equipment cabinet” means an enclosure, room, shelter, structure, or building used to encapsulate, enclose, contain or otherwise support equipment associated with a wireless telecommunication facility.
13. “Existing tower or base station” means a lawfully constructed tower or base station approved under the applicable zoning and siting process of the Town of Fayetteville, approved under another state or local regulatory review process, or permitted to continue to operate as a nonconforming use.
14. "FAA" means the Federal Aviation Administration, or its lawful successor.
15. "FCC" means the Federal Communications Commission, or its lawful successor.
16. “Habitable structure” means any structure intended to be used for living, sleeping, eating, or assembly purposes, including but not limited to dwellings, churches, schools, food facilities, and commercial and industrial buildings.
17. "Height" means the vertical distance measured from the base of the alternative support structure at grade to the highest point of the structure, including any antennas.
    i. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the tower is located on a sloped grade, then the average between the highest and lowest grades immediately surrounding the perimeter of the tower base shall be used in calculating the antenna height.
    ii. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.
18. "Modification” or “Modify" means the physical change to any existing wireless telecommunications tower or base station that may or may not be related to eligible facilities request and that involves:
    i. collocation of new transmission equipment;
    ii. removal of transmission equipment;
    iii. replacement of transmission equipment; or
    iv. any expansion of wireless telecommunication tower or base station.
19. “Personal wireless telecommunication services” means commercial mobile services, unlicensed wireless telecommunication services, and common carrier wireless telecommunication exchange access services.

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20. "Public recreational area" means a regionally or locally significant area, as designated by state or federal regulation, or by the Town of Fayetteville, and which is meant to serve a recreational purpose.
21. “Site” means the current boundaries of the leased or owned property surrounding the tower and base station and any access or utility easements currently related to the site; and, for other eligible support structures, means that area in proximity to the structure and to other transmission equipment already deployed on the ground. This term does not apply to towers or base stations in public rights-of-way.
22. “Small wireless telecommunication facility” means a wireless telecommunication facility that meets both of the following qualifications:
    i. Each antenna could fit within an imaginary enclosure of no more than six (6) cubic feet; and
    ii. All other wireless telecommunication equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: Electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services.
23. “Small cell network” means a collection of interrelated small wireless telecommunication facilities designed to deliver personal wireless telecommunication services.
24. “Spectrum Act” means the “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).
25. “Substantial change criteria” means the criteria set forth in Section 1324..07.
26. "Stealth” means the same as “camouflage,” “conceal,” or “concealment.”
27. “Surety” means a financial guaranty that the activities proposed in the application are made as planned. If activities are not made by the applicant, the local government can use surety funds to complete the work as planned or return the land to its original state. Includes but is not limited to performance bonds, cash in escrow, a letter of credit, and similar collateral.
28. "Targeted market coverage area" means the area which is targeted to be served by the wireless telecommunications facility proposed in an application.
29. “Transmission equipment” means equipment that facilitates transmission for any wireless telecommunication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.
30. “Tower” means any structure capable of supporting any antennas affixed to the tower and their associated facilities, licensed or authorized by the FCC, and constructed for the sole or primary purpose of supporting wireless telecommunications facilities.
31. "Viewpoint" means a location identified either in the Town of Fayetteville comprehensive plan or by a federal or state agency and which serves as the basis for the location and determination of a designated scenic resource.
32. "Wireless telecommunication facility" or "facility" means any structure, antenna, tower, base station, or other device that provides or is suitable to provide

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radio/television transmission, commercial mobile wireless telecommunication services, cellular phone services, specialized mobile radio communications (SMR), broadband telecommunications services, common carrier wireless telecommunication exchange phone services, and personal communications service (PCS) or pager service. The following are not wireless telecommunication facilities for purposes of this ordinance:

i. "Emergency wireless telecommunications facility" means wireless telecommunication facilities exclusively for emergency communications.
ii. "Amateur (ham) Radio Stations" means any antenna of less than one hundred (100) feet in height owned and operated exclusively by an amateur radio operator licensed by the Federal Communications Commission (FCC).
iii. "Temporary wireless telecommunications facility means a temporary wireless telecommunications facility, either operational or in operation for a maximum period of one hundred twenty (120) calendar days per calendar year within the jurisdiction.
iv. "Antennas as accessory uses" means an antenna that is an accessory use to a residential dwelling unit.

Section 1324.05 Applicability.
Wireless telecommunications facilities may not be constructed or modified without a zoning permit issued in accordance with the provisions of this Article. Modifications to existing wireless telecommunication facilities, as of the effective date of this Article, are required to comply with this Article.

This Section does not apply to the replacement of any component of a wireless telecommunication facility where the replacement is identical to the component being replaced or to the normal repair and maintenance of a wireless telecommunication facility that does not involve the addition, removal, or change of any of the externally discernable physical components of a wireless telecommunication facility from that which was originally permitted.

Section 1324.07 Substantial Change Criteria.
For the purposes of determining whether a requested modification is an eligible facilities request for modification under this Section, a proposed facilities modification will substantially change the physical dimensions of an eligible support structure, and therefore not be eligible for the expedited modification process and corresponding eligible facilities application process under this Article, if the requested modification meets any of the following criteria:

a. For towers other than towers in the public rights-of-way, the requested increases the height of the tower by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater.
b. Changes in height shall be measured from the original support structure in cases

where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

c. For towers other than towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.
d. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure.
e. It entails any excavation or deployment outside the current site.
f. It would defeat the concealment elements of the eligible support structure.
g. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

Section 1324.09 General Requirements.

a. *Lighting*. Lighting affixed to any wireless telecommunication facilities shall meet, but not exceed, the minimum lighting required by the Federal Aviation Administration (FAA). For any application where lighting is required, the applicant shall submit documentation from the FAA stating that the proposed lighting meets all applicable FAA standards and regulations.
b. *Structural Standards*. Wireless telecommunications facilities shall conform to the most current versions of the ANSI/ASSE A10.48 "Standard Criteria for Safety Practices with the Construction, Demolition, Modification and Maintenance of Communication Structures"; ANSI/TIA-222 Standard, "Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures"; and ANSI/TIA-322 Standard, "Loading, Analysis and Design Criteria Related to the Installation, Alteration and Maintenance of Communication Structures." Wireless telecommunication facilities shall also meet any applicable local building code standards.
c. *Height Restrictions*. No wireless telecommunication facility shall exceed one hundred ninety-nine (199) feet in height, unless the applicant sufficiently justifies that the height of the tower will eliminate other similar towers or that the provision of service cannot be accomplished without a tower height in excess of one hundred

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ninety-nine (199) feet. Any applicant proposing a wireless telecommunication facility greater than one hundred ninety-nine (199) feet in height must provide evidence that the applicant notified the FAA of the intent to build the facility and received a final determination of "no hazard" from the FAA. Wireless telecommunications facilities located atop or within an alternative support structure may extend ten (10%) percent above the height of the structure or to the maximum height permitted in the zoning district in which the structure is located, whichever is less.

d. *Collocation*.
   1. An applicant for a new wireless telecommunication facility must demonstrate by substantial evidence that a bona fide need exists for the construction of a new tower and that no reasonable combination of locations, techniques, or technologies would obviate the need. The applicant for a new facility must further demonstrate that all reasonable efforts have been made to collocate wireless telecommunication facilities on existing towers or alternative support structures.
   2. Prior to the approval of an application for a wireless telecommunications facility, the applicant shall demonstrate commitment to joint use as follows:
      i. The applicant shall submit evidence as part of the application demonstrating that a genuine effort has been made to solicit additional users for the proposed new wireless telecommunications facility. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless telecommunications services within the same county and within adjacent counties, or a Class II legal advertisement, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen (15) business days.
      ii. As part of the application, the applicant shall attest that the company will encourage the joint use of telecommunications towers within the Town of Fayetteville, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing, or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.
      iii. Wireless telecommunications facilities, other than alternative support structures, shall be designed and built to accommodate a minimum of three (3) wireless telecommunications provider's equipment. The owner of the tower, if different than the applicant, must certify to the Town of Fayetteville that the tower is available for use by other telecommunications service providers on a reasonable and non-discriminatory basis.

e. *Concealment.*
      i. All new or modified wireless telecommunication facilities must be concealed in a way that minimizes the adverse visual impact of the

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facilities through careful design, siting, landscaping, screening, and innovative camouflaging and stealth techniques, unless applicant shows by substantial evidence that to do so is impracticable.

ii. Concealment techniques include artificial trees, parapet extensions, silos, chimneys, water towers, fiberglass flagpoles, clock towers, and existing steeples.

