

## **CODIFIED ORDINANCES OF BENWOOD**

### **PART THIRTEEN - PLANNING AND ZONING CODE**

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#### **CHAPTER ONE - Zoning Administration**

- Art. 1303. Purpose and Interpretation.
- Art. 1305. Definitions.
- Art. 1307. Administration and Enforcement; Penalty.
- Art. 1309. Board of Zoning Appeals.

#### **CHAPTER THREE - Zoning Districts and Regulations**

- Art. 1331. Districts Established; Zoning Map.
- Art. 1333. Application of Regulations.
- Art. 1335. S-C Special Conservation District.
- Art. 1337. R Residential District.
- Art. 1339. R-C Residential Commercial District.
- Art. 1341. C-H Highway and Integrated Commercial District.
- Art. 1343. I Industrial District.

#### **CHAPTER FIVE - Additional Zoning Requirements**

- Art. 1353. General Supplemental Standards.
- Art. 1355. Off-Street Parking and Loading.
- Art. 1357. Planned Residential Development.
- Art. 1359. Swimming Pools.
- Art. 1363. Special Provisions for Commercial and Industrial Uses.
- Art. 1367. Mobile Homes.
- Art. 1371. Nonconforming Uses.

#### **CHAPTER SEVEN - Subdivision Control**

- Art. 1385. Subdivisions Regulations.
- Art. 1386. Limited Video Lottery Establishments.

**CODIFIED ORDINANCES OF BENWOOD**  
**PART THIRTEEN - PLANNING AND ZONING CODE**

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**CHAPTER ONE - Zoning Administration**

- Art. 1303. Purpose and Interpretation.  
 Art. 1305. Definitions.  
 Art. 1307. Administration and Enforcement; Penalty.  
 Art. 1309. Board of Zoning Appeals.
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**ARTICLE 1303**  
**Purpose and Interpretation**

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| <b>1303.01 Grant of power.</b><br><b>1303.02 Purpose.</b> | <b>1303.03 Interpretation.</b> |
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**CROSS REFERENCES**

- Statutory definitions - see W. Va. Code 8-24-3  
 Zoning authority generally - see W. Va. Code 8-24-39  
 Conflict of laws - see W. Va. Code 8-24-70  
 General definitions - see ADM. 101.02
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**1303.01 GRANT OF POWER.**

Pursuant to the authority contained in West Virginia Code Article 8-24, as amended, this Part Thirteen - Planning and Zoning Code shall amend and reenact the Zoning Ordinance of the City, relating to the regulation and restriction of the height and bulk of buildings; to regulate and determine the area of yards; to regulate and restrict the location of trades and industries and the buildings designed for specified uses and for such purposes to divide the City into districts and prescribe for each such district the trades and industries that shall be excluded or be subject to special regulation, and the uses for which buildings may not be erected or altered; such regulations being designed to promote the public health, safety, morals and general welfare; being made with reasonable consideration, among other things to the most desirable use to which the land of each district may be adapted, the peculiar suitability for particular use of a district and the conservation of property values and the direction of building development in accordance with a well-considered plan. (Ord. 10-28-80.)

**1303.02 PURPOSE.**

This Zoning Ordinance is enacted for the purpose of promoting the health, safety, morals and general welfare of the City. The regulations hereinafter set forth are made in accordance with a comprehensive plan and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations are made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City. (Ord. 10-28-80.)

**1303.03 INTERPRETATION.**

In interpreting and applying this Zoning Ordinance, its provisions shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare of the residents of the City. Where this Ordinance imposes greater restrictions upon the use of a building or land or upon the height, bulk, or size of a building or structure, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or permits or by easements, covenants or agreements, the provisions of this Ordinance shall govern. Where any other ordinances, rules, regulations or permits, or any easements, covenants or agreements, impose greater restrictions upon the use of a building or land, or upon the height, bulk or size of a building or structure, or require larger open spaces than are required under the regulations of this Ordinance, such provisions shall govern. (Ord. 10-28-80.)

**ARTICLE 1305**  
**Definitions**

**1305.01 Word usage.**

**1305.02 Meaning of words.**

CROSS REFERENCES  
General definitions - see ADM. 101.02

**1305.01 WORD USAGE.**

For the purpose of this Zoning Ordinance, certain terms or words used herein shall be interpreted or defined as follows:

- (a) Words used in the present tense include future tense.
- (b) Words used in singular include the plural.
- (c) "Person" includes a corporation as well as a partnership, association or an individual.
- (d) "Shall" and "will" are always mandatory.
- (e) "Used" or "occupied", as applied to any land or buildings includes "intended", "arranged" or "designed" to be used or occupied.
- (f) "Building" includes "structure" and "premises" and "premises" includes "building" and "land" and also includes "vacant land".
- (g) "Vacant land" includes "premises".  
(Ord. 10-28-80.)

**1305.02 MEANING OF WORDS.**

As used in this Zoning Ordinance, the terms listed below are defined as follows:

- (1) "Accessory use" or "structure" means a use or structure subordinated to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building.
- (2) "Agriculture" means cultivating the ground, including harvesting of crops and the rearing and management of livestock and the necessary accessory uses for packing, treating and storing produce; the operation of any such accessory use shall be secondary to that of the normal agricultural activity.
- (3) "Alley". See "Street".
- (4) "Alterations, structural" means any change in the supporting members of a building such as bearing walls, columns, beams or girders.
- (5) "Apartment house" or "multiple dwelling" means a building arranged, intended or designed to be occupied by three or more families living independently of each other.

- (6) "Automobile service station", "gas service station", "gasoline station" or "filling station" means a building or place of business where gasoline and other products such as oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and also, where minor repair service may be rendered.
- (7) "Basement" or "cellar" means a story or a portion of a story having more than one half its height below grade. It is not to be considered as a story except when occupied for living purposes.
- (8) "Board" means the Board of Zoning Appeals of the City.
- (9) "Boardinghouse" means a dwelling or part thereof, other than a hotel, motel or restaurant where meals and/or lodging are provided for compensation, for three or more unrelated persons where no cooking or dining facilities are provided in the individual rooms.
- (10) "Building" or "premises" means any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattels. "Building" or "premises" means and applies to both vacant and improved real property.
- (11) "Building height" means the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and ridge for gable, hip and gambrel roofs.
- (12) "City" means the City of Benwood, West Virginia.
- (13) "Club" means an association of persons for social, fraternal, religious or patriotic purposes whose activities are confined to the members and their guests and are not extended to the general public.
- (14) "Court" means any open, unoccupied space bounded by three or more attached building walls.
- (15) "Dwelling" means a building designed or used exclusively as the living quarters for one or more families.
- (16) "Dwelling, multiple" means a building used or designed as a residence for three or more families living independently of each other and doing their own cooking therein, including apartment houses and apartment hotels.
- (17) "Dwelling, one-family" means a detached building designed or occupied exclusively by one family. Servants living in shall, for the purposes of the definition, be considered members of the family.
- (18) "Dwelling, two-family" means a building designed for or occupied exclusively by two families living independently of each other.
- (19) "Dwelling unit" means a dwelling or portion thereof providing complete living facilities for one family.
- (20) "Existing use" means the actual, lawful use of the premises at the time this Zoning Ordinance is adopted or at the time a permit has been issued provided work has been actually done thereon or a valid contract made for such work within the intent of the permit and before the amendment of this Ordinance insofar as it affects the use allowed under the permit or the adoption of a new zoning ordinance.

- (21) "Family" means any number of individuals living and cooking together on the premises as a single housekeeping unit.
- (22) "Frontage" means that part of a building or land which fronts on or is bounded by a public street or place.
- (23) "Garage, private" means a detached or attached accessory building used principally for the storage of private passenger vehicles.
- (24) "Garage, public" means any garage, other than a private garage available to the public and which is used for the storage of private passenger automobiles.
- (25) "Garden apartment" means an architectural and functioning grouping of dwelling units in one or more buildings which is the central feature of a development plan composed of building area, parking area, service area, landscape reservations and plantings, and other land features appropriate for its use as dwelling space and which conforms to the standards and requirements of this Zoning Ordinance.
- (26) "Grade, established" means the elevation of the centerline of the streets as officially established by the City authorities.
- (27) "Gross floor area" means the area included within surrounding walls of a building (or portion thereof) exclusive of vents shafts and courts and stairwell, but including all floors.
- (28) "Hotel" means a building designed for occupancy as the temporary residence of individuals who are lodged with or without meals and in which no provision is made for cooking in any individual room or suite.
- (29) "Industry" means the manufacturing, compounding, assembling, processing, packaging or treatment of raw materials or other products.
- (30) "Line, street" means the dividing line between the street and the lot.
- (31) "Lot" means a portion or parcel of land considered as a unit, devoted to a certain use or occupied by a building that is united by a common interest or use and the customary accessories and open spaces belonging to the same.
- (32) "Lot, corner" means a parcel of land at the junction of and fronting on two or more intersecting streets.
- (33) "Lot, depth of" means the mean horizontal distance between the front and rear lot lines.
- (34) "Lot, through" means an interior lot having frontage on two parallel or approximately parallel streets.
- (35) "Lot width" means the mean horizontal distance across the lot between the side lot lines, measured parallel to the front lot line and the rear lot line.
- (36) "Nonconforming lot" means any zone lot which does not conform to the minimum area required in the district where such lot is situated.
- (37) "Nonconforming structure" means a structure or sign which does not conform to the regulations of this Ordinance for the district in which it is located.
- (38) "Nonconforming use" means the lawful employment, occupancy or use of a building, structure or premises, at the time of adoption of this Ordinance, or any amendment thereto, which does not conform with the provisions of this Ordinance.
- (39) "Open space" means that part of a zoning lot, including courts or yards which is:
  - A. Generally open and unobstructed from its lowest level to the sky, and
  - B. Accessible to and useable by all persons occupying a dwelling or rooming unit on the zoning lot, and
  - C. Not part of the roof of that portion of a building containing dwelling or rooming unit(s).

- (40) "Parking space" means the area required for parking one automobile, which in this Ordinance is held to be an area eight feet wide and twenty feet long, exclusive of passageways for ingress and egress.
- (41) "Plat" means a map, plan or layout of the City, section or subdivision indicating the location of the boundaries of individual properties.
- (42) "Planned residential development" means a dwelling structure or apartment or a group of dwelling structures or apartments designed to be maintained and operated as a unit in single ownership or controlled by an individual, partnership, corporation or cooperative group and which has certain facilities in common such as yards and open spaces, recreation areas, garages and parking areas.
- (43) "Rooming house" or "lodging house". See "Boardinghouse".
- (44) "Sanitarium" means a health retreat for the care of invalids and/or an institution for the treatment of disease.
- (45) "Sign" means any board or contrivance upon which an advertisement, name, notice or other lettering appears. This shall not include usual board notices in or about property, not exceeding nine square feet in area, nor shall it include temporary signs advertising the sale, lease or rental of property.
- (46) "Stand" or "vendor's stand" means a place in the open where articles are displayed for the purpose of sale or promotion of sales, or of samples of merchandise to be sold, whether contained in boxes, crates or on a framework of temporary or permanent character. Such display in a store or building within ten feet of an open show window facing the street is hereby defined also as a stand or vendor's stand.
- (47) "Storage" means a degree of permanent use as distinguished from transient use.
- (48) "Store" means a structurally enclosed building in which food or merchandise is kept or stored or offered for sale, either at wholesale or retail and which building or structure complies with the provisions of this Zoning Ordinance.
- (49) "Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between any floor and the ceiling next above it.
- (50) "Story, half" means a story under a gable, hip or gambrel roof, the wallplates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.
- (51) "Street" means a public or private thoroughfare which affords the principal means of access to abutting property. Any other vehicular right of way that is not a street is an alley.
- (52) "Structure" means anything constructed, the use of which requires a permanent location on the ground or attachment to something having permanent location on the ground.
- (53) "Swimming pool" means a pool, pond, lake or open tank containing at least one and one-half feet of water at any point and maintained by the owner or manager.
- A. "Private" means exclusively used without paying an additional charge for admission by the residents and guests of a single household, a multifamily development or a community, the members and guests of a club or the patrons of a motel or hotel; an accessory use.
- B. "Community" means operated with a charge for admission; a primary use.

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- (54) "Wall, front" means the main wall of a building fronting on the street excluding a porch, front bay windows, vestibules and chimneys.
- (55) "Yard" means an open space which lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as herein permitted.  
(Ord. 10-28-80)
- (56) "This Zoning Ordinance" or "this Ordinance" means the Ordinance of October 28, 1980, as amended, which is codified as Chapters One to Five of this Part Thirteen - Planning and Zoning Code.



**ARTICLE 1307**  
**Administration and Enforcement; Penalty**

<b>1307.01 Administration and enforcement generally.</b> <b>1307.02 Duties of Zoning Administration Officer.</b> <b>1307.03 Issuance of building permits and certificates of occupancy.</b>	<b>1307.04 Plat plan to be submitted with building permit application.</b> <b>1307.05 Building permit fees.</b> <b>1307.99 Penalty.</b>
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**CROSS REFERENCES**

Enforcement - see W. Va. Code 8-24-66

Injunction - see W. Va. Code 8-24-67

Penalty - see W. Va. Code 8-24-68

**1307.01 ADMINISTRATION AND ENFORCEMENT GENERALLY.**

The provisions of this Zoning Ordinance shall be administered and enforced by a duly appointed and designated agent appointed by Council upon the recommendation of the Planning Commission to enforce and administer this Ordinance, which agent shall be known as the Zoning Administrative Officer. (Ord. 10-28-80.)

**1307.02 DUTIES OF ZONING ADMINISTRATION OFFICER.**

The Zoning Administration Officer shall perform the duties herein required of him and shall among other things:

- (a) Keep an official record of all business and activities of his office as specified by provisions of this Zoning Ordinance and all such records shall be open to public inspection at all appropriate times.
- (b) Receive applications for and issue permits and certificates of use and occupancy in accordance with this Ordinance.
- (c) Make all required inspections or he may, subject to the approval of Council, engage such expert opinion as he deems necessary to report upon unusual technical issues that may arise.
- (d) Submit, quarterly to Council, a written statement of all permits and certificates of use and occupancy issued and notices and orders issued.
- (e) If no Zoning Administration Officer is appointed, then all records relating to the issuance of permits and certificates and the collection of fees shall be kept by the City Clerk and all duties as to issuance of such certificates and permits and other duties required in enforcing the provisions of this Ordinance shall be vested in Council. (Ord. 10-28-80.)

**1307.03 ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY.**

No building or structure shall be erected, added to or structurally altered until a permit therefor has been issued by the City Clerk and after prior approval of Council. All applications for such permits shall be in accordance with the requirements of this Ordinance and unless upon written order of the Board of Zoning Appeals, no such building permit shall be issued for any building where such construction, addition or alteration or use thereof would be in violation of any of the provisions of this Ordinance.

(Ord. 10-28-80.)

**1307.04 PLAT PLAN TO BE SUBMITTED WITH BUILDING PERMIT APPLICATION.**

All requests for building permits shall be made in writing by the owner or his authorized agent and shall include a statement of the use as an intended use of the building and shall be accompanied by two copies of a layout or plat plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this Zoning Ordinance. When complete and accurate information is not readily available from existing records, Council may require an applicant to furnish a survey of the lot by a registered engineer or registered surveyor.

(Ord. 10-28-80.)

**1307.05 BUILDING PERMIT FEES.**

(EDITOR'S NOTE: See Article 1735 of the Building and Housing Code.)

**1307.99 PENALTY.**

(a) Whoever violates any provision of this Zoning Ordinance or the map of the zoning districts of the City, shall, for each violation, pay a fine or penalty of not less than ten dollars (\$10.00) nor more than three hundred dollars (\$300.00). Each and every day that such violation continues may constitute a separate offense.

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

(c) The City or any interested person may institute a suit for injunction in the Circuit Court of Marshall County, West Virginia, to restrain any person, firm or corporation or a governmental unit from violating or failing to comply with the provisions of this Ordinance.

(Ord. 10-28-80.)

**ARTICLE 1309**  
**Board of Zoning Appeals**

<b>1309.01</b>	<b>Creation; membership.</b>	<b>1309.05</b>	<b>Appeals to the Board.</b>
<b>1309.02</b>	<b>Officers; quorum; employees.</b>	<b>1309.06</b>	<b>Stay pending appeal.</b>
<b>1309.03</b>	<b>Rules and procedure; records.</b>	<b>1309.07</b>	<b>Appeal from Board's</b>
<b>1309.04</b>	<b>Powers and duties.</b>		<b>decision.</b>

**CROSS REFERENCES**

Open governmental proceedings - see W. Va. Code Art. 6-9A  
Establishment; composition - see W. Va. Code 8-24-51 et seq.  
Appeals - see W. Va. Code 8-24-56 et seq.  
Injunctions - see W. Va. Code 8-24-67

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**1309.01 CREATION; MEMBERSHIP.**

A Board of Zoning Appeals is hereby established. "Board" when used in this Zoning Ordinance shall be construed to mean the Board of Zoning Appeals. The Board shall consist of five members. All members of the Board shall be appointed by Council on recommendation by the Planning Commission. One member shall be appointed to serve until January 1 of the year following the adoption of this Zoning Ordinance, two until January 1 of the first succeeding year and two until the second succeeding year. Thereafter, members shall be appointed for a term of three years. Vacancies shall be filled by appointment for the unexpired term only. Members of the Board shall be freeholders and residents of the City. At least three-fifths of the members of the Board shall have been residents of the City for at least ten years preceding the time of their appointment. No member of the Board shall be a member of the Planning Commission of the City. No member of the Board shall hold another elective or appointive office in the government of the City, or in the government of Marshall County, West Virginia. Members of the Board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties. (Ord. 10-28-80.)

**1309.02 OFFICERS; QUORUM; EMPLOYEES.**

At the first meeting of each year, the Board shall elect a chairman, vice-chairman and secretary from its members. The vice-chairman shall have authority to act as chairman during the absence or disability of the chairman. A majority of members of the Board shall constitute a quorum. No action of the Board is official, however, unless authorized by a majority of the Board. The Board may appoint and fix the compensation of a secretary and such employees as are necessary for the discharge of its duties all in conformity to and compliance with salaries and compensation therefor fixed by the City.  
(Ord. 10-28-80)

**1309.03 RULES AND PROCEDURE; RECORDS.**

The Board shall adopt such rules concerning the filing of appeals and applications for variances and exceptions, giving notice and conduct of hearings as shall be necessary to carry out their duties under the terms of this Zoning Ordinance. The Board shall keep minutes of its proceedings, shall keep records of its examinations and other official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and shall be a public record. (Ord. 10-28-80.)

**1309.04 POWERS AND DUTIES.**

The Board of Zoning Appeals shall have the following powers:

- (a) Appeals from the Zoning Administration Officer. To hear and determine appeals from and review any order, requirement, decision or determination made by the Administration Officer only where it is alleged by the appellant that the Zoning Administration Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provisions of these Zoning Standards.
- (b) Special Exceptions. Council, in these Zoning Standards, has stated special exceptions to be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. However, it is not intention of Council to limit the granting special exceptions only in those cases where the standards and criteria have been met and fully complied with, but the Board of Zoning Appeals may, in all proper circumstances, grant such special exceptions, where the express standards and criteria have been substantially complied with and where the special exception will not substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, and in all cases the Board of Zoning Appeals shall set forth fully their findings of fact justifying their finding that the standards and criteria have been fully complied with or that full and complete compliance will not permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (c) Map Interpretation. When the street layout on the ground, or as recorded, differs from the street layout as shown on the Zoning Map, the Board shall interpret the map in such a way as to carry out the intent and purpose of this Zoning Ordinance and map for the particular district in question.
- (d) Variances. The Board shall hear requests for variances where it is alleged that the provisions of this Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board may grant a variance, provided the following findings are made where relevant in a given case:
  - (1) The variance applies only to that particular piece of property for which it is granted and only to the modification of the land development standards. A variance does not apply to the change of a permitted or accessory use within the district. A change of use requires councilmatic action in the form of an amendment. A modification of land development standards requires action by the Board in the form of a variance;

- (2) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of these Zoning Standards in the district in which the property is located;
  - (3) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Zoning Standards and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property;
  - (4) That such unnecessary hardship (physical circumstances) has not been created by the appellant;
  - (5) That the variance, if authorized, will not alter the essential character or permitted uses of the district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
  - (6) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
  - (7) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of these Zoning Standards.
- (e) Variance and Special Exceptions; Conditions. Any variance or special exception granted by the Board of Zoning Appeals shall be null and void and of no effect should the applicant fail to take action under the terms of the variance or special exception within a period of six months from and after the date of the granting of such variance or special exception or should the applicant fail to substantially complete the work contemplated in the variance or special exception or fail to occupy premises which are the subject of the variance or special exception within two years from the date of the granting of such variance or special exception. (Ord. 10-28-80.)

### **1309.05 APPEALS TO THE BOARD.**

An appeal taken from any requirement, decision or determination made by the Zoning Administration Officer charged with the enforcement of this Zoning Ordinance shall be filed with the Board of Zoning Appeals within such time as may be prescribed by the Board by general rule, and such appeal shall specifically set forth the grounds for appeal.

- (a) The Zoning Administration Officer from whom the appeal is taken shall, upon the request of the Board of Zoning Appeals, transmit to it all documents, plans and papers concerning the action from which the appeal was taken.
- (b) The Board of Zoning Appeals shall fix a reasonable time for the hearing of the appeal, which in any case shall not be more than forty-five days from the date of the filing of the appeal.
- (c) Public notice of the hearing shall be given by publication in a newspaper of general circulation in Marshall County, West Virginia, at least ten days prior to the time of the hearing.

- (d) Due notice of the hearing shall also be given to all interested parties by certified mail at their last known address at least ten days prior to the time of the hearing. All persons owning property within 100 feet of the property affected by the appeal shall be deemed interested parties. (Ord. 10-28-80.)
- (e) The party making the appeal shall be responsible for all costs incurred by the City related to said appeal. Said costs shall be paid by the appealing party upon submission of an itemization of said costs by the City. The appeal shall not be heard until such time as the costs are paid in full.  
(Ord. 8-13-02.)
- (f) Upon the hearing, any party may appeal in person, by agent or attorney.  
(Ord. 10-28-80.)

#### **1309.06 STAY PENDING APPEAL.**

An appeal stays all proceedings and work on the premises concerning which the decision was made, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal was filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application and on notice to the officer from whom the appeal is taken and due cause shown.  
(Ord. 10-28-80.)

#### **1309.07 APPEAL FROM BOARD'S DECISION.**

Any person, firm or corporation jointly or severally aggrieved by any decision of the Board of Zoning Appeals may present to the Circuit Court of Marshall County a petition duly verified, setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. The petition shall be filed in the Circuit Court of Marshall County within thirty days after the date of the decision and entry of the order by the Board of Zoning Appeals.  
(Ord. 10-28-80.)