iii. A description must be included in the application of the possibilities for concealment that have been explored, and why the proposed option was chosen.

iv. Visual impact analysis of the wireless telecommunication facility is required using existing information, predictive modeling techniques, photographs, and simulations, to accurately and impartially communicate the potential visual impacts from proposed project.

v. If determined to be impracticable by [Official] for a tower or alternative support structure to be entirely concealed, the applicant will describe how they will utilize materials, colors, textures, screening and landscaping to blend facilities into the natural setting and surrounding buildings to the greatest extent practicable.

vi. If an antenna is installed on an alternative support structure, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to or closely compatible with the color of the alternative support structure so as to make the antenna and related equipment as visually unobtrusive as possible.

vii. Any equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground

viii. Replacement or modification of any previously approved concealed tower or facility must substantially conform to previous design characteristics.

f. *Setback*. Each tower shall have a setback of at least one hundred and ten (110%) percent the tower height measured from the tower base to the nearest property line.

g. *Collapse Zone*. No habitable structure may be located within the proposed collapse zone. The applicant shall demonstrate that the entire collapse zone is either under lease or owned by the applicant and that no habitable structure will be constructed in the collapse zone while the tower is standing.

h. *Equipment Cabinets*. No equipment cabinet for a wireless telecommunications facility shall exceed seven hundred fifty (750) square feet in area, nor twelve (12) feet in height. All equipment cabinets shall be located with the tower and shall be enclosed within a minimum of a six (6) foot security fence and a locked gate.

i. *Signs*. No commercial messages nor any other signs beyond that which is required, not to exceed twelve (12) square feet cumulatively, shall be placed on any tower, equipment cabinet, or security fence.

j. *Landscaping*.

1. Existing mature tree growth and natural landforms shall be preserved to the maximum extent possible. Trees existing within one hundred (100) feet of

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the wireless telecommunications facility shall not be removed except as required for tower construction, security fence construction, installation of ingress or egress, and the installation of utilities to the facility. To the extent that existing vegetation is the basis for a waiver of the landscaping requirement, preservation of such vegetation shall be a condition of the permit, and if such existing vegetation is removed or destroyed, the applicant shall meet the landscaping specified in Subsection 2 below within six (6) months thereafter.

2. Wireless telecommunications facilities shall be landscaped within six (6) months after the tower and base station are erected with a visual buffer of plant materials that effectively screens the view of the equipment cabinet from adjacent property. The standard visual buffer shall consist of a landscaped strip of at least four (4) feet wide outside the perimeter of the security fencing enclosing the facilities. The visual buffer shall include vegetation of at least eight (8) feet tall, planted ten (10) feet apart behind a contiguous hedge of shrubs three (3) feet deep. All plant materials shall be species native to West Virginia. In the case where the tower and base station are sited on large wooded lots, the applicant may request that the natural growth preserved around the tower site be considered a sufficient visual barrier, without the need for additional landscaping. Such a request shall accompany the application and shall include photographs of the natural growth to be preserved.

k. *Location of Towers or Antenna in or near Historic Sites, Historic Districts, and Designated Scenic Resources*. Applications for wireless telecommunications facilities or antennas subject to this Section shall also demonstrate that the views of, and vistas from, such structures, districts, and resources shall not be impaired or diminished by the placement of the proposed tower or antennas. In no instance shall a wireless telecommunications facility subject to the provisions of this paragraph exceed one hundred and ninety-nine (199) feet in height.

l. *Site Demarcation*. The site shall be physically and visually marked in the field, for immediate identification, with any combination of survey irons or flags as needed during the application process or during construction.

Section 1324.11 Approval Authority and Process.

Applications for wireless telecommunications facilities shall follow the requirements of this section and written findings shall be made by the Town of Fayetteville as to whether the proposed facility complies with the regulations outlined in this Section.

a. *Voluntary Pre-application Conference*. All persons seeking approval under this Article may meet with the Town of Fayetteville prior to filing an application. It is recommended that the meeting occur no less than thirty (30) days prior to the anticipated filing of the application to ensure adequate consideration and adequate time to address concerns. At this meeting, the Town of Fayetteville shall explain to the applicant the regulations as well as application forms and submissions that will be required under this Article.

b. *Submission Materials*. Where telecommunications facilities are a permitted use,

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applications shall be submitted to the Zoning Officer, who may confer with the Planning Commission in the application process as needed. Where telecommunications facilities are a conditional use, applications shall be submitted to the Board of Zoning Appeals. No application shall be deemed complete unless it is in writing, is accompanied by the applicable fees, includes the required submittals, and is attested to by the applicant, certifying the truth and accuracy of the information provided in the application.

1. All applications shall include the following, in addition to the applicable subsections below:
    i. The following contact information for the applicant:
        A. Name,
        B. Title,
        C. Mailing address,
        D. Phone number,
        E. West Virginia tax number, and
        F. Electronic mail address (optional).
    ii. If a corporation, the name and address of the registered agent of applicant in West Virginia and the state of incorporation of applicant.
    iii. If applicant is an entity other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
    iv. If the applicant is not the owner or person in control of the structure or site, the following shall be required:
        A. Attestation that the owner or person in control of the structure or site has consented to the new facility, collocation, or for any modification that require a substantial change or are otherwise not considered an eligible facilities modification.
        B. If the structure is in a public right-of-way, the applicant must also attest to having authorization to install, maintain, and operate a wireless telecommunication facility in, under, and above the public right-of-way.
    v. If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required: Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.
2. Applications for eligible facilities requests, as defined herein and subject to a determination under Section 1324.07 Substantial Change Criteria:
    i. Attestation that the proposed request is subject to review under Section 6409 of the Spectrum Act as an "eligible facilities modification."
    ii. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required: Record drawings, as-built plans, or the equivalent, showing

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the height of the eligible support structure, (a) as originally constructed and granted approval by the Town of Fayetteville or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received approval, prior to the passage of Section 6409(a) of the Spectrum Act of 2012, whichever height is greater.

iii. If the applicant proposes an eligible facilities request for modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by the Town of Fayetteville ordinances, the following shall be required: A copy of the document setting forth such pre-existing restrictions or requirements, together with a certification that the proposed facilities modification conforms to such restrictions or requirements.

iv. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required: Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict, to scale, the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

v. If the applicant proposes a modification that will result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower or will protrude from the edge of a non-tower eligible support structure, the following shall be required: Record drawings and as-built plans, or the equivalent, showing, at a minimum, the edge of the eligible support structure at the location of the proposed modification.

vi. If the applicant proposes a modification to an eligible support structure that (a) will include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required: A description of the boundaries of the site and a scaled drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation, and dimensions of the new or replacement transmission equipment. The Town of Fayetteville may require a

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survey by a land surveyor licensed in the state of West Virginia when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

vii. If the applicant proposes a modification to a tower, the following shall be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical, and safety codes, including by way of example, but not limited to, the most recent revision of EIA/TIA-222, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:

A. the number and type of antennas that can be accommodated;
B. the basis for the calculation of capacity; and
C. a written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC.

The Town of Fayetteville may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

viii. If the applicant proposes a modification to a base station, the following shall also be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical, and safety codes.

ix. If the applicant proposes a modification requiring an alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required: A detailed site plan and drawings, showing the true north point, drawn to an appropriate decimal scale, indicating and depicting:

A. the location, elevation, and dimensions of the existing eligible support structure;
B. the location, elevation, and dimensions of the existing transmission equipment;
C. the location, elevation, and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
D. the location, elevation, and dimensions of any proposed new equipment cabinets and the intended use of each;
E. any proposed modification to the eligible support structure;

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F. the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
G. the location of any areas where excavation is proposed, showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

x. Copies of any environmental documents required by any state or federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (Part 1—Practice and Procedure), Section 1.1307, as amended, or, in the event that an environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.