**CHAPTER THREE - Zoning Districts and Regulations**

- Art. 1331. Districts Established; Zoning Map.
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**ARTICLE 1331  
Districts Established; Zoning Map**

- 1331.01 Establishment of districts.**
- 1331.02 Map.**
- 1331.03 Boundaries.**

**CROSS REFERENCES**

Zoning districts generally - see W. Va. Code 8-24-40

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**1331.01 ESTABLISHMENT OF DISTRICTS.**

In order to classify, regulate and restrict the location of trades, residences and buildings designed for specified uses, to regulate and limit the height and bulk of buildings hereafter erected or structurally altered, to regulate and limit the intensity of the use of the lot areas, and to regulate and determine the areas of yards and other open spaces surrounding such buildings, the City is hereby divided into districts, of which there shall be five in number, known as:

- S-C Special Conservation District
  - R Residential District
  - R-C Residential Commercial District
  - C-H Highway and Integrated Commercial District
  - I Industrial District
- (Ord. 10-28-80.)

**1331.02 MAP.**

The boundaries of these zoning districts are established as shown on the map entitled "Zoning Districts," on file in the office of the Zoning Administration Officer which, together with all explanatory matter thereon, is hereby made a part of these Zoning Standards.  
(Ord. 10-28-80)

**1331.03 BOUNDARIES.**

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

- (a) Boundaries indicated as approximately following the centerline of roads, streets, highways or alleys shall be construed to follow such centerlines;
- (b) Boundaries indicated as approximately following highway, street and alley right-of-way lines shall be construed to follow such right-of-way lines;
- (c) Boundaries indicated as approximately following property lines shall be construed as following such lines;
- (d) Boundaries indicated as approximately following a railroad line shall be deemed to be located midway between the main tracks of such railroad line;
- (e) Boundaries indicated as approximately following a stream, creek, river, lake or other body of water shall be construed to follow such district boundary and be at the jurisdiction of the City unless otherwise indicated;
- (f) All areas within the corporate limits of the City which are under water and are not shown as included within any district shall be subject to all of the regulations of the district which immediately adjoins the water area. If the water area adjoins two or more districts, the boundaries of each district shall be construed to extend into the water area in a straight line until they meet the other district;
- (g) In every case where property has not been specifically included within a district or where territory has become a part of the City by annexation, the same shall automatically be classed as lying and being in the R Residential District until such classification is changed by an amendment to these Zoning Standards;
- (h) Wherever any street, alley or other public way is vacated in the manner authorized by law, the zoning district adjoining each side of such street, alley or public way shall be automatically extended to the center of such location and all area included in the location shall then and henceforth be subject to all of the extended districts;
- (i) Where the district boundaries are not otherwise indicated and where the property has been or may hereinafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines;
- (j) Where physical or cultural features existing on the ground are at variance with those shown on the Zoning Districts Map, or in other circumstances not covered by subsection (a) to (i) hereof, the Board of Zoning Appeals shall interpret the district boundaries. (Ord. 10-28-80.)



**ARTICLE 1333**  
**Application of Regulations**

<b>1333.01</b>	<b>Use of property.</b>	<b>1333.04</b>	<b>Sign and parking restrictions.</b>
<b>1333.02</b>	<b>Building restrictions.</b>	<b>1333.05</b>	<b>One principal building.</b>
<b>1333.03</b>	<b>Yard restrictions.</b>		

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**1333.01 USE OF PROPERTY.**

No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, converted, moved, enlarged, reconstructed or structurally altered unless in conformance with the regulations herein specified for the district in which it is located. (Ord. 10-28-80.)

**1333.02 BUILDING RESTRICTIONS.**

No building shall hereafter be converted, moved, enlarged, reconstructed or structurally altered to exceed the height; to accommodate a greater percentage of lot area; or to have narrower or smaller rear yards or side yards than are specified herein for the district in which such building is located. (Ord. 10-28-80.)

**1333.03 YARD RESTRICTIONS.**

No part of a yard or other open space required about any building for the purpose of complying with the provisions of these Zoning Standards shall be included as a part of a yard or other open space similarly required for another building. (Ord. 10-28-80.)

**1333.04 SIGN AND PARKING RESTRICTIONS.**

All uses shall comply with the sign and parking provisions of Articles 1335 to 1343, except where otherwise noted. (Ord. 10-28-80.)

**1333.05 ONE PRINCIPAL BUILDING.**

Every building hereafter erected or structurally altered shall be located on a lot as herein provided. (Ord. 10-28-80.)

**ARTICLE 1335  
S-C Special Conservation District**

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|--|--|
| <b>1335.01 Permitted principal uses;<br/>special exceptions.</b> | <b>1335.03 Lot, area and parking<br/>requirements.</b> |
| <b>1335.02 Accessory uses.</b>                                   |  |

CROSS REFERENCES  
District established - see P. & Z. 1331.01

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**1335.01 PERMITTED PRINCIPAL USES; SPECIAL EXCEPTIONS.**

(a) Permitted Principal Uses.

- (1) Parks, playgrounds, hiking trails and similar recreational facilities making extensive use of the natural environment, but not containing permanent or enclosed buildings.
- (2) Flood control, water protection works and similar uses for the purpose of preserving natural resources.
- (3) Tree farms and botanical nurseries.

(b) Permitted Special Exceptions. The following uses require approval by the Board of Zoning Appeals following a public hearing held by the Board and that the Board has been assured that care will be practiced to conserve the quality and quantity of trees, soil, water and other natural resources in the District and that sufficient measures are taken to protect life and property:

- (1) Recreational areas making extensive use of the natural environment having permanent and other enclosed recreational structures, but not including temporary residence quarters such as cabins.
- (2) Fishing and hunting preserves and hatcheries.
- (3) Essential services.  
(Ord. 10-28-80.)

**1335.02 ACCESSORY USES.**

Signs for identification purposes only, provided they are no larger than four square feet in size. (Ord. 10-28-80.)

**1335.03 LOT, AREA AND PARKING REQUIREMENTS.**

None specified.  
(Ord. 10-28-80.)

**ARTICLE 1337  
R Residential District**

<b>1337.01</b>	<b>Permitted principal uses; special exceptions.</b>	<b>1337.03</b>	<b>Lot and area requirements.</b>
<b>1337.02</b>	<b>Accessory uses.</b>	<b>1337.04</b>	<b>Off-street parking.</b>

**CROSS REFERENCES**

Additional dwellings - see P. & Z. 1353.02

Visibility at intersections - see P. & Z. 1353.03

Accessory buildings - see P. & Z. 1353.05

**1337.01 PERMITTED PRINCIPAL USES; SPECIAL EXCEPTIONS.**

In this District, no building or premise shall be used, no building erected or altered, which is arranged, intended or designed to be used for other than any of the following:

(a) Permitted Principal Uses.

- (1) All uses permitted in the Special-Conservation District.
- (2) Single-family or two-family detached dwellings.
- (3) Educational, medical and religious uses, provided the building is designed and constructed for these purposes; forty percent (40%) of the ground floor area for business.
- (4) Fire and police stations.
- (5) Apartment houses or multiple dwellings, no more than four dwelling units per structure.
- (6) Home gardening without the sale of products (noncommercial).

(b) Permitted Special Exceptions. Where the Board of Zoning Appeals has held a public hearing and has been assured that the following conditions have been met within the spirit of these Zoning Standards and that no hazardous conditions will result:

- (1) Home occupations and professional offices as a subsidiary and subordinate use to residential units are permitted as special exceptions under the following conditions:
  - A. Official residence shall be maintained on the premises by the occupant who may be an owner, renter or a lessee engaged in such occupation.
  - B. This subordinate use shall be located in a principal dwelling.
  - C. This subordinate use shall not occupy more than sixty percent (60%) of the ground floor area of the principal dwelling.
  - D. Nonresidents shall not be permitted to work in R-1 Districts.
  - E. Animal hospitals, clinics or boarding shelters shall not be permitted in R-1 Districts.

- F. There shall be a minimum five off-street spaces located behind the building line in addition to those required under the provisions of these Zoning Standards.
- (2) Cluster development as set forth in Section 1353.04.
  - (3) Planned residential development as set forth in Article 1357.
  - (4) Service installations essential to the adequate distribution of service, provided it shall not be a business facility, repair facility, storage of material outside a structure; storage of a vehicle or housing or quarters for an installation. It shall be subject to approval by the Planning Commission with respect to use, design, yard area, setback and height.
  - (5) Medical and health care facilities.  
(Ord. 10-28-80.)

### **1337.02 ACCESSORY USES.**

The following accessory uses are allowed:

- (a) Accessory uses permitted in the S-C Special Conservation District.
- (b) Private garages or parking areas.
- (c) Other accessory uses customarily incidental to a permitted principal use.
- (d) Signs as hereafter permitted:
  - (1) Temporary signs advertising the sale, rental or development of property; temporary signs indicating the location and direction of premises and not exceeding four square feet in area; temporary signs erected by churches, schools, civic organizations or other similar institutions, provided the area of the sign does not exceed twelve square feet. All temporary signs shall not be erected or displayed more than ninety consecutive days.
  - (2) Permanently illuminated signs designating the name of the occupant and street name and house number may be erected if the letters and numbers are not in excess of three inches.
  - (3) Permanent announcement signs designating professional offices or home occupations such as those of a surgeon, attorney, engineer, architect, beautician or similarly employed persons provided such signs do not exceed nine square feet in area.
  - (4) Permanent signs erected by churches, schools and other institutions provided that the area of the sign does not exceed nine square feet; the light sources shall be within the sign back or sides but entirely within the cover glass.  
Permanent signs shall be located a minimum distance of ten feet from the street or road right of way, if no sidewalk exists and four feet from the inside edge of the sidewalk, if such a sidewalk exists.  
(Ord. 10-28-80.)

### **1337.03 LOT AND AREA REQUIREMENTS.**

- (a) Maximum Floor Area Requirements.
  - (1) Single-family dwelling unit: 3,000 square feet.
  - (2) Two-family dwelling unit: 2,500 square feet/unit.
  - (3) Multi-family dwelling unit: 2,500 square feet/unit.
  - (4) Other principal use: 6,000 square feet.
  - (5) Parks, playgrounds: None.

- (b) Maximum Lot Area Requirements.
  - (1) Single-family: 8,500 square feet.
  - (2) Two-family: 6,250 square feet.
  - (3) Multi-family: 6,250 square feet.
  - (4) Other: 8,000 square feet.
  - (5) Parks: None.
  
- (c) Minimum Lot Width Requirements.
  - (1) Single-family dwelling unit: 50 feet.
  - (2) Parks, playgrounds: None.
  - (3) Other: 50 feet.
  
- (d) Minimum Front Yard Requirements.
  - (1) Single-family: 20 feet.
  - (2) Two-family: 20 feet.
  - (3) Multi-family: 30 feet.
  - (4) Parks, playgrounds: None.
  - (5) Other: 25 feet.
  
- (e) Minimum Side Yard Requirements.
  - (1) Single-family: 10 feet both sides, 5 feet one side.
  - (2) Two-family: 10 feet both sides, 5 feet one side.
  - (3) Multi-family: 20 feet both sides, 8 feet one side minimum.
  - (4) Parks, playgrounds: None.
  - (5) Other: 20 feet both sides, 8 feet one side.
  
- (f) Minimum Rear Yard Requirements.
  - (1) Single-family: 25 feet.
  - (2) Two-family: 25 feet.
  - (3) Multi-family: 25 feet.
  - (4) Parks, playgrounds: None.
  - (5) Other: 30 feet.
  
- (g) Maximum Building Height Requirements.
  - (1) Permitted principal use: No building shall exceed 30 feet in height.
  - (2) Accessory uses: 20 feet.
  
- (h) Maximum Lot Area Coverage.
  - (1) Single-family dwelling unit: Thirty-five percent (35%).
  - (2) Two-family dwelling unit: Forty percent (40%).
  - (3) Other: Forty percent (40%).
  