3. Applications for new facilities, collocations, or for any modifications that require a substantial change or are otherwise not considered an eligible facilities modification, as defined by this Article, shall include the following in the application submittal:
   i. Copies of any easements necessary to access the property and proof that the same has been recorded, or will be recorded, in the applicable county clerk's office.
   ii. Certification of the wireless telecommunication facility's collocation capabilities or whether the proposal is a collocation on an existing facility and whether the applicant anticipates other lessees will be able to utilize the facility.
   iii. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility will comply with current FCC regulations.
   iv. Evidence of compliance with applicable local, state, and federal historic preservation laws and regulations, including a copy of a written request for a statement of compliance sent to the necessary local, state, and federal historic preservation authorities and said authorities' written responses.
   v. A map showing the location of all wireless telecommunications facilities above ground level, except antennas located on roof tops, within a three (3) air-mile radius of the proposed facility, unless this information has been previously made available to the Town of Fayetteville.
   vi. A site plan is required and shall include:
      A. Certification by a professional engineer indicating the location, including latitude and longitude, type, and height of the proposed facility; antenna capacity; on-site and abutting off-site land uses; topography; setbacks; parking; fencing; landscaping; the collapse zone; easements or other means of access; and all applicable American National Standards Institute (ANSI) technical and structural codes.
      B. A topographic map identifying the location of the site for the

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proposed wireless telecommunications facility.

C. A stormwater and erosion control plan for the access road to the site, or a written statement that there will be no changes implemented with regards to any existing roads.
D. Proximity of the proposed site to flood hazard areas.
E. Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
F. A boundary survey completed by a land surveyor licensed by the State of West Virginia, and which includes the access road and vicinity map.
G. Photo simulations of the proposed facility taken from at least two perspectives, with emphasis placed on residential areas, public rights-of-way, public parks, designated scenic resources, and any historic site or district. Each photo must be labeled with the line of sight, elevation, and date taken.

vii. The applicant shall identify and demonstrate consideration of each and every designated scenic resource or viewshed, as recognized by federal, state, or local government in which the proposed wireless telecommunications facility is located or visible and shall provide a scenic assessment for the project area consisting of the following:

A. Elevation drawings of the proposed facility, showing height above ground level.
B. A landscaping plan indicating the proposed placement of the facility on the site.
C. Location of existing structures, trees, and other significant site features.
D. A description and visual simulation of possible stealth tower design.
E. A description of the lighting and type of lighting the facility will implement, including, but not limited to, the color of the lighting and whether it will be constant, flashing, or strobe.
F. A narrative discussing the extent to which the proposed facility would be visible from any residential areas, height of vegetation within one hundred (100) feet of the facility at the time of application, and the distance to the proposed facility from a designated scenic resource's noted viewpoints.

viii. A propagation map, before and after, of how the proposed facility fits in the existing telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility and the anticipated date that the facility will be occupied and used by such tenant. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information. The Zoning Officer, Planning Commission, and Board of Zoning Appeals are hereby authorized to and may enter into a non-disclosure

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agreement with the applicant provided the non-disclosure agreement relates only to the applicant's propagation maps.

ix. Evidence demonstrating that an existing building, site, or structure cannot accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

A. Evidence that no existing facilities, located within the targeted market coverage area, meet the applicant's engineering requirements.

B. Evidence that existing facilities do not have sufficient height and cannot be increased in height at a cost not exceeding fifty (50%) percent of the cost required to construct the existing tower in present-day dollars, to meet the applicant's engineering requirements.

C. Evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:

1. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of the existing facilities, and the existing facilities cannot be reinforced to accommodate the new equipment.
2. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
3. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

D. Evidence that the fees, costs, or contractual provisions required by the owner of the existing facility or structure in order to share or adapt an existing facility are unreasonable, provided the existing facility was constructed prior to the effective date of the Article. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.

E. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access.

x. A form of surety approved by the Town of Fayetteville to pay for the costs of removing the facility to a depth of three (3) feet below ground level if it is abandoned.

xi. Proof of compliance with all applicable federal, state, and local regulations, including the NEPA (National Environmental Policy Act) Environmental Compliance Checklist and Section 106 of NHPA (National Historic Preservation Act).

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xii. A statement from the applicable county's assessor indicating the modification in real property taxation, if any, including the applicable tax rate to be charged, the real property subject to the tax rate, and the person or persons responsible for the payment of the real property taxes.

c. *Application Fee and Costs*. An application shall include a non-refundable payment in accordance with the fee schedule adopted by the Town of Fayetteville. The application shall not be considered complete until this fee is paid.

d. *Notice of Complete Application*.
   1. Upon receipt of an application, the applicant shall be provided with a dated receipt of submission.
   2. Within thirty (30) calendar days of receipt of an application, the application shall be reviewed to determine if the application meets the submission requirements. Any requests for a waiver from the submission requirements shall be reviewed prior to determining the completeness of the application.
   3. If the application is not complete, the applicant shall be notified in writing, specifying the additional materials or information required to complete the application.
   4. If the application is complete, the applicant shall be notified in writing of this determination and, if the application is to be reviewed by the Planning Commission or Board of Zoning Appeals, require the applicant to provide a sufficient number of copies of the application for the Planning Commission or Board of Zoning Appeals.

e. *Modification of Application Prior to Approval*. In the event that after submittal of the application, or as a result of any subsequent submittals, the applicant materially modifies the proposed facilities described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period and application fee; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the Town of Fayetteville to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

f. *Approval of Application*. The shot clock period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the application is incomplete and notice is provided to the applicant that the application is insufficient.
   1. Approval of Eligible Facilities Modifications. Within sixty (60) calendar days of the date of receipt of an eligible facilities modification application, a determination shall be made as to whether the proposed modification is an eligible facilities modification, and contemporaneously a permit issued or the application denied.
   2. Approval of Applications involving (1) collocation or (2) modifications that are not eligible facilities modifications. Within ninety (90) calendar days of the date on which the Town of Fayetteville receives an application for collocation, as defined by this Article, or a modification that is not an eligible facilities requests, as defined by this Article, a determination shall be made on

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the application, and contemporaneously a permit issued or the application denied.

3. Approval of All New Towers. Within one hundred and fifty (150) calendar days of the date on which the Town of Fayetteville receives an application for the construction of a new wireless telecommunication facility, or any modification that is not solely for a collocation, and that does not meet the requirements for eligible facilities modification under this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.

g. *Denial of All Applications*. A denial of an application shall set forth in writing the reasons for the denial and shall be provided to the applicant contemporaneously with the denial of the application.

h. *Tolling Timeline for Approval Due to Incompleteness*.
   1. To toll the timeline due to application incompleteness, written notice shall be provided to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.
   2. The timeline for review (when tolling ends) begins running again when the applicant makes a supplemental submission in response to the notice of incompleteness.
   3. Following a supplemental submission, the Town of Fayetteville shall have ten (10) business days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeline is tolled in the case of second or subsequent notices, and tolling ends when the applicant makes supplemental submissions. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

Section 1324.13 Changes to Approved Application.

Any changes to an approved application must be processed pursuant to Section 1324.11 and may be subject to the application fee, at the discretion of the Town of Fayetteville.

Section 1324.15 Abandonment.

a. Any wireless telecommunications facility that is not in operation for a continuous period of twelve (12) months shall be considered an abandoned facility. If negotiations are pending with a service provider to place equipment at the facility, a letter of intent shall be provided to the Town of Fayetteville prior to the expiration of the twelve (12) months.

b. The owner of an abandoned facility shall be notified in writing of an order to remove the facility within no less than ninety (90) calendar days of receipt of the written notice. Failure to remove the wireless telecommunication facility within ninety (90) calendar days shall be grounds to remove the wireless telecommunications facility at the owner's expense and may use the surety to pay this expense. If two or more users occupy a single tower or alternative support structure, this provision shall not

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become effective until all users cease using the tower or alternative support structure.

c. The Town of Fayetteville requires the posting of surety before commencement of construction of an approved wireless telecommunication facility to ensure removal after the facility is no longer being used. The owner of the facility may apply to the Town of Fayetteville for release of the surety only when the facility and related equipment are removed by the owner to the satisfaction of the Town of Fayetteville.

Section 1324.17 Retention of Expert Assistance and Reimbursement by Applicant.

a. The Town of Fayetteville may hire any consultant or expert necessary to assist the Town of Fayetteville in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.
b. An applicant shall deposit with the Town of Fayetteville funds sufficient to reimburse the Town of Fayetteville for all reasonable costs of consultant and expert evaluation and consultation to the Town of Fayetteville in connection with the review of any application, including services needed during the construction and modification of the site, once permitted. The initial deposit shall be submitted with the application. The Town of Fayetteville shall maintain a separate escrow account for all such funds. The consultants and experts shall invoice the Town of Fayetteville for services rendered. If at any time during the process, this escrow account has a balance of less than _____, the applicant shall immediately, upon notification by the Town of Fayetteville, replenish said escrow account so that it has a balance of at least _____. Such additional escrow funds shall be deposited with the Town of Fayetteville before any further action or consideration is taken on the application. If the amount held in escrow by the Town of Fayetteville is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. Consultants and experts shall, upon request, provide copies of all billing to the applicant.
c. The total amount of the funds needed as set forth in the Subsection b of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

Section 1324.19 Indemnification.

a. Any application for wireless telecommunication facilities that is proposed for the Town of Fayetteville property shall contain a provision with respect to indemnification. Such provision will require the applicant, to the extent permitted by law, to at all times indemnify and hold harmless the Town of Fayetteville, its commissions, and its agents, from any and all penalties, damages, or costs, arising out of any claims that might arise from said facility, excepting however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Fayetteville, or its commissions or agents.
b. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town of Fayetteville. Notwithstanding the above, an

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indemnification provision shall not be required in those instances where the Town of Fayetteville itself applies for and secures a permit for wireless telecommunication facilities.

Section 1324.21 Other Permits Required.
Compliance with this Section does not exempt compliance with all other applicable federal, state, and local regulations, Sections, or requirements.

Article 1325: Sign Regulations

Section 1325.01 Findings, purpose, and intent; interpretation.

(a) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height, and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values; preservation of the character of the various neighborhoods; creation of a convenient, attractive, and harmonious community; protection against destruction of or encroachment upon historic areas; and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, and size of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.

(b) Signs not expressly permitted as being allowed by right or by conditional use permit under this article, by specific requirements in another portion of this ordinance, or otherwise expressly allowed by the Town Council or Board of Zoning Appeals are forbidden.

(c) These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant and the landscape and architecture of surrounding buildings, and to ensure that signs are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

(d) These regulations distinguish between portions of the Town designed for primarily vehicular access and portions of the Town designed for primarily pedestrian access.

(e) These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the Town. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

(f) These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

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Section 1325.03 Permit required.

(a) *Application for permit.* Except as provided in this code, a sign permit is required prior to the display and erection of any sign.

1. An application for a sign permit shall be filed with the Zoning Officer on forms furnished by the Town of Fayetteville. The applicant shall provide sufficient information to determine if the proposed sign is permitted under the zoning ordinance and other applicable laws, regulations, and ordinances. An application for a temporary sign shall state the dates intended for the erection and removal of the sign. An application for an electronic message display shall include the manufacturer's statement that the sign has been pre-programmed, to the extent possible, to conform to the requirements of this code. Such manufacturer's statement shall include, where applicable, the pre-stacked sign settings relating to text and graphic features, message change features, message change time intervals, day and night lighting requirements, and any other settings capable of limiting the electronic message display such that it conforms to this code.
2. The Zoning Officer shall promptly process the sign permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within twenty (20) business days after receipt. Any application that complies with all provisions of this zoning ordinance, the building code, and other applicable laws, regulations, and ordinances shall be approved.
3. If the application is rejected, the Town shall provide a list of the reasons for the rejection in writing. An application shall be rejected for non-compliance with the terms of the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

(b) *Permit fee.* A nonrefundable fee shall accompany all sign permit applications. The permit fee shall be set by Town Council.

(c) *Duration and revocation of permit.* If a sign is not installed within six (6) months following the issuance of a sign permit or the time period stated within the permit, or within thirty (30) days in the case of a temporary sign permit, the permit shall be void. The permit for a temporary sign shall state its duration. The Town may revoke a sign permit under any of the following circumstances:

1. The Town determines that information in the application was materially false or misleading;
2. The sign as installed does not conform to the sign permit application; or
3. The sign violates the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

(d) All signs shall be removed within thirty (30) days of the earliest of expiration of the sign permit or vacation of the premises by the occupant.

(e) Appeals from the denial or granting of a sign permit shall be made to the Board of Zoning Appeals pursuant to the process set out in this code.

Section 1325.05 Permit not required.

The purpose of not requiring a permit for some signage is to exempt certain signs that are frequently used, often by private citizens, and which typically have less of an impact on the

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public safety and aesthetic concerns. Signs permitted under this section count towards the maximum sign area and maximum number of signs allowed per use. A sign permit is not required for:

(a) Signs required by law.
(b) Flags up to sixteen (16) square feet.
(c) The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with Section 1325.11.
(d) Temporary signs as follows, subject to sign area and height limitations of the district in which the sign is located:
    1. One (1) sign, not illuminated, no more than twelve (12) square feet in area, located on property where a building permit is active.
    2. On any property where a dwelling is for sale or rent, one sign with a total area of up to thirty-two (32) square feet and a maximum height of six (6) feet, and on any commercial property for sale or rent, two signs with a total area of up to thirty-two (32) square feet and a maximum height of eight (8) feet.
    3. On residential property, not more than two (2) temporary signs with a total area of no more than twelve (12) square feet, and which are removed within thirty (30) days after being erected.
    4. Window signs.
    5. Signs shall be placed as required with permanent signs.
    6. All other temporary signs require a permit.
(e) Two (2) minor signs per use.
(f) A-frame signs more than fifty (50) feet from the nearest public right of way.
(g) Pavement markings or any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.
(h) A permanent window sign.
(i) Signs permitted under this section shall count towards the allowable maximum sign square footage for a particular use or particular property.

Section 1325.07 Prohibited signs.

The purpose of prohibiting the following signage is to address the Town's substantial public safety and welfare concerns, including aesthetic concerns and protecting property values, associated with certain types of signage. In addition to signs prohibited elsewhere in this code or by applicable state or federal law, the following signs are prohibited:

(a) *General prohibitions*.
    1. Signs that violate any state or federal law relating to outdoor advertising or in violation of this code.
    2. Signs attached to natural vegetation.
    3. Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized town official as a nuisance.
    4. Vehicle or trailer signs.
    5. Freestanding signs more than twenty-five (25) feet in height or with less than eight (8) feet of clearance beneath the sign face.
    6. Signs hanging from supports, except against the face of a building.

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7. Animated signs, except where animated sign features as part of an electronic message display are expressly permitted.
8. Flashing signs or other signs displaying flashing, scrolling, or intermittent lights or lights of changing degrees of intensity, except where such signs are expressly permitted.
9. Partially animated and fully animated electronic message displays.
10. Feather signs more than ten (10) feet in height. No more than two (2) feather signs may be placed per fifty (50) square feet of frontage.

(b) *Prohibitions based on materials*.

1. Signs painted directly on a building, except where expressly permitted by this article.
2. Signs consisting of illuminated tubing or strings of lights outlining property lines or open sales areas, rooflines, doors, windows or wall edges of any building, except for temporary decorations not to exceed three months per year.
3. Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
4. Signs that emit sound.
5. Any electronic sign that is generated by a series of moving images, such as an LED, digital display, or other video technology, whether displayed on a building, vehicle, or mobile unit.
6. Pennants or strings of flags visible from, and within fifty (50) feet of, any public right-of-way.
7. Neon signs, except in windows where expressly permitted.

(c) *Prohibitions based on location*.

1. Off-premises signs, unless specifically permitted by this article.
2. Signs erected on public land other than those approved by an authorized Town official in writing, required by law without such approval, or permitted under West Virginia law. Any sign not so authorized is subject to immediate removal and disposal by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
3. Roof signs. Signs on the roof surface or extending above the roofline of a building or its parapet wall.
4. Any sign located in the vision triangle formed by any two (2) or more intersecting streets.

Section 1325.09 General requirements.

(a) *Setback and placement.* Except as otherwise permitted, all freestanding signs and flagpoles shall be set back from any public right-of-way at least half the height of the sign or flagpole. Electronic message displays shall be placed perpendicular to residential structures where possible and shall comply with Federal Communications Commission regulations, including the avoidance of harmful interference with radio frequencies.

(b) *Illumination*. The purpose of the following provisions regulating signage lighting is to ensure that signs are lighted in such a manner as to maintain aesthetic consistency with signs already existing in the Town and to ensure the safety of drivers and pedestrians, while also ensuring that signs are adequately able to convey sign messages.

1. *Definitions*.

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1. "Candela" means the basic unit of measurement of light in SI (metric) units.
2. "Candela per square meter (cd/m²)" means the SI (metric) unit used to describe the luminance of a light source or of an illuminated surface that reflects light. Also referred to as Nits.
3. "Nit" means a photometric unit of measurement referring to luminance. One nit is equal to one cd/m².
4. "SI (International System of Units)" means the modern metric system of measurement, abbreviated SI for the French term "Le Systeme International d'Unites."