- (i) Accessory structures shall comply with all yard requirements except rear yard requirements shall be 5 feet.  
(Ord. 10-28-80.)

**1337.04 OFF-STREET PARKING.**

An off-street parking space shall be an area of 200 square feet used exclusively for a parking stall plus 150 square feet used exclusively for turning and access to the parking stall.

- (a) Residential Uses. Two off-street parking spaces per family dwelling unit, minimum.
- (b) Outdoor Recreational Uses. One off-street space per 3,000 square feet.
- (c) Public Assembly Uses. One off-street parking space for each four seats.
- (d) Education Uses. One off-street parking space per teacher, employee or administrator plus one per six seats in the assembly hall; one per ten students.
- (e) Fire, Police and Other Residential Services. One off-street parking space per 500 square feet of gross floor area.
- (f) Other Off-street Parking Requirements. See Sections 1355.01 and 1355.02. (Ord. 10-28-80.)

**ARTICLE 1339**  
**R-C Residential Commercial District**

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|--|---|
| <b>1339.01 Permitted principal uses; special exceptions.</b> | <b>1339.03 Lot and area requirements.</b> |
| <b>1339.02 Permitted accessory uses.</b>                     | <b>1339.04 Off-street parking.</b>        |

**CROSS REFERENCES**

Planned residential development - see P. & Z. Art. 1357

Special provisions for commercial districts - see P. & Z. Art. 1363

**1339.01 PERMITTED PRINCIPAL USES; SPECIAL EXCEPTIONS.**

(a) Permitted Principal Uses.

- (1) Police and fire stations.
- (2) All uses permitted in the R Residential District.
- (3) Retail sales for local or neighborhood needs to the following limited extent and when such business is conducted entirely within a building:
  - A. The sale of baked goods and pastries, candy and confections, dairy and ice cream, groceries and meats, fruits and vegetables.
  - B. The sale of books, magazines, newspapers, tobacco, drugs, gifts, stationery and soft drinks.
  - C. Service establishments including barber and beauty shops, laundry agencies, self-service laundries, shoe repair, dry cleaning, pressing or tailoring shops and florist retail outlets in which only nonexplosive and nonflammable solvents and materials are used and where no work is done on the premises for retail outlets elsewhere.
  - D. Sale of clothing, sporting goods, hardware and appliances.

(b) Permitted Special Exceptions. Mixed uses for business and residential uses are permitted as a special exception where the Board of Zoning Appeals finds after a public hearing that such cases will not create a health problem, a hazardous condition or may be detrimental to the quality and the unity of the neighborhood.

- (1) Dwelling units contain 500 square feet of habitable living space minimum.
- (2) Each dwelling unit contains one bathroom and three habitable rooms, at least one of which shall be a bedroom.
- (3) Each dwelling unit is provided with its own separate and private sanitary facilities, cooking and dining accommodations.
- (4) Each dwelling unit is provided a private entrance separate from the business use.
- (5) Each dwelling unit meets fire, health and safety provisions of the City's Fire Prevention and Housing Codes.
- (6) Off-street parking is provided per dwelling unit. (See Sections 1355.01 and 1355.02).

- (7) Residential use is limited to two dwelling units per structure.
- (8) Planned residential development meets the requirements as set forth in Chapter 1357.  
(Ord. 10-28-80.)

**1339.02 PERMITTED ACCESSORY USES.**

- (a) Accessory uses as permitted in the R Residential District.
- (b) Only those uses necessarily, and customarily incidental to the R-C Residential Commercial District.
- (c) Parking lots and parking garages.
- (d) Signs as hereafter set forth:
  - (1) Three wall signs per lot having a cumulative total of 100 square feet used for the following purposes:
    - A. Signs advertising the sale, rental or development of property.
    - B. Signs indicating the location of premises of property.
    - C. Signs advertising business-conducted services, materials or equipment for sale on the premises.
  - (2) All signs on or in front of buildings shall be immobile, non-flashing and in no way resemble traffic signals or other warning devices.
  - (3) No sign shall exceed the height of the associated building or twenty-five feet, whichever is greater.
  - (4) No sign shall be located within a public right of way.
  - (5) No sign shall extend over or onto a public sidewalk.  
(Ord. 10-28-80.)

**1339.03 LOT AND AREA REQUIREMENTS.**

- (a) Minimum Lot Area Requirements: All permitted principal and special exception uses: 2,500 square feet.
- (b) Minimum Lot Width Requirements: All permitted principal and special exception uses: Fifty feet.
- (c) Minimum Front Yard Requirements:
  - (1) All permitted principal and special exception uses: Twenty-five feet:
  - (2) No accessory uses except surface parking permitted within front yard.
  - (3) Anywhere in this Zoning Ordinance wherein a minimum front yard is required for newly constructed buildings and there is an established building line on the same side of the City street on which such lot is located which is less than the required front yard requirement, the minimum front yard can be the existing building line.



- (d) Minimum Side Yard Requirements:
- (1) All permitted principal and special exception uses:
    - A. Adjoining other commercial and/or industry uses: None.
    - B. Adjoining residential uses; whichever is more: Ten feet or one-half of the height of the building.
    - C. Building or uses located on corner lots: Side yard, twenty percent (20%) of the lot width.
  - (2) Accessory uses to rear of principal use.
- (e) Minimum Rear Yard Requirements.
- (1) All permitted principal and special exception uses:
    - A. Adjoining residential districts: Thirty feet.
    - B. Adjoining commercial and/or industry districts: Twenty-five feet.
  - (2) Accessory uses: Four feet.
- (f) Maximum Building Height Requirements:
- (1) All permitted principal and special exception uses: Thirty-five feet maximum.
  - (2) Accessory uses: Twenty feet maximum.
- (g) Maximum Lot Coverage Requirements:
- (1) All permitted principal and special exception uses: Forty-five percent (45%).
  - (2) Accessory uses may cover an additional thirty-five percent (35%) of the rear yard only.  
(Ord. 10-28-80.)

**1339.04 OFF-STREET PARKING.**

An off-street parking space shall be an area of 200 square feet used exclusively for parking stall.

Retail shops shall provide one space per every 200 square feet plus one per every two persons employed.

For additional off-street parking requirements, see Section 1355.02.  
(Ord. 10-28-80.)

**ARTICLE 1341**  
**C-H Highway and Integrated Commercial District**

- |  |   |
|--|---|
| <b>1341.01 Permitted principal uses; special exceptions.</b> | <b>1341.03 Lot and area requirements.</b> |
| <b>1341.02 Permitted accessory uses.</b>                     | <b>1341.04 Off-street parking.</b>        |

**CROSS REFERENCES**

District established - see P. & Z. 1331.01

Special uses for commercial districts - see P. & Z. Art. 1363

**1341.01 PERMITTED PRINCIPAL USES; SPECIAL EXCEPTIONS.**

- (a) Permitted Principal Uses.
- (1) All uses permitted in the Residential-Commercial District.
  - (2) Retail sales except those permitted by special exception.
  - (3) Motels, hotels, motor inns and tourists homes.
  - (4) Recreation uses not otherwise prohibited by these Zoning Standards.
  - (5) Eating places.
- (b) Permitted Special Exceptions.
- (1) Outdoor commercial uses, including automobile sales and outdoor recreation where the Board of Zoning Appeals finds, after public hearing, that such uses will not create hazardous conditions and will otherwise meet the following requirements:
    - A. Such uses shall neither be less than 100 feet from an R Residential District as established in these Zoning Standards, a church or school nor designed to relate thereto, as would interfere with peaceful enjoyment of such properties by reason of lights, noise or other physical factors.
  - (2) Automobile-oriented drive-in uses relating to the auto and retail services, food, amusement centers; automobile service and gasoline stations are permitted as special exceptions where the Board of Zoning Appeals finds, after public hearing, that such uses will not create hazardous conditions and will otherwise meet the following requirements:
    - A. No street entrance or exit for vehicles and no portion or equipment of such service station or other drive-in uses shall be located:
      1. Within 200 feet of a street entrance or exit of any school, park or playground conducted for and attended by children.

2. Within 100 feet of any hospital, church or library.
  3. Within seventy-five feet of a lot in an R Residential District as established in these Zoning Standards.
- B. No equipment or structure above the surface of the ground for the service of motor vehicles shall be closer than thirty feet to any property line.
  - C. The width of any entrance driveway leading from the public street to such service station or other drive-in use shall not exceed thirty feet at its intersection with the curb line or edge of the pavement.
  - D. No two driveways leading from a public street to such service station or other drive-in shall be within fifteen feet of each other at their intersection with the curb line or street line.
  - E. Parking and vehicle access shall be arranged so that there will be no need for the motorists to back over sidewalks or into streets.  
(Ord. 10-28-80.)

### **1341.02 PERMITTED ACCESSORY USES.**

(a) Accessory uses on the same lot with and customarily incidental to the principal uses permitted in the R-C District.

(b) Parking lots, parking garages and parking facilities for accommodating the integrated business centers or regional shopping centers.

(c) Signs as hereafter provided are permitted provided they are not in conflict with any City ordinance.

- (1) Signs used for the following purposes only: Signs directing and guiding traffic and parking on private property provided they bear no advertising matter.
- (2) Advertising signs indicating the location of the premise; indicating the sale, rental or development of property and signs indicating the business conducted, services, materials and equipment for sale on the premises.
- (3) Lot, area, height or other requirements:
  - A. Three advertising signs per individual lot or in the case of integrated shopping centers, three advertising signs per individual commercial use including pole signs, wall signs, projecting signs and signs on marquees or canopies.
  - B. The total cumulative area of the three advertising signs shall not exceed 150 square feet.
  - C. All advertising signs on and in front of the building or buildings shall be immobile, non-flashing and in no way resemble traffic signals or other warning devices. They may be lighted indirectly or from within.
  - D. Projecting signs and signs on marquees or canopies:
    1. Shall not exceed thirty square feet in area.
    2. Shall be attached to the main wall of the building or to a support within the building line.

(Ord. 10-28-80.)

**1341.03 LOT AND AREA REQUIREMENTS.**

- (a) Minimum Lot Requirements.
  - (1) Individual uses: 3,000 square feet.
  
- (b) Minimum Lot Width Requirements.
  - (1) Individual uses: Fifty square feet.
  
- (c) Minimum Front Yard Requirements.
  - (1) All permitted uses: Fifteen feet.
  - (2) Accessory uses (except off-street parking): Fifteen feet.
  
- (d) Minimum Side Yard Requirements.
  - (1) All permitted uses - special exceptions:
    - A. Adjoining other commercial or industrial districts: None.
    - B. Adjoining residential uses and/or districts: Ten feet or one-half of the height of the structure, whichever is greater.
    - C. Building or use located on a corner lot: Twenty percent (20%) of lot width.
  
- (e) Minimum Rear Yard Requirements.
  - (1) All permitted uses:
    - A. Adjoining residential district: Thirty feet.
    - B. Adjoining commercial uses or commercial and industrial uses: Twenty-five feet.
  - (2) Accessory uses: Four feet.
  
- (f) Maximum Building Height Requirements.
  - (1) All permitted uses - special exceptions: Sixty feet.
  - (2) Accessory uses: Twenty feet.
  
- (g) Maximum Lot Coverage Requirements: None.  
(Ord. 10-28-80.)

**1341.04 OFF-STREET PARKING.**

See Sections 1355.01 and 1355.02.

(Ord. 10-28-80.)

**ARTICLE 1343**  
**I Industrial District**

<b>1343.01</b>	<b>Permitted principal uses.</b>	<b>1343.04</b>	<b>Lot and area requirements.</b>
<b>1343.02</b>	<b>Permitted special exceptions.</b>	<b>1343.05</b>	<b>Off-street parking and loading requirements.</b>
<b>1343.03</b>	<b>Permitted accessory uses.</b>		

**CROSS REFERENCES**

Special provisions for industrial uses - see P. & Z. Art. 1363

**1343.01 PERMITTED PRINCIPAL USES.**

(a) Only those industrial, manufacturing, compounding, processing, packaging or treatment uses and processes from the following listing are permitted when and if they do not represent a health or safety hazard to the community through air, water and noise pollution including the production or emission of dust, smoke, refuse matter, toxic or noxious odors, explosives, gas, and fumes, excessive noise or vibration, similar substances and conditions based on determination by the Zoning Official after review of the intended use with both the Planning Commission and Board of Zoning Appeals:

- (1) Wholesale, warehousing and storages.
- (2) Highway freight, transportation and warehousing.
- (3) Transportation terminals.
- (4) Parking lots and parking garages.
- (5) Distributing plants, beverage bottling and/or distribution.
- (6) The manufacturing, compounding, processing, packaging, treatment and distribution of such products as bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food and kindred products.
- (7) Laboratories devoted to research, design, experimentation, processing and fabrication incidental thereto.
- (8) Utility operations (electric and gas company operators, sewer and water authorities).
- (9) Radio and television facilities and operations, telephone exchange and transformer stations.
- (10) Carpenter, electrical, plumbing, welding, heating or sheet metal shop, furniture upholstering shop, laundry and clothes cleaning or dyeing establishments, printing shop or publishing plant.
- (11) Building material supplies, including stone crushing or concrete mixing.
- (12) The manufacture, compounding, assembling or treatment of articles of merchandise from the following previously prepared materials: bone, canvas, cellophane, cloth, cork, feathers, felt fiber, fur, glass, hair, horn, leather, paper plastics, metals, stone, shell, textiles, tobacco, wax, wood, yarn, tars and paint.

- (13) The manufacture of ceramic products using only previously pulverized clay and kilns fired only by electricity or gas and the manufacturing of glass products.
- (14) The manufacture of musical instruments, toys, novelties, rubber or metal stamps and other small molded rubber products.
- (15) The manufacture or assembly of electrical equipment and appliances, electronic instruments and devices.
- (16) Police and fire stations.
- (17) Essential services.  
(Ord. 10-28-80.)

### **1343.02 PERMITTED SPECIAL EXCEPTIONS.**

Where the Board of Zoning Appeals has held a public hearing; has been assured that the industrial use does not represent a health or safety hazard to the community through air, water and noise pollution including the production and emission of dust, smoke, refuse matter, toxic or noxious odors, explosives, gas and fumes, excessive noise or vibrations; where the location of such use is approved after review and report by the Planning Commission, and it is shown that such use or its location is not in conflict with any ordinances of the City, a special exception shall be granted. (Ord. 10-28-80.)

### **1343.03 PERMITTED ACCESSORY USES.**

(a) Those accessory uses which are necessary and customary to the above uses when located in the same building or upon the same lot.

(b) Parking lots and garages.

(c) Signs as hereafter permitted provided they do not conflict with any City ordinances, as follows:

- (1) Signs used for the following purposes only:
  - A. Signs directing and guiding traffic and parking on private property provided they bear no advertising matter.
  - B. Advertising signs indicating the location of the premises; indicating the sale, rental or development of property; and signs indicating the business-conducted services, materials and equipment for sale on the premises.
- (2) Lot, area, height and other requirements:
  - A. Three advertising signs per individual lot or in the case of an industrial park, three advertising signs per individual industrial use including pole signs, wall signs, projecting signs and signs on marquees or canopies.
  - B. The total cumulative area of the three advertising signs shall not exceed 150 square feet.
  - C. All advertising signs on and in front of the building or buildings shall be immobile non-flashing and in no way resemble traffic signal or other warning devices. They may be lighted indirectly or from within.
  - D. Projecting signs and signs on marquees or canopies:
    1. Shall not exceed forty square feet in area.

2. Shall be attached to the main wall of the building or to a support within the building line.
  3. Shall not extend over any building line more than four feet and none shall extend past the centerline of a public sidewalk.
  4. Shall be erected at a height of not less than ten feet above the ground level nor shall a sign exceed twenty-eight feet above the average grade of the lot.
- E. One pole sign for each individual use is permitted provided:
1. It shall not exceed forty square feet in surface area.
  2. It shall be at least fifteen feet from any street right-of-way line and located so as to allow clear and ample sight lines for driveways leading into a street and at intersecting streets and alleys.
  3. Shall not exceed twenty-eight feet in height above the average grade of the lot.
- F. Identification signs for an industrial park:
1. Shall not exceed 150 square feet in area.
  2. Shall be at least fifteen feet from any street right-of-way line and shall be located so as to allow clear and ample sight lines for driveways leading into a street and at intersecting streets and alleys.
  3. Shall not exceed thirty feet in height above the average grade of the site.
- G. Wall signs:
1. Shall be attached to the wall of a building and shall project horizontally not more than twelve inches therefrom.
  2. On a one-story building, a sign shall not extend more than three feet above the roofline.
  3. On buildings of more than one story, a sign shall not extend beyond the roofline or twenty-eight feet, whichever is greater.
  4. A wall sign shall not be more than twelve feet in height.  
(Ord. 10-28-80.)

#### **1343.04 LOT AND AREA REQUIREMENTS.**

(a) Minimum lot area requirements for all permitted principal and special exception uses shall be as follows:

- (1) Industrial parks: 30,000 square feet.
- (2) Individual uses: 20,000 square feet.

(b) Minimum lot width requirements for all permitted principal and special exception uses: 100 feet.

(c) Minimum front yard requirements for all permitted principal and special exception uses:

- (1) Adjoining a Residential District: Fifty feet.
- (2) Otherwise, the front yard shall be twenty-five feet.

- (d) Minimum side yard requirements:
  - (1) All permitted principal and special exception uses:
    - A. One-half the height of the structure, but in no case less than twenty feet on either side.
    - B. However, when adjoining a Residential District, the requirement shall be forty feet on either side.
    - C. Where buildings or uses are located on a corner lot, the street side yard shall be twenty percent (20%) of the lot width.
  - (2) Accessory uses: Street side corner lot twenty feet, otherwise no requirement.
- (e) Minimum rear yard requirements:
  - (1) All permitted principal and special exception uses: Twenty-five feet.
  - (2) However, when adjoining a Residential District, the requirement shall be forty feet.
  - (3) Accessory uses: Four feet.
- (f) Maximum building height requirements:
  - (1) An permitted principal and special exception uses: No building or use shall exceed seventy-five feet in height.
  - (2) Accessory uses: No building or use shall exceed thirty-five feet in height.
- (g) Maximum lot coverage requirements: No requirement except as necessary for off-street parking and loading as provided herein.  
(Ord. 10-28-80.)

**1343.05 OFF-STREET PARKING AND LOADING REQUIREMENTS.**

See Sections 1355.01 to 1355.03.

(Ord. 10-28-80)



### **CHAPTER FIVE - Additional Zoning Requirements**

- Art. 1353. General Supplemental Standards.
- Art. 1355. Off-Street Parking and Loading.
- Art. 1357. Planned Residential Development.
- Art. 1359. Swimming Pools.
- Art. 1363. Special Provisions For Commercial and Industrial Uses.
- Art. 1367. Mobile Homes.
- Art. 1371. Nonconforming Uses.

### **ARTICLE 1353 General Supplemental Standards**

- |                |  |                |                           |
|----------------|--|----------------|---------------------------|
| <b>1353.01</b> | <b>Intent.</b>                             | <b>1353.06</b> | <b>Fences or hedges.</b>  |
| <b>1353.02</b> | <b>Additional dwellings.</b>               | <b>1353.07</b> | <b>Height exceptions.</b> |
| <b>1353.03</b> | <b>Visibility at intersections.</b>        | <b>1353.08</b> | <b>Yard exceptions.</b>   |
| <b>1353.04</b> | <b>Cluster development.</b>                | <b>1353.09</b> | <b>Building lines.</b>    |
| <b>1353.05</b> | <b>Accessory buildings and structures.</b> |                |                           |

#### **CROSS REFERENCES**

- Accessory structure defined - see P. & Z. 1305.02
- One principal building - see P. & Z. 1333.05

#### **1353.01 INTENT.**

The provisions of these Zoning Standards shall be subject to such exceptions, additions or modifications as herein provided by the following supplementary regulations.  
(Ord. 10-28-80.)

#### **1353.02 ADDITIONAL DWELLINGS.**

(a) **Residential Uses.** Individual lots or subdivided parcels ten acres or less in size shall have no building or buildings in addition to the principal building on the same lot used for living purposes except that buildings within planned residential developments and cluster developments approved by the Board of Zoning Appeals shall conform to those regulations stated within Sections 1357.01 and 1353.04, respectively. Notwithstanding limitations imposed by any other provisions of these Zoning Standards, a permit shall be issued for the erection of a dwelling for one or two families on any lot, separately owned or under contract of sale and containing, at the time of the

passage of the Zoning Standards, an area or a width smaller than that required for a one or two-family dwelling except that there shall be compliance with the front yard setback requirements. Where a residence district is bounded by a portion of a Commercial or Industrial District (referred to hereafter as business district), the side street extending through such residence district into such business district shall not be used for any business purpose except as herein set forth. The business structure erected in such business district shall face and open upon the street set aside for business purposes, except that show windows in such business structure may be built and exposed upon the side street within the area set aside as a part of such business district and an entrance may be made at the corner of such business and residential street, and all other entrances thereto shall face on the business street, except that entrances may be made from such residential street to the upper stories of such business structure.

(b) Nonresidential Uses. Where a lot or tract is used for a nonresidential purpose, more than one principal building may be located upon the lot or tract, but only when such buildings conform to all open space and yard requirements around the lot for the district in which the lot or tract is located.  
(Ord. 10-28-80.)

#### **1353.03 VISIBILITY AT INTERSECTIONS.**

On a corner lot in any district, nothing shall be erected, placed, planted or allowed to grow within fifty feet, from the point of intersection of the right-of-way lines of the intersecting streets, that will impede the vision between a height of two and one-half and ten feet above the centerline grades of the intersecting streets.  
(Ord. 10-28-80.)

#### **1353.04 CLUSTER DEVELOPMENT.**

Upon approval of the Board of Zoning Appeals and the Planning Commission, minimum lot area requirements for single-family dwellings in the Residential District may be reduced by fifteen percent (15%) provided that fifteen percent (15%) of the net land area (of which would be less twenty percent (20%) of the total area for streets) be dedicated for open space.  
(Ord. 10-28-80.)

#### **1353.05 ACCESSORY BUILDINGS AND STRUCTURES.**

No accessory building in the Residential District shall be erected in any open space except a rear yard, except accessory buildings on a corner lot may be erected in the yard space adjacent to the street affording secondary access to such lot, provided such building complies with the building lines established for such street.

Open fire escapes may extend into any required yard not more than four feet, six inches or as required by the State Fire Code.

Architectural projections such as covered porches, eaves, sills, bay windows, cornices, canopies, balconies, platforms, carports, covered patios and similar structural appurtenances are considered part of the building to which attached may not project beyond the building line restrictions of this Zoning Ordinance, the original Plat of Benwood or any addition thereto, nor shall they project beyond the side yard restrictions or rear yard restrictions set forth in this Ordinance, nor may they extend closer than the minimum distance set forth in this Ordinance between buildings. Mechanical appurtenances such as air conditioning units, ventilators, etc., are considered part of the building to which attached and may not project into the minimum front, side or rear yard.

(Ord. 10-28-80.)

**1353.06 FENCES OR HEDGES.**

No barbed wire shall be strung unless otherwise authorized by the Board of Zoning Appeals.