2. A sign in any district may be illuminated at night. Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred and fifty (750) cd/m² or Nits, regardless of the method of illumination, at least one-half hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for the specific geographic location and date. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise, as determined by the NOAA, at which time the sign may resume luminance levels appropriate for daylight conditions.
3. The maximum luminance during daylight conditions, between Apparent Sunrise and one-half hour before Apparent Sunset, shall be ten thousand (10,000) cd/m² or Nits.
4. All permitted and conditional use signs may be backlit, internally lighted, or indirectly lighted, subject to lighting limitations in this code. All external sign lighting shall have lighting fixtures or luminaires that are fully shielded.
5. Temporary signs shall not be lighted.

(c) Signs shall be of quality design, construction, color, and materials consistent with the design of the building and development. This includes glass, masonry, wood, natural stone, ornamental metalwork, and ceramics. Paint and metal gilt work are also acceptable. Signs painted on cloth awnings are permissible. Signs must be constructed of durable materials.

(d) *Maximum height measurements.* Wall signs and other signs with sign structures not affixed to the ground are measured from the lowest attached component of the sign to the highest attached component of the sign. The maximum height for signs with sign structures affixed to the ground is measured as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign, subject to limitations in this article. Normal grade is the lower of:

1. Existing grade prior to construction; or
2. The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating primarily for the purpose of mounting or elevating the sign.

(e) *Measurement of sign area*. Sign area is calculated under the following principles:

1. With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular

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polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.

2. The permitted area of a double-faced a-frame sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area.
3. For projecting signs, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.
4. Supports, uprights, or structures on which any sign is supported shall not be included in determining the sign area unless such supports, uprights, or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed.
5. In instances where there are multiple tenants or users on a property or in a building, allowable sign area not exceed twelve (12) square feet per tenant or the total sign area allowed per use per tenant, whichever is less.
6. *Wall signs*. Wall signs are not counted towards the maximum sign area permitted per use.
    i. Wall signs larger than fifty (50) square feet shall provide as part of zoning permit application:
        A. Express permission from the operator and owner of the building;
        B. The name and address of the person applying the wall sign;
        C. A clear drawing of the proposed wall sign including dimensions and location.
    ii. Wall signs larger than one hundred (100) square feet are subject to the design review standard in subsection (f).

(f) *Design review standards for wall signs in excess of one hundred (100) square feet*. The Board of Zoning Appeals shall issue permits for signs subject to design review in accordance with Section 1325.03, except that the Board of Zoning Appeals shall issue a determination within forty (40) business days. In determining whether a sign is compatible with the theme and overall character to be achieved in each zoning district, the Board of Zoning Appeals shall base its compatibility determination on the following criteria:

1. The relationship of the scale and placement of the sign to the building or premises on which it is to be displayed.
2. The relationship of the colors of the sign to the colors of adjacent buildings and nearby signs.
3. The similarity or dissimilarity of the sign's size and shape to the size and shape of other signs in the area.
4. The similarity or dissimilarity of the style of lettering or number of words on the sign to the style of lettering or number of words of nearby signs.
5. The compatibility of the type of illumination, if any, with the type of illumination in the area.
6. The compatibility of the materials used in the construction of the sign with the materials used in the construction of other sign in the area.

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Section 1325.11 Nonconforming signs.

(a) Signs lawfully existing on the effective date of this or prior ordinances, which do not conform to the provisions of this code, and signs which are accessory to a nonconforming use shall be deemed nonconforming signs and may remain except as qualified below. The owner of a nonconforming sign has the burden of establishing the nonconforming status of a sign and the physical characteristics and location of such signs.

1. Nonconforming signs shall not be enlarged nor shall any feature of a nonconforming sign, such as illumination or technology, be increased. Nonconforming signs shall not be replaced or structurally reconstructed except as permitted by this code.
2. Nonconforming signs shall not be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this code.
3. A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its area may be restored within six (6) months after such destruction or damage but shall not be enlarged in any manner. If such sign is so destroyed or damaged to an extent exceeding fifty (50) percent, the sign shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this code.
4. A nonconforming sign which is changed to becoming conforming or replaced by a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this code.
5. A nonconforming sign structure shall be subject to removal. In addition, a nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of one year or more. Such structure sign shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the zoning officer shall give the owner fifteen (15) days' written notice to remove it. Upon failure to comply with this notice, the zoning officer may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property.

(b) Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign. Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and sign area.

Section 1325.13 Maintenance and removal.

(a) All signs shall be constructed and mounted in compliance with the West Virginia Uniform Statewide Building Code.

(b) All signs and components thereof shall be maintained in good repair and in a safe, neat, and clean condition.

(c) *Safety Hazard*. The zoning officer may cause to have removed or repaired immediately without written notice any sign which, in his or her opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such

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emergency removal or repair shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.

(d) *Nuisance*. Any sign which constitutes a nuisance shall be abated by the owner within thirty (30) days of notice by the Zoning Officer. At any time, the Zoning Officer may cause the nuisance to be abated with the costs charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.

(e) *Illegal sign and disrepair*. Any sign which is illegal or in disrepair shall be made conforming and/or repaired within thirty (30) days of notice from the Zoning Officer. If an illegal sign or a sign in disrepair is not made conforming and/or repaired, the Zoning Officer may cause the sign to be removed or repaired and the cost of such removal or repair shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges. Signs of disrepair include chipped paint, missing or significantly faded letters or other aspects of the sign, cracked portions of the sign face, broken lighting, graffiti, and unleveled portions of the sign structure or face.

(f) *Expired permit*. Any sign for which a sign permit has expired shall be removed within five (5) days of the permit expiration. If the sign is not removed, the Zoning Officer may cause the sign to be removed and the cost of such removal shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.

(g) Signs located within ten (10) feet of any public right-of-way and in violation of this code may be impounded at any time.

(h) Signs located on commercial property where the use or business has ceased operating shall be removed within sixty (60) days of the cessation of use or business operation, including temporary signs. Property owner may request, in writing, a waiver of such requirement, if the businesses is temporarily or seasonally operational, is remodeling, or otherwise has the good will intention of opening that business back up within one year's time of cessation. All signs shall be constructed and mounted in compliance with the West Virginia Code.

Section 1325.15 Temporary signs.

The purpose of this section is to address that temporary signs pose distinct concerns with visual clutter, safety in erection and display, and removal when the time for display has concluded. Temporary signs also pose distinct concerns with materials quality. The following provisions and individual zoning of temporary signs per district serve to address these concerns.

(a) Temporary signs require a permit, except as provided in this article, and may be permitted up to thirty (30) days each calendar year.

(b) A use may erect one temporary, off-premises sign on property in any district, except residential districts, with the consent of the persons in charge of such properties, no more than two (2) times in one calendar year. Each sign shall be no more than and eight (8) feet in height and sixteen (16) square feet in area, which area counts against the maximum sign area permitted on that lot.

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(c) No more than one permitted temporary sign may be displayed per lot in the single-family, multi-family, and conservation zoning districts.
(d) No more than two (2) permitted temporary signs may be displayed per lot in the mixed use and general commercial districts.
(e) Temporary signs shall be securely affixed to the ground or a building, or a pole designated only to a single temporary sign.
(f) Person-assisted signs shall not be located more than ten (10) feet from the entrance to a building or within ten (10) feet of a right-of-way.

Section 1325.17 Sign regulations by district.

(a) Single Family, Multi-Family, Conservation, and Neighborhood Commercial Zoning Districts signs.
1. Permitted permanent sign use as accessory to dwellings: geological, wall sign, window sign, minor sign, wicket sign. Permitted temporary sign use as accessory to dwellings: minor, wall, wicket, window signs.
2. Permitted permanent sign use as accessory to non-dwellings: freestanding sign, geological, minor, temporary, wall sign, wicket, and window sign. Only one of each is permitted per use, except wall signs and window signs. Permitted temporary sign use as accessory to non-dwellings: minor, wall, wicket, window signs.
3. No more than two (2) flags as accessory to a dwelling and no more than two (2) flags as accessory to a non-dwelling are permitted, except there is no limit to the number of flags for a government building.
4. *Dimension specifications chart*. All maximum sign area requirements include the sum total sign area of all signs per use.

	Permitted as Accessory to Dwellings	Permitted as Accessory to Non-dwellings	Temporary Signs	Flags
Max. Sign Area	6 sq. ft.	16 sq. ft.	32 sq. ft.	40 sq. ft.
Max. Height	4 ft.	6 ft.	4 ft.	25 ft.

(b) Mixed Use District signs.
1. Permitted permanent sign use as accessory to dwellings shall be the same as for Section 1325.17 of this code.
2. Permitted permanent sign use as accessory to non-dwellings: a-frame, awning sign, canopy sign, chalkboard sign, changeable copy sign, freestanding sign, geological, marquee sign, minor, monument sign, neon sign, off-premises, pennant, projecting, temporary, wall sign, wicket sign, window sign, and static electronic message displays. Only one of each is permitted per use, except wall signs and window signs. Permitted temporary sign use as accessory to non-dwellings: a-frame, banner, chalkboard, changeable copy, feather, minor, off-premises, wall, wicket, and window signs.
3. Off-premises signs are counted towards the maximum square footage permitted on that lot.

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4. No more than two (2) flags as accessory to a dwelling and no more than two (2) flags as accessory to a non-dwelling are permitted, except there is no limit to the number of flags for a government building.
5. *Dimension specifications chart*. All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding Signs	All Other Signs	Temporary Signs	Flags
Max. Sign Area (each/total)	16 sq. ft.	2 sq. ft. per 1 linear foot of frontage	12 sq. ft.	40 sq. ft.
Max. Height	6 feet	None	6 feet	30 feet

(c) General Commercial District Signs.

1. Permitted permanent sign use as accessory to dwellings shall be the same as Section 1325.17 of this code.
2. Permitted permanent sign use as accessory to non-dwellings: a-frame, awning sign, canopy sign, chalkboard sign, changeable copy sign, static electronic message display, static electronic message displays with transition features, partially animated electronic message displays, fully animated electronic message displays, freestanding sign, geological, marquee sign, minor, monument sign, neon sign, off-premises, pennant, person-assisted, projecting, temporary, wall sign, wicket sign, window sign. Only one of each is permitted per use, except wall signs, window signs, and permitted off-premises signs. Permitted temporary sign use as accessory to non-dwellings: a-frame, banner, beacon, chalkboard, changeable copy, feather, inflatable/tethered, minor, off-premises, pennant, person-assisted, wall, wicket, and window signs.
3. Off-premises signs are counted towards the maximum square footage permitted on that lot.
4. No more than two (2) flags as accessory to a dwelling and no more than two (2) flags as accessory to a non-dwelling are permitted, except there is no limit to the number of flags for a government building.
5. *Dimension specifications chart*. All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding Signs	All Other Signs	Temporary Signs	Flags
Max. Sign Area (each/total)	60 sq. ft.	3 sf per each lineal foot of building frontage	32 sq. ft.	60 sq. ft. each
Max. Height	25 ft.	none	6 ft.	40 ft.

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Article 1327: Nonconforming Uses, Lots, and Structures

Section 1327.01 Purpose.

(a) The purpose of this article is to set forth standards and regulations regarding the continued existence of uses, structures, and lots established prior to the effective date of this Zoning Ordinance (or any amendment subsequent thereto) that do not conform to this Zoning Ordinance. These standards shall apply to all nonconforming uses, structures and lots, as defined by this ordinance.

(b) Nothing in this section prohibits alterations or additions to or replacement of buildings or structures owned by any farm, industry, or manufacturer, or the use of land presently owned by any farm, industry, or manufacturer but not used for agricultural, industrial, or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development, or expansion of any agricultural, industrial, or manufacturing operation of any present or future satellite agricultural, industrial, or manufacturing use.

Section 1327.03 Nonconforming uses.

(a) These regulations shall apply to any use of a structure or lot in any zoning district that is a nonconforming use as defined by this ordinance. Whenever the boundaries of a zoning district shall be changed so as to transfer an area from one zoning district to another zoning district of a different classification, these regulations shall apply to any uses which thereby become nonconforming.

(b) Where, at the effective date of adoption or amendment of this ordinance, a lawful use of a lot or structure exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be sold or otherwise transferred to other owners and may be continued as long as it remains otherwise lawful in accordance with the provisions of this article.

(c) Normal structural repair and maintenance may be performed to allow the continuation of a non-conforming use.

(d) Nonconforming uses existing at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use, may extend within the building which housed the nonconforming use at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use, provided that the area to which the nonconforming use extends was manifestly designed or arranged to accommodate such use, and that no structural alterations are made within the building in order to allow the use to extend, except those that may be required by the Building Code.

(e) Once a non-conforming use has been changed or converted to a conforming use, it shall not thereafter be used for any nonconforming use.

(f) When a nonconforming use is abandoned for twelve (12) months, abandonment is presumed and the non-conforming use shall not be allowed to be re-established. If the property has been abandoned, then any future use of the land, buildings, or structures shall conform and be in accordance with all applicable rules, regulations, and requirements of the particular zoning district wherein the property is located.

(g) The non-conforming use of a building or land which has been abandoned shall not thereafter be returned to such non-conforming use. Abandonment of a non-conforming

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use shall be presumed if one (1) or more of the following conditions exists, indicating intent on the part of the property owner to abandon the nonconforming use:

1. When the intent of the owner to discontinue the nonconforming use is apparent;
2. Utilities, such as water, gas, and electricity to the property have been disconnected;
3. The property, buildings, and grounds, have fallen into disrepair as evidenced by proper code violation documentation;
4. When it has been replaced by a conforming use;
5. When it has been changed to a use permitted by conditional use by the Board of Zoning Appeals; or
6. The business license issued by the Town of Fayetteville has expired.

(h) The extension of a lawful use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming use.

Section 1327.05 Nonconforming structures.

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.

(a) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

(b) 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:

1. Nonconforming structures used for a permitted use may be enlarged, provided that the enlargement shall not create any additional nonconformity or increase the degree of the existing nonconformity of such structure, except that porches and decks may be added or extended into rear setbacks up to fifty (50) percent of the setback requirements for the district in which the nonconforming structure is located.
2. Nonconforming structures used for a nonconforming use may add or extend porches and decks into rear setbacks up to fifty (50) percent of the setback requirements for the district in which the nonconforming structure is located. Buildings or structures with nonconforming setbacks may extend along a line extending from the greatest point of nonconforming setback parallel to the lot line from which the setback is measured, provided the setback nonconformity is not increased. A lawful nonconforming structure, which is damaged the extent of fifty percent (50%) or more of its appraised value, as valuated within twelve (12) months of when the damage occurred, shall not be restored unless it is in full conformance with this code, except that single-family homes may be rebuilt within the original building's boundaries and no taller than the original building unless exceeding the boundaries or height of the original building would not increase the structure's nonconformity.
3. A lawful nonconforming structure which is damaged, by neither malfeasance nor wanton disregard by an interested party, to the extent of less than fifty percent (50%) of its appraised value, as valuated within twelve (12) months of when the damage occurred, may be reconstructed, provided that:

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i. The reconstructed structure shall not exceed the height, area, or volume of the original structure;
ii. Reconstruction shall be commenced within one year from the date the structure was destroyed or condemned and shall be carried on without interruption; and
iii. An application to reconstruct the structure is made to the Board of Zoning Appeals prior to reconstruction.

Section 1327.07 Nonconforming lots.

(a) Except as provided in (b) 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 (1.5) 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.

Section 1327.09 Nonconforming accessory uses and structures.

No nonconforming 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, except this provision does not apply where reconstruction of damaged principal structures is performed in accordance with Section 1327.05(b). No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure.

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Article 1329: Zoning Ordinance Administration

Section 1329.01 Purpose.
The purpose of this article to describe the procedures for administration and enforcement of this ordinance and the duties and responsibilities of the Zoning Officer, Board of Zoning Appeals and Planning Commission.

Section 1329.03 Powers and duties of zoning officer.
Council shall appoint a Zoning Officer, who shall have the authority to administer and enforce the Zoning Ordinance. This includes but is not limited to the following:

(a) Keep a record of plans and applications for permits and all permits issued with notations as to special conditions. All records shall be open for public inspection.
(b) Review permit applications and notifications as necessary to determine compliance with the provisions of this ordinance. No permit shall be issued unless it conforms to all applicable ordinances, statues, and regulations.
(c) All questions or interpretation and enforcement shall be initially presented and determined by the zoning administrator. Subsequent recourse shall be, in order, to the board of zoning appeals and the courts.
(d) Upon finding that provisions of this ordinance have been violated, notify the person or party in writing responsible for the violation(s), order the action necessary to correct the violation, and if correction is not completed within the time specified in the notice of violation, begin legal actions necessary to compel correction of the violation.
(e) Maintain official zoning maps.
(f) Provide information on planning and zoning upon request by citizens and public agencies.
(g) Submit at least annually, a written report on all permits issued and notice and orders issued.
(h) Perform additional tasks and duties as may be prescribed by the Fayetteville Town Council.

Section 1329.05 Zoning permit.