Subject to the following conditions, fences may be erected along the boundaries of a lot:

- (a) Fences, hedges or other plantings, structures or walls at street and alley corners shall not be located so as to interfere with the clear sight triangle. The height of such objects is restricted to two and one-half feet within the clear sight triangle. (Refer to Section 1353.03.)
- (b) In the R Residential District and the R-C Residential Commercial District, fences may be erected to a height not exceeding six feet where the openings between the material used to construct the fence represent less than seventy percent (70%) of the total surface area of the fence. (Ord. 10-28-80; Ord. 10-13-09.)

**1353.07 HEIGHT REGULATIONS.**

(a) Public, semipublic or public services buildings, hospitals, public institutions or schools when permitted in a district may be erected to a height not exceeding seventy-five feet if the building is set back from each yard line at least one foot for each additional two feet of building height above the height limit, otherwise provided in the district in which the building is located.

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

- (1) The structure shall not occupy more than twenty-five percent (25%) of the lot area; and
- (2) The yard requirements of the district in which the structure is erected shall be increased by one foot for each four of height over the maximum height permitted.

(c) The height limitations of these Zoning Standards shall not apply to flag poles, church spires, belfries, chimneys, antennas or water tanks. (Ord. 10-28-80.)

**1353.08 YARD EXCEPTIONS.**

Where a lot in a business district or industrial district abuts a lot in a residential district, there shall be provided along such abutting lot a yard equal in width or depth to that required in the residential district. Such yard need not be in excess of ten feet. (Ord. 10-28-80.)

**1353.09 BUILDING LINES.**

No building or any part thereof shall be erected or altered in any district so as to be nearer than fifteen feet to the street right of way upon which it fronts. On those streets wherein building line restrictions have been created for the City or any of the additions thereto, or otherwise by deed restrictions these shall be observed in lieu of the requirements of this section, insofar as such building line restrictions are more restrictive than the requirements of this Planning and Zoning Code. However, whenever eighty percent (80%) or more the existing lots on one side of the street between two intersecting side street have been built closer than fifteen feet to the street line, then a building line may be established by drawing a line from the front walls of the existing buildings on either side of the lot.

(Ord. 10-28-80.)

**ARTICLE 1355**  
**Off-Street Parking and Loading**

- |   |  |
|---|--|
| <p><b>1355.01 Off-street parking generally.</b></p> <p><b>1355.02 Off-street parking requirements.</b></p> <p><b>1355.03 Off-street loading and unloading.</b></p> <p><b>1355.04 Joint facilities for parking or loading.</b></p> | <p><b>1355.05 Development and maintenance of parking areas and structures and loading areas.</b></p> |
|---|--|

**CROSS REFERENCES**

Parking space defined - see P. & Z. 1305.02  
 In R-Residential District - see P. & Z. 1337.04  
 In R-C District - see P. & Z. 1339.04

**1355.01 OFF-STREET PARKING GENERALLY.**

The following regulations are hereby established as requirements for off-street parking:

- (a) Each off-street parking space shall have an area of not less than 180 square feet exclusive of access drives or aisles. Except in the case of dwellings, no parking area provided hereunder shall be established for less than three spaces. There shall be adequate provision for ingress and egress to all parking spaces. No access drive or driveway shall be located in any residential zone to provide access to uses other than those permitted in such zone.
- (b) Off-street parking spaces and structures for four or more family structures shall not be located between the required front yard setback line and right-of-way line. On corner lots, no parking area or parking structure for four or more family structures shall be located between the side street right-of-way line and the required front yard setback line for structures on the side street.
- (c) The number of off-street parking spaces required is set forth in Section 1355.02. In the case of any building, structure or premises, which is not specifically mentioned herein, the Board of Zoning Appeals shall determine the amount of off-street parking required.
- (d) All permitted and required accessory off-street parking spaces, open or enclosed, shall be located on the same lot as the use to which such spaces are accessory, except that such spaces may be provided within a radius of twenty-five feet from the lot lines. Such spaces shall be in the same ownership as the use to which they are accessory.

(e) The number of required off-street parking spaces for a church, synagogue or house of worship may be eliminated or reduced if there exists within 500 feet of the church, synagogue or house of worship, public or private parking lots containing a sufficient number of off-street parking spaces to satisfy the requirements of Section 1355.02. The church, synagogue or house of worship shall provide the difference if the number of parking spaces in the private or public lots is below the number required by Section 1355.02. Any spaces provided in public or private lots shall be shown to be available for worshipers on the day or days of greatest use. (Ord. 10-28-80.)

### **1355.02 OFF-STREET PARKING REQUIREMENTS.**

Uses	Minimum Required Off-street Parking Spaces
Bowling lanes	Five spaces for each lane
Churches, synagogues and houses of worship	One parking space for each four seats except as noted in Section 1355.01(e)
Community buildings, country clubs, social halls, lodges, fraternal organizations and similar uses	One for each 500 square feet of floor area occupied by all principal and accessory structures
Doctors and dentists (in other than office buildings or medical clinics)	Five spaces for patients' use for each doctor's office and one for each doctor
Motels and rooming houses	One for each rentable unit
Funeral homes and mortuaries	Five parking spaces for each parlor
Hospitals	One for every two beds, one for every three employees, plus one per doctor
Nursing, convalescing, old age and rest home	One for each three beds
Manufacturing, industrial and general commercial uses not otherwise specified herein	One for each two employees in the maximum working shift
Offices	One space for every 500 square feet of rentable floor area
Restaurants, bars and cafes	One space for each four seats
Retail stores, store groups, shops, etc.	One for each 300 square feet of floor area where the floor area exceeds 1,000 square feet
Wholesale establishments or warehouses	One for each two employees on maximum shift
School - elementary (public or private)	One for every two teachers, employees or administrator; one for every five seats in the assembly hall
High school or other institution of higher learning	One for every two teachers, employees or administrators; one for each ten students
Hotels	One for each rentable unit
Industrial-commercial use	One for each motor vehicle used in connection with, or condition of, an industrial or commercial use

(Ord. 10-28-80.)

**1355.03 OFF- STREET LOADING AND UNLOADING.**

(a) In any district, in connection with every building, or building group or part thereof hereafter erected, which is to be occupied by manufacturing or commercial uses or distribution by vehicles or material or merchandise where required, there shall be provided and maintained on the same zone lot with such building off-street loading berths in accordance with the requirement of subsection (b) hereof.

One loading space shall be not less than ten feet in width, forty feet in length and have a minimum clearance of fourteen feet and may occupy all or any part of any required yard.

(b) Off-street loading and unloading requirements shall be as follows:

Uses	Square Feet of Total Floor Area	Required Off-street Loading Berths
Schools	15,000 or more	1
Hospital (in addition to space for ambulances)	From 10,000 to 30,000	1
	For each additional 30,000 or major fraction thereof	1 additional
Undertakers and funeral parlors	5,000	1
	For each additional 5,000 or major fraction thereof	1 additional
Offices, hotels, retail, commercial wholesale, manufacturing, storage and miscellaneous uses	From 10,000 - 25,000	1
	From 25,000 - 40,000	2
	From 40,000 - 60,000	3
	From 60,000 - 100,000	4
	For each additional 50,000 or major fraction thereof	1 additional

(Ord. 10-28-80.)

**1355.04 JOINT FACILITIES FOR PARKING OR LOADING.**

Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use, and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use unless otherwise approved by the Board of Zoning Appeals in accordance with the purposes and procedures set forth herein.

(Ord. 10-28-80)

**1355.05 DEVELOPMENT AND MAINTENANCE OF PARKING AREAS AND STRUCTURES AND LOADING AREAS.**

Every parcel of land hereafter used as a public or private parking area for five or more cars, or structure used as a parking garage, or loading area, including a commercial parking lot, shall be developed and maintained in accordance with the requirements of this section. Plans for such areas shall be reviewed by the Building Inspector to insure compliance with the following regulations:

(a) Off-street parking areas and structures for five or more vehicles and off-street loading areas shall be effectively screened by a fence or hedge. The screening shall be on the sides which adjoin, abut, are adjacent to or face premises situated in the residential zone or institutional building.

- (b) No off-street loading area or parking area or part thereof for five or more vehicles shall be closer than ten feet to any dwelling, school, hospital or institution for human care located on an adjoining or adjacent lot.
- (c) Any off-street parking of five or more vehicles or off-street loading area shall be surfaced with an asphaltic or Portland cement pavement or similar durable and dustless surface. All areas shall be marked so as to provide for the orderly and safe loading, parking and storage of automobiles or trucks.
- (d) Any lighting used to illuminate any off-street parking or loading area shall be arranged so as to reflect the light away from adjoining premises. Off-street parking facilities for multi-family structures containing four or more families shall be adequately lighted.
- (e) Any off-street parking area and off-street loading area shall be graded and drained so as to dispose of all surface water without detriment to surrounding uses.
- (f) Parking shall be permitted on the roof of any structure provided a four-foot wall is constructed around the perimeter of the roof.  
(Ord. 10-28-80)



**ARTICLE 1357**  
**Planned Residential Development**

**1357.01 Action prior to approval.**

**1357.02 Procedures and standards.**

**CROSS REFERENCES**

Planned residential development defined - see P. & Z. 1305.02

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**1357.01 ACTION PRIOR TO APPROVAL.**

The following action shall be taken prior to the approval of a planned residential development as permitted in the Residential and Commercial Zones:

- (a) Review and Approval. Before any action on any of the plans for a planned residential development, the plan and any supplemental information shall be submitted to the Planning Commission for study and report. Reasonable additional requirements may be recommended by Planning Commission for the protection of adjoining residential property. After notice and hearing for the requested development as required by this section, the Commission shall report its recommendations for approval or disapproval, together with the reasons therefor and additional requirements, if any, to Council for action.
- (b) Delay in Construction. In event that construction of the planned residential development has not begun within one year from the date of final approval, the district shall revert to the same zoning classification which existed prior to the approval of the planned development and the zoning regulations of such prior zone shall thereupon be in full force and effect; the Planning Commission may, however, grant a reasonable extension of time beyond the two-year period, for the beginning of construction if, in its opinion, good cause has been shown for the delay.  
(Ord. 10-28-80.)

**1357.02 PROCEDURES AND STANDARDS.**

- (a) Any applicant wishing to construct a planned residential development area may submit to the Planning Commission the overall plan to contain the following:
  - (1) The name of the property owner or owners who must be the applicant, except when the applicant is a residential renewal project, in which instance, ownership is not required. This condition, however, shall be satisfied if, at the time the applicant submits his overall plan, he is the owner of an option to purchase the property includable within the residential development area.

- (2) A site plan indicating the planned location and heights of buildings and their use, off-street parking areas, driveways, recreation areas, easements, walks, the location, type and heights of walls and the extent of landscaping.
- (3) A copy of any deed restrictions intended to be recorded.
- (4) A map showing existing topographic characteristics of the land within the proposed development area.
- (5) Existing and proposed land uses.
- (6) The character and approximate density of the dwellings.
- (7) The character and approximate percentage of nonresidential acreage and floor space per structure.
- (8) The approximate location of public streets.
- (9) The approximate location of public uses such as schools, parks, playgrounds and other open areas.
- (10) A general timetable for the completion of the proposed development area.
- (11) A statement of the manner in which the common open space shall be maintained and operated following completion of the planned residential development area. Review and approval of the planned residential development area shall conform with the requirements of Section 1337.01(b).

(b) Within six months following the approval of the planned residential development area, the applicant shall submit to the Planning Commission a preliminary plan for the development of all or a portion of the residential development area, which preliminary plan shall include the following:

- (1) The information required in the overall development plan in detailed form.
- (2) A general development schedule stating the approximate date when construction of the project will begin and the approximate completion date of each stage of the project.
- (3) An off-street parking and loading plan.
- (4) A circulation diagram showing the proposed movement of vehicles, goods and pedestrians within the planned residential development and traffic regulating devices needed to facilitate or insure the safety of the circulation pattern.
- (5) Landscape and tree planting plan.

(c) Within six months following the approval by the Planning Commission of the preliminary plan or at such other time as the Planning Commission may direct, the applicant shall file a final plan for the residential development area with the Planning Commission if the plan meets the following requirements:

- (1) The final plan shall be in substantial compliance with the previously approved preliminary plan.
- (2) The final plan shall be consistent with the comprehensive plan of the City.
- (3) All public improvements included within the residential development area shall comply with the ordinances of the City regarding subdivisions and approval of the subdivision shall be completed prior to the submission of the final plan.

- (4) The final plan for the residential development area shall harmonize and be developed in accordance with the area surrounding and adjacent to the project area.  
All standards of the residential zone in which the tract is located shall be complied with, except that the yard requirements need only be applied in relationship to tract boundaries.  
All land shown on the final development plan and designated as common open space land shall be conveyed to a public agency or a community association which agrees to maintain the common open space and any buildings, structures or other improvements which have been placed on it; no common open space may be used for any purpose not specified in the final development plan until the final development plan has been amended and approved by the Planning Commission to permit such use.

(d) No change may be made in the approved final plan for the residential development area during construction or following completion of the planned development except upon application to the Planning Commission as follows:

- (1) Minor changes in the use, location, siting, height of buildings, street alignment and structures may be authorized by the Planning Commission as required by engineering or other circumstances not foreseen at the time of the final planned residential development plan was approved provided that such changes will not affect street alignment or utility locations outside the planned residential development area.
- (2) If the Planning Commission finds that the proposed changes constitute major changes in use, rearrangement of lots, blocks, building tracts, changes in provisions of common open space or other major changes, approval shall only be granted as provided by Section 1337.01(b).  
(Ord. 10-28-80)

**ARTICLE 1359**  
**Swimming Pools**

**1359.01 Private swimming pools.**

**1359.02 Community or club swimming pools.**

CROSS REFERENCES

Swimming pool defined - see P. & Z. 1305.02

**1359.01 PRIVATE SWIMMING POOLS.**

No private swimming pool, exclusive of portable swimming pools with a diameter less than twelve feet or with an area of less than 100 square feet shall be allowed in any commercial or residential district, except as an accessory use and unless it complies with the following conditions and requirements:

- (a) The pool is intended and is to be used solely for the enjoyment of the occupants of the principal use of the property on which it is located;
- (b) It may not be located closer than ten feet to any property line;
- (c) The swimming pool, or the entire property on which it is located, shall be walled or fenced to prevent uncontrolled access by children from the street or from adjacent properties. Such fence or wall shall not be less than six feet in height and maintained in good condition with a gate and lock.  
(Ord. 10-28-80)

**1359.02 COMMUNITY OR CLUB SWIMMING POOLS.**

Community and club swimming pools are permitted in any commercial or residential district, but shall comply with the following conditions and requirements:

- (a) The pool is intended solely for the enjoyment of the members and families and guests of members of the association or club under whose ownership or jurisdiction the pool is operated;
- (b) The pool and accessory structures thereto, including the areas used by the bathers, shall not be closer than fifty feet to any property line;
- (c) The swimming pool and all of the area used by the bather shall be walled or fenced to prevent uncontrolled access by children from the thoroughfare or adjacent properties. Such fence or wall shall not be less than six feet in height and shall be maintained in good condition.  
(Ord. 10-28-80)

**ARTICLE 1363**  
**Special Provisions for Commercial and Industrial Uses**

**1363.01 Performance requirements.**

**1363.03 Measurement procedures.**

**1363.02 Enforcement provisions.**

**1363.01 PERFORMANCE REQUIREMENTS.**

No land or building in any district shall be used or occupied in any manner creating dangerous, injurious, noxious or otherwise objectionable conditions which could adversely affect the surrounding areas or adjoining premises, except that any use permitted by this Ordinance may be undertaken and maintained if acceptable measures and safeguards to reduce dangerous and objectionable conditions to acceptable limits as established by the performance requirements in the following paragraphs inclusive, are adopted:

- (a) Fire Hazards. Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire fighting and fire prevention equipment and by such safety devices as are normally used in the handling of any such material. Such hazards shall be kept removed from adjacent activities to a distance which is compatible with the potential danger involved. This distance shall be determined by the City Fire Inspector.
  - (b) Radioactivity or Electrical Disturbance. No activity shall emit dangerous radioactivity at any point or electrical disturbance adversely affecting the operation of any equipment at any point other than that of the creator of such disturbance.
  - (c) Noise. Objectionable noise as determined by the Zoning Officer which is due to volume, frequency or both shall be muffled or otherwise controlled. Air-raid sirens and related apparatus used solely for public purposes are exempt from this requirement.
  - (d) Vibrations. No vibration shall be permitted which is discernible without instruments on any adjoining lot or property.
  - (e) Air Pollution. Air pollution shall be subject to the requirements and regulations established by the Federal Environmental Protection Agency.
  - (f) Glare. No direct or reflected glare shall be permitted which is visible from any property outside a manufacturing district or from any street.
  - (g) Erosion. No erosion, by either wind or water, shall be permitted which will carry objectionable substances onto neighboring parcels.
  - (h) Water Pollution. Water pollution shall be subject to the requirements and regulations established by the Federal Environmental Protection Agency.
- (Ord. 10-28-80)

**1363.02 ENFORCEMENT PROVISIONS.**

The Zoning Officer, prior to the issuance of a zoning permit, may require the submission of statements and plans indicating the manner in which dangerous and objectionable elements involved in processing and in equipment operations are to be eliminated or reduced to acceptable limits and tolerance.

(Ord. 10-28-80)

**1363.03 MEASUREMENT PROCEDURES.**

Methods and procedures for the determination of the existence of any dangerous and objectionable elements shall conform to applicable standard measurement procedures published by the American Standards Association, Inc., New York, the Manufacturing Chemists Association, Inc., Washington, D.C., the U.S. Bureau of Mines and the Federal Environmental Protection Agency.

(Ord. 10-28-80)

**ARTICLE 1367  
Mobile Homes**

<b>1367.01 Definition.</b> <b>1367.02 Permitted uses.</b>	<b>1367.03 Mobile Home Use District.</b> <b>1367.04 Requirements.</b>
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**CROSS REFERENCES**

Power to regulate - see W. Va. Code 8-12-5(30)

**1367.01 DEFINITION.**

"Mobile home" means a portable unit designed and built to be towed on its own chassis, comprised of frame and wheels, and designed for human habitation, when connected to utilities and other foundation, whether temporary or permanent.

(Ord. 11-28-89)

**1367.02 PERMITTED USES.**

There are no permitted uses. No mobile homes shall be erected permanently or temporarily in the City, except as hereinafter provided in Section 1367.03.

(Ord. 11-28-89)

**1367.03 MOBILE HOME USE DISTRICT.**

Mobile homes shall be permitted in a Mobile Home Use District in certain areas of the City, as follows:

Certain realty situate at 1944 Marshall Street, and described as Part Lot 4, Hildreth's Addition in a certain deed to Charles H. Gillingham, recorded in Deed Book 500, page 460, Marshall County Records.

(Ord. 11-28-89)

**1367.04 REQUIREMENTS.**

Any permitted use under Section 1367.03 shall be subject to the following requirements:

- (a) Lot Size Requirements.
- (1) Minimum lot width requirement - 35 feet.
  - (2) Minimum front yard requirement - 10 feet or the established building line.
  - (3) Minimum side yard requirement - combination of 15 feet with a minimum of 5 feet on one side.
  - (4) Minimum rear yard requirement - 10 feet.

(b) Water and Sewage Requirements. All mobile homes shall be connected to public water and sanitary sewer facilities of the City.

(c) Foundation and Skirting Requirements.

(1) All mobile homes shall be erected on adequate foundations with secure tie-downs.

(2) All mobile homes shall be skirted with fireproof skirting material.

(d) Safety Requirements. All mobile homes shall comply with all City housing, building and fire prevention, electrical and plumbing codes.

(e) Off-Street Parking. Two off-street parking spaces per mobile home unit.  
(Ord. 11-28-89)



**ARTICLE 1371  
Nonconforming Uses**

<p><b>1371.01</b> Definition.</p> <p><b>1371.02</b> When permitted.</p> <p><b>1371.03</b> Unsafe structure.</p> <p><b>1371.04</b> Alterations.</p> <p><b>1371.05</b> Restorations.</p> <p><b>1371.06</b> Extensions.</p> <p><b>1371.07</b> Changes in use.</p>	<p><b>1371.08</b> Construction approved prior to legal enactment of standards.</p> <p><b>1371.09</b> Abandonment.</p> <p><b>1371.10</b> Unlawful use not authorized.</p> <p><b>1371.11</b> District boundary changes.</p> <p><b>1371.12</b> Recording.</p>
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**CROSS REFERENCES**

Validation of existing ordinances - see W. Va. Code 8-24-49  
Existing uses safeguarded - see W. Va. Code 8-24-50

**1371.01 DEFINITION.**

A nonconforming use is the lawful employment or occupancy of a land area, building or structure which was in existence prior to the enactment of these Zoning Standards or its amendments but does not comply with the present provisions of these Zoning Standards or amendments hereafter enacted.  
(Ord. 10-28-80.)

**1371.02 WHEN PERMITTED.**

A nonconforming use may continue; be bought or sold, altered, restored or extended subject to the provisions of this article even though such use does not conform to the regulations established for that zoning district in which it is located. However, one nonconforming use cannot be changed to another type of nonconforming use.  
(Ord. 10-28-80.)

**1371.03 UNSAFE STRUCTURE.**

Nothing in this Zoning Ordinance shall prevent the strengthening or restoring to a safe condition of any portion of a building or structure declared unsafe by a proper authority.  
(Ord. 10-28-80.)

**1371.04 ALTERATIONS.**

A nonconforming building or structure may be altered, improved or reconstructed provided such work does not exceed the fair market value of the building or structure, or provided the building or structure is changed to a conforming use.  
(Ord. 10-28-80.)

**1371.05 RESTORATIONS.**

(a) A building which is damaged to the extent of sixty percent (60%) or more of its value (exclusive of walls below grade) as at the date of the damage and as determined by fair building standards and which does not comply with the use, area or height regulations of this Ordinance, shall not be restored except in conformity with the regulations for the use district in which such building is located.

(b) A lawful nonconforming building destroyed to the extent of less than sixty percent (60%) by fire, explosion, flood or other casualty or legally condemned, may be reconstructed and used for the same nonconforming use, provided that:

- (1) The reconstructed building shall not substantially exceed in height, area or volume as the building destroyed or condemned, and
- (2) Building reconstruction shall be commenced within one year from the date the building was destroyed or condemned and shall be carried on without interruption.  
(Ord. 10-28-80.)

**1371.06 EXTENSIONS.**

(a) A nonconforming use may be extended as a special exception upon approval through application to the Board of Zoning Appeals subject to the following:

- (1) The extension becomes an attached part of the main structure and does not utilize additional or adjoining land area other than the original parcel.
- (2) The extension does not encroach upon the lot and area requirements and the maximum building height requirements of the district in which the nonconforming use is presently located.
- (3) The extension is for the purpose of expanding the nonconforming use in existence at the time of the legal acceptance of these Zoning Standards.

(b) Extension of a lawful use to any portion of a nonconforming building or structure which existed prior to the enactment of these Zoning Standards shall not be deemed the extension of such nonconforming use.

(Ord. 10-28-80.)

**1371.07 CHANGES IN USE.**

No nonconforming building, structure or use shall be changed to another type of nonconforming use.