(a) No building or structure shall be constructed, erected, expanded, enlarged, or otherwise structurally altered until a zoning permit has been issued by the Zoning Officer.
(b) Applications for a zoning permit shall be made available at town hall.
(c) All applications for zoning permits shall be made in writing by the owner or authorized agent and shall be filed with the Zoning Officer. The application shall:
    1. Include a statement as to the proposed use of the structure or land.
    2. Be accompanied by a plan, drawn to scale, showing the dimensions of the lot to be built upon, the exact size and location of the building to be constructed upon the lot, and accessory buildings to be erected, and such other information as may be deemed necessary by the Zoning Officer in determining and provided for the enforcement of this ordinance.
(d) If the zoning permit application is approved by the Zoning Officer, then an appropriate placard issued by the Town and containing the approval of the Zoning Officer, shall be returned together with the zoning permit to the applicant, following payment of the

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appropriate fee as determined by Town Council. The placard shall be posted by the applicant in a conspicuous place upon the building or construction site prior to the commencement of any construction and shall remain upon the building or construction site during all construction operations.

(e) A zoning permit does not alleviate the necessity to obtain a building permit as required by the Town of Fayetteville.

Section 1329.07 Powers and duties of planning commission.

For the purpose of this ordinance, the Planning Commission has the following duties:

(a) Initiate proposed amendments to this Ordinance.

(b) Review all proposed amendments to this Ordinance and make recommendations to Town Council.

Section 1329.09 Powers and duties of the board of zoning appeals.

A board of zoning appeals is hereby established with membership and appointment provided in accordance with the West Virginia Code.

(a) The board shall consist of five (5) members appointed by town council. The members of the board shall be residents of the Town of Fayetteville for at least three (3) years preceding his or her appointment. Members cannot be a member of the planning commission and cannot hold any other elective or appointive office in municipal government. Upon creation of the Board of Zoning appeals, the members shall be appointed for the following terms: One for a term of one year; one for a term of two years; and one for a term of three years. The terms shall expire on the first day of January of the first, second, and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, council shall appoint a member for the unexpired term.

(b) The governing body may appoint up to three (3) additional members to serve as alternate members of Board of Zoning Appeals. The alternate members must meet the same eligibility requirements as set out in (a) 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.

(c) At its first regular meeting each year, a 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.

(d) A board of zoning appeals shall meet quarterly and may meet more frequently at the written request of the chairperson or by two or more members. 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 days before the special meeting. 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. A board of zoning appeals must have quorum to conduct a meeting. A majority of the members of a board of zoning appeals is a quorum. No action of a board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

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(e) The board of zoning appeals has the following duties:
1. Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;
2. Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;
3. Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;
4. Authorize, upon appeal in specific cases, a variance to the zoning ordinance;
5. Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;
6. Adopt rules and regulations concerning:
   i. The filing of appeals, including the process and forms for the appeal;
   ii. Applications 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;
7. Keep minutes of its proceedings.
8. Keep an accurate and complete audio record of all the board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four hours of demand, for three years;
9. Record the vote on all actions taken;
10. Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the board and shall be public records;
11. With consent from 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
12. Supervise the fiscal affairs and responsibilities of the board.

Section 1329.11 Appeal to the board of zoning appeals.

An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance, or rule and regulation adopted pursuant to a zoning ordinance, shall be filed with the board of zoning appeals. The appeal shall:

(a) Specify the grounds of the appeal;
(b) Be filed within thirty days of the original order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance; and
(c) Be on a form prescribed by the board.
(d) Upon request of the board of zoning appeals, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.

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Section 1329.13 Notice and hearing of appeal.

(a) Within ten days of receipt of the appeal by the 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 days of receipt of the appeal by the board.

(b) At least fifteen days prior to the date set for the hearing on the appeal, the Board of Zoning Appeals shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of the West Virginia Code and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.

(c) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.

(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 must be in writing and state 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 attorneys' fees required to permit the person appealing the board's decision to return the matter to the circuit court for completion of the appeal.

(f) The written decision by the board shall be rendered within thirty days after the hearing. If the board fails to render a written decision within thirty days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.

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

1. If the official or board from where the appeal was taken certifies in writing to the Board of Zoning Appeals that a stay would cause imminent peril to life or property;
2. Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or
3. Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work or other tests.

(h) Nothing in this section prevents a party from obtaining an injunction.

Section 1329.15 Violations and penalties.

(a) Any person who violates any provision of this code is guilty of a misdemeanor and upon conviction, shall be punished for each offense by a fine not less than $50.00 nor more than $500.00. Each day the violation continues shall be considered a separate offense. Work carried on in violation of the cancellation of any permit issued under this code shall also be deemed a violation punishable in the same manner.

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(b) Any buildings erected, raised or converted, or land or premises used in violation of any provision of this ordinance is declared a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

Section 1329.17 Injunction.

(a) The Planning Commission, Fayetteville Board of Zoning Appeals, or any designated enforcement official may seek an injunction in the Circuit Court of Fayette 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.

(b) The Planning Commission, Fayetteville Board of Zoning Appeals, or any designated enforcement official may also seek a mandatory injunction in the Circuit Court of Fayette 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.

(c) If the Planning Commission, Fayetteville 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.

Section 1329.19 Variances.

(a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

(b) The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
2. 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;
3. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
4. Will allow the intent of the zoning ordinance to be observed and substantial justice done.

(c) The board of zoning appeals shall not grant a variance to allow the establishment of a use in a zoning district when such use is prohibited by the provisions of this code.

Section 1329.21 Conditional uses.

The Board of Zoning Appeals may approve an application for a conditional use permit, subject to reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit, subject to the limitations and conditions as follows:

(a) The use will be consistent with the vision and goals set forth in the town comprehensive plan;

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(b) 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 existing uses will be reduced to the maximum extent feasible, including, but not limited to, conditions or measures addressing:
    1. Location on a site of activities that generate potential adverse impacts such as noise and glare;
    2. Hours of operation and deliveries;
    3. Location of loading and delivery zones;
    4. Light intensity and hours of full illumination;
    5. Placement and illumination of outdoor vending machines;
    6. Loitering;
    7. Litter control;
    8. Placement of trash receptacles;
    9. On-site parking configuration and facilities;
    10. On-site circulation;
    11. Privacy concerns of adjacent uses.

(c) 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.

(d) On-site and off-site traffic circulation patterns related to the use shall not adversely impact adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.

(e) 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, storm drainage, public transit, and public parks/trails.

(f) The use provides adequate off-street parking on the same property as the use, in compliance with standards set forth in Section 1321.17 of this code.

(g) The use will not substantially injure the value of adjoining property.

(h) The location and character of the use, if developed according to the plans and information approved, will be in harmony with the character and appearance of the surrounding neighborhood.

(i) Operations in connection with the use shall not be offensive, dangerous, and destructive of the environment.

(j) Any storage of hazardous material that is ancillary to a Conditional Use shall be listed and made known with the Town of Fayetteville Fire Department.

(k) The Board may impose additional conditions and safeguards deemed necessary.

DRAFT

Town of Fayetteville Zoning Ordinance FINAL DRAFT Use Table

P = Permitted ("By Right"); C = Conditional (Board of Zoning Appeals)
*asterisked uses are subject to supplemental provisions

	USES					
Uses	*Single-family*	*Multi-family*	*Mixed Use*	*General Commercial*	*Conservation*	*Neighborhood Commercial*
Adult Business*				C		
Airport				C		
Amphitheater					P	P
Animal Hospital/ Veterinary Office				P		
Automobile Car Wash				P		
Automobile Repair/ Service*				P		
Bakery			P	P		C
Bank/Financial Institution			P	P		
Bed and Breakfast Inn I*	P	P	P	P	P	P
Bed and Breakfast Inn II*		C	C	C		P
Boarding House and/or Rooming House	P	P	P			
Boat and Marine Sales/Service*				P		
Boat Storage				P		
Brewery Pub			P	P		C
Broadcasting Studio				P		
Building Material Facility				P		
Bus & Transit Facilities			C	P		
Bus/Other Transit Shelter			C	P		
Camp, Youth*					P	P
Campground*				P		
Catering Business			P	P		C
Cemetery/ Mausoleum					C	
Child Care Center*				P		P
Child Care Facility*				P		P

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*asterisked uses are subject to supplemental provisions

	USES					
Uses	*Single-family*	*Multi-family*	*Mixed Use*	*General Commercial*	*Conservation*	*Neighborhood Commercial*
Child Care Home*	P		P			
Clinic			P	P		
Community Facility, Private			P	P		
Continuing Care Facility			C	P		
Convenience Store			P	P		
Conversion of Old School/Church	C		C			
Correctional Facility				P		
Country Inn*						P
Cultural Service			P	P		C
Distribution Facility				P		
Distillery				P		
Dog Day Care*			C	P		C
Drive-through Facility*			P	P		
Dry Cleaner			P	P		
Dwelling, Conversion Apartment			C			
Dwelling, Garage Conversion			C			
Dwelling, Mixed Use			P			P
Dwelling, Single-family*	P		P			P
Educational Institution				P		C
Emergency Shelter			P	P		P
Equipment Rental/Repair				P		
Essential Utilities and Equipment	P	P	P	P	P	P
Event, Mass Gathering*						P
Event, Special*			P	P		P
Extractive Industry				P		
Factory-built Home*	P		P	P		
Factory-built Home Rental Community				C		
Farm Equipment/ Construction Equipment and Supply Sales				P		
Farmer's Market			P	P		P
Flea Market			C	C		C
Freight Terminal				P		

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*asterisked uses are subject to supplemental provisions

	USES					
Uses	*Single-family*	*Multi-family*	*Mixed Use*	*General Commercial*	*Conservation*	*Neighborhood Commercial*
Funeral Home/Mortuary			P	P		
Garage, Community		P				C
Garage, Private	P	P	P	P		P
Garden Center				P		
Gas Station				P		
Gas Station, Large				P		
Govermental Operations			P	P		
Greenhouse, Noncommercial*	C	C	C			P
Greenhouse, Commercial				P		
Group Residential Facility	P	P	P	P	P	P
Group Residential Home	P	P	P	P	P	P
Health Club			C	P		C
Home-based Business (Low-Impact)*	C	C	C			C
Home-based Business (No-Impact)*	P	P	P			P
Hospital				P		
Hostel*		P				
Hotel/Motel			C	P		
Kennel				P		C
Laundromat		P	P	P		
Liquor Store			P	P		
Lumberyard				P		
Manufacturing (Light)				P		
Medical Adult Day Care Center			C	P		C
Medical Cannabis Dispensary*				P		
Medical Cannabis Organization, Health Care				P		
Multi-family Housing*		P		P		C
Night Club				C		
Office Supply Services or Establishment			P	P		

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	USES					
Uses	*Single-family*	*Multi-family*	*Mixed Use*	*General Commercial*	*Conservation*	*Neighborhood Commercial*
Parcel Delivery Facility				P		
Park	P	P	P	P	P	P
Parking Structure			C	P		C
Personal Service			P	P		P
Pet Shop			P	P		
Pharmacy			P	P		
Photographic Studio			P	P		P
Places of Worship/ Religious Institution	P	P	P	P	P	P
Private Club				P		C
Professional Services			P	P		P
Reception Facility*						P
Recreation, Commercial Indoor			P	P		C
Recreation, Commercial Outdoor				P		C
Recreation, Municipal	P	P	P	P	P	P
Recycling Facility				P		
Research and Development				C		C
Restaurant (Carry Out)			P	P		P
Restaurant (Fast Food)				P		
Restaurant (Sit Down)			P	P		P
Retail Store/Shop <25,000 square feet			P	P		C
Retail Store/Shop >25,000 square feet				P		
School, Commercial				P		C
School, Preschool-12	P		P	P		C
Self-storage Facility*				P		
Senior Independent Housing			P	P	P	C
Sewage Treatment Facility				C		
Shopping Center				P		C
Solar Energy System, Large				C		
Solar Energy System, Small	C	C	C	C		C
Sports Arena				P		
Studio, Dancing, Music, or Art			P	P		P
Tattoo Parlor/Body Piercing Studio			P	P		P

P = Permitted ("By Right"); C = Conditional (Board of Zoning Appeals)
*asterisked uses are subject to supplemental provisions

	USES					
Uses	*Single-family*	*Multi-family*	*Mixed Use*	*General Commercial*	*Conservation*	*Neighborhood Commercial*
Tavern/Drinking Establishment I			C	P		C
Tavern/Drinking Establishment II			C	P		C
Theater			P	P		C
Theater, Drive-in				P		
Travel Plaza				P		
Truck Terminal				P		
Vehicle Sales/Rental and Service*				P		
Video Gaming or Lottery Establishment*			C	P		C
Warehouse				P		
Water Treatment Plant					P	
Wholesale Establishment				P		
Winery			P	P		C
Wireless Telecommunications Facility*			C	P		C

Town of Fayetteville Zoning Map

Draft March 2021

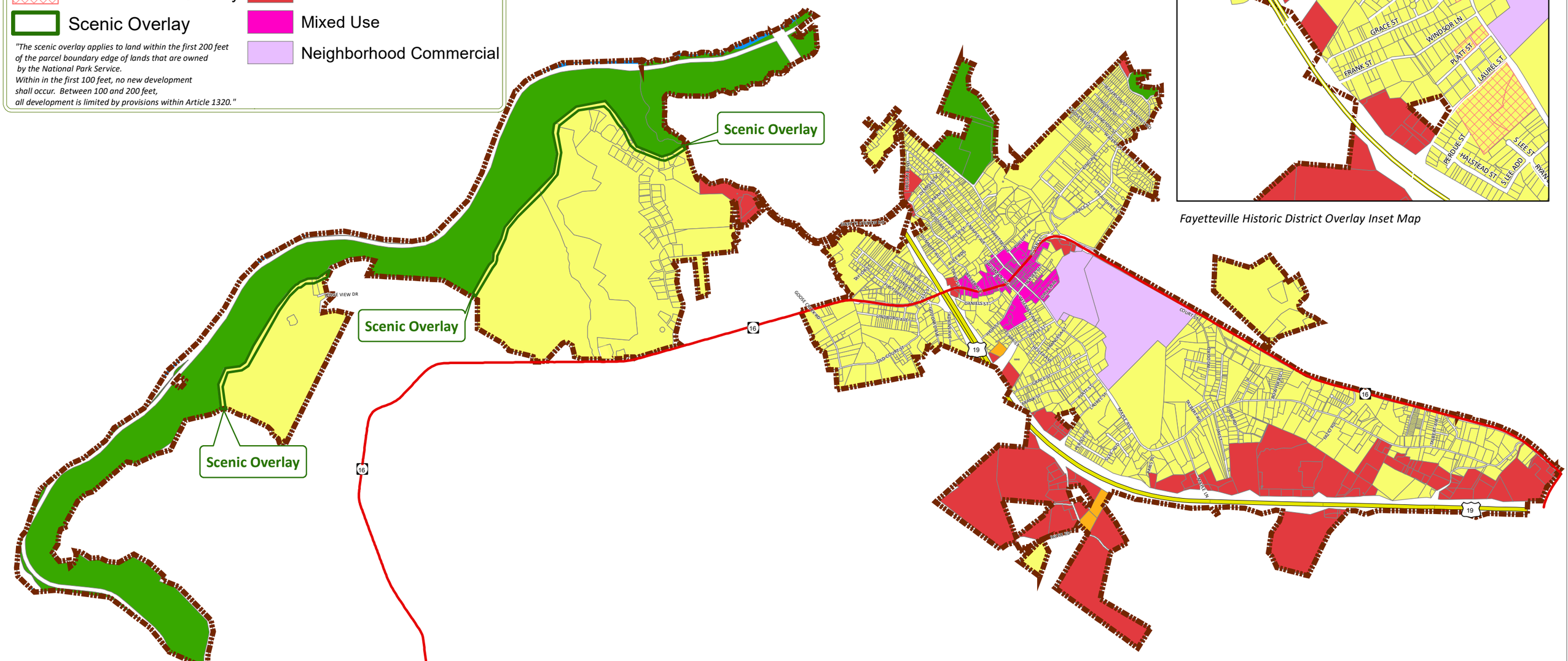
Legend

- State Route
- Municipal Boundry
- Water
- US Route 19
- Historic District Overlay
- Scenic Overlay

"The scenic overlay applies to land within the first 200 feet of the parcel boundary edge of lands that are owned by the National Park Service. Within in the first 100 feet, no new development shall occur. Between 100 and 200 feet, all development is limited by provisions within Article 1320."

Zoning Districts

- Conservation
- Single Family Residential
- Multi-Family Residential
- General Commercial
- Mixed Use
- Neighborhood Commercial



Fayetteville Historic District Overlay Inset Map

WVULAW
LAND USE & SUSTAINABLE DEVELOPMENT LAW CLINIC

Source Data: Fayette County, West Virginia GIS Technical Center, WVDOT