(Ord. 10-28-80.)

**1371.08 CONSTRUCTION APPROVED PRIOR TO LEGAL ENACTMENT OF STANDARDS.**

Nothing herein contained shall require any change in plans, construction or designated use of a building or structure for which a permit has been issued and the construction of which is diligently prosecuted within two months of the date of such permit, and the ground story framework of which is completed within four months of the date of the permit and which entire building shall be completed according to such plans as filed within one year from the date of legal enactment of these Zoning Standards.

(Ord. 10-28-80.)

**1371.09 ABANDONMENT.**

(a) The nonconforming use of a building or land which has been abandoned shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned when one of the following conditions exists:

- (1) When the intent of the owner to discontinue the use is apparent.
- (2) When the characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within six months unless other facts show intention to resume the nonconforming use.
- (3) When a nonconforming use has been discontinued for a period of one year.
- (4) When it has been replaced by a conforming use.
- (5) When it has been changed to a use permitted as a special exception by the Board of Zoning Appeals.

(b) Any nonconforming use of a sign or billboard which is discontinued or not used for six months shall not be resumed; and if any sign or billboard is removed, it shall not be reconstructed. (Ord. 10-28-80.)

**1371.10 UNLAWFUL USE NOT AUTHORIZED.**

Nothing in these Zoning Standards shall be interpreted as authorization for or approval of the continuance of the illegal use of a structure or premises in violation of zoning controls in existence at the time of the effective date of legal enactment of these Zoning Standards. (Ord. 10-28-80.)

**1371.11 DISTRICT BOUNDARY CHANGES.**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any nonconforming uses existing therein. (Ord. 10-28-80.)

**1371.12 RECORDING.**

The Zoning Administration Officer shall be responsible for preparing a list of all nonconforming uses existing at the time of the legal enactment of these Zoning Standards and such list shall be maintained for public use and information. (Ord. 10-28-80.)

**CHAPTER SEVEN - Subdivision Control**

Art. 1385. Subdivision Regulations.

Art. 1386. Limited Video Lottery Establishments.

**ARTICLE 1385  
Subdivision Regulations**

<p><b>1385.01 Purpose and authority.</b></p> <p><b>1385.02 Definitions.</b></p> <p><b>1385.03 Plan requirements and processing procedures.</b></p> <p><b>1385.04 Variances.</b></p>	<p><b>1385.05 Design standards.</b></p> <p><b>1385.06 Improvement and construction requirements.</b></p> <p><b>1385.07 Conditions of acceptance.</b></p> <p><b>1385.99 Penalty.</b></p>
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**CROSS REFERENCES**

Approval required - see W. Va. Code 8-24-28

Application - see W. Va. Code 8-24-29

Approval - see W. Va. Code 8-24-30 et seq.

Enforcement - see W. Va. Code 8-24-66

Injunction - see W. Va. Code 8-24-67

Penalty - see W. Va. Code 8-24-68

**1385.01 PURPOSE AND AUTHORITY.**

(a) Interpretation. In their interpretation and application, the provisions of these Subdivision Regulations shall be held to be the minimum requirements adopted for the protection of the public health, safety and welfare.

(b) Purpose. The purpose is to assure sites suitable for building purposes and human habitation; to provide for the harmonious development of the City to coordinate existing streets with proposed streets, parks or other features of the official street plan of the City; to insure adequate open spaces for traffic, recreation, light and air, and to provide the proper distribution of population; and thereby to create conditions favorable to the health, safety, morals and general welfare of the residents of the City; to establish land subdivision regulations, including definitions, design standards, plan requirements, plan processing procedures, improvements and standards, improvement and construction requirements, and conditions of acceptance of public improvements by the City.

(c) Scope. These Regulations shall not apply to any lot or lots forming a part of a subdivision created and recorded prior to the enactment of these Regulations. Nor is it intended

by these Regulations to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those inconsistent with these Regulations, or with private restrictions placed upon property by deed, covenant or other private agreement, or with restrictive covenants running with the land to which the City is a party. Except that where these Regulations impose a greater restriction upon land than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of these Regulations shall control.

(d) Authority and Administration. Council is authorized, subject to the holding of required public hearings, to adopt rules and regulations covering plans for subdivisions of land, and to approve, conditionally approve, or disapprove plans of subdivisions of land falling within their jurisdiction. The City Planning Commission is hereby designated as the reviewing authority of and for Council, and is charged with the duty of making investigations, reports and recommendations on the design and improvement of proposed subdivisions; and shall submit such reports and recommendations to Council; and is hereby authorized to approve, conditionally approve, or disapprove plans of subdivisions wherein lots abut existing approved streets of sufficient width provided such plans shall be prepared and filed in accordance with the provisions of these Regulations.

(e) Jurisdiction and Approval. The provisions of these Regulations shall apply to the area within the boundaries of the City of Benwood, Marshall County, West Virginia.

No subdivision of any lot, tract or parcel of land shall be effected, no street, sanitary sewer, storm sewer, water main or other facilities in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings, abutting thereon, except in strict accordance with the provisions of these Regulations.

Plans of subdivisions wherein lots abut existing improved streets of sufficient width shall be subject to approval or rejection by the City Planning Commission. In the event such a plan is disapproved, the reasons therefor shall be set forth in writing and given to the applicant. Any person aggrieved by the decision of the Commission may appeal to Council, and such appeal shall be considered by Council at its next regular meeting. The decision of Council shall be final.

Plans of subdivisions wherein lots abuts existing streets of insufficient width, or streets proposed to be laid out through unimproved land, shall be subject to approval or rejection by Council. In the event that such plan is disapproved, the reasons therefor shall be set forth in writing and given to the applicant. Any party aggrieved by the decision of Council may appeal to the Circuit Court.

On and after the effective date of this section, no lot in a subdivision may be sold, no permit to erect, alter or repair any building upon land in a subdivision may be issued, and no building may be erected in a subdivision, unless and until a subdivision plat has been approved and recorded, and until the improvements required herein in connection therewith have either been constructed or guaranteed, as required by these Regulations.

Nothing in these Regulations shall be deemed to require the approval of Council for divisions of land for agricultural purposes in parcels of more than ten acres, not involving any new street or easement of access.

(f) Public Hearing. Before acting on any subdivision plan, Council may arrange for a public hearing thereon, after giving such notice as Council may deem desirable in each case.

(g) Appeals. In any case where Council disapproves a subdivision plan, any person aggrieved thereby may, within thirty days thereafter, appeal therefrom, by petition to the Circuit Court of the County, which court shall hear the matter de novo and after hearing enter a decree affirming, reversing or modifying the action of Council, as may appear just in the premises. The court shall designate the manner in which notices of the hearing of any such appeal shall be given to all parties interested. The decision of the court shall be final.

(h) Amendments. Council may, after public hearing, amend, supplement or change the provisions of these Regulations. Notice shall be given of the time and place of such public hearing by publication once a week for two successive weeks in one newspaper of general circulation published in the County prior to holding of the hearing. The amendment or amendments shall be on file in the office of Council for public examination prior to the public hearing. (Ord. 8-14-62.)

### **1385.02 DEFINITIONS.**

Unless otherwise expressly stated, the following words shall, for the purpose of these Subdivision Regulations, have the meaning herein indicated:

- (a) "Subdivision" means the division of a single lot, tract or parcel of land, or a part thereof, into two or more lots, tracts or parcels of land, including changes in street lines or lot lines for the purpose, whether immediate or future, of transfer of ownership or of building development: Provided, however, that divisions of land for agricultural purposes into parcels of more than five acres, not involving any new street or easement of access, shall not be included within the meaning of "subdivision."
- (b) "Subdivider" means a person, co-partnership or corporation, owning land in the Municipality and for which a land subdivision application is filed and processed under the provisions of these Regulations.
- (c) "Street" means a public right of way for vehicular or other traffic whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, alley or however otherwise designated and for the purpose of these Regulations shall be classed as follows:
  - (1) Arterial streets transverse through the Municipality and are used primarily for through, fast or heavy traffic.
  - (2) Collector streets carry traffic from minor streets to the major system of arterial streets, including principal entrance streets of a residential development and streets for major circulation within such developments.
  - (3) Minor streets are used primarily for access to the abutting properties.
  - (4) Marginal access streets are minor streets which are parallel to and adjacent to arterial streets and which provide access to abutting properties and protection from through traffic.

- (5) Alleys are minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.
- (d) "Contour map" means a map showing the elevation of the ground by contours or elevations.
- (e) "Public water supply" means water approved for drinking purposes and other public use by the Department of Health supplied through approved piping facilities to places of private and public use, and being under the jurisdiction of one or more of the following: The Public Utility Commission, the local Governing Body, a municipal water authority or other approved water company.  
(Ord. 8-14-62.)
- (f) "Subdivision Regulations" or "these Regulations" means the ordinance of August 14, 1962, which is codified as Chapter Seven of this Part Thirteen - Planning and Zoning Code.

### **1385.03 PLAN REQUIREMENTS AND PROCESSING PROCEDURES.**

(a) Compliance Required. The plan requirements and processing procedures shall be followed by subdividers as set forth herein and shall be submitted to the Planning Commission for review and approval prior to consideration or approval by the Governing Body.

(b) Pre-Application Plan and Data. Previous to the filing of an application for conditional approval of the preliminary subdivision plan, the subdivider shall submit to the Commission the following plans and data:

- (1) General information shall describe or outline existing covenants, land characteristics, community facilities and utilities; and information describing the proposed subdivision such as the number of residential lots, typical lot width and depth, price range, business areas, playgrounds, park areas, other public areas, proposed protective covenants and proposed utilities and streets improvements.
- (2) Location map shall show the relationship of the proposed subdivision to existing community facilities which serve or influence it and shall include development name, location and any existing facilities; traffic arteries; public or other schools, parks, playgrounds; utilities; churches; shopping centers, airports; hospitals, principal places of employment; title; scale; north arrow; and date.
- (3) Sketch plan on a topographic survey shall show in a simple sketch form the proposed layout of streets, lots and other features in relation to existing conditions and may be free-hand on a print of the topographic map.
- (4) Information relating to mineral rights and the status of mining activity in the past and planned for the future.

(c) Plats and Data for Conditional Approval. Previous to the filing of an application for final approval of the subdivision plan, the subdivider shall submit to the Planning Commission the following plans and data:

- (1) Topographic data. As required for subsection (b) hereof, plus the following:
  - A. Boundary lines: Or property lines by bearings and distances.

- B. Existing easements: Location, width and purpose.
  - C. Existing streets: On and adjacent to the tract by name, right-of-way width, location, type, width and elevation of surfacing, walks, curbs, gutters, culverts, etc.
  - D. Existing utilities: On and adjacent to the tract; location, size and invert elevation of sanitary, storm and combined sewers; location and size of water mains; location of gas lines, fire hydrants, electric and telephone poles and street lights; if any of the above are not available at site, indicate direction and distance to the nearest ones and furnish statement of availability.
  - E. Other existing conditions: Water courses, marshes, rock outcrop, wooded areas, houses, barns and other significant structure on or near the tract.
  - F. Proposed public improvements: Highways or other major improvements planned by public authorities for future construction on or near the tract.
  - G. Ground elevations: On tract based on datum plan approved by Municipal Engineer; for land that slopes less than two percent (2%) show elevations at all breaks in grade and along drainage channels or swales not more than 100 feet and less in cases where necessary to show irregular land for planning purposes.
  - H. Title and certificates: Present tract designation according to official recorder's office; title under which subdivision is to be recorded; names and addresses of owners; acreage, scale, north point, datum, benchmarks, certification of registered civil engineer or surveyor, date of survey.
- (2) Preliminary plat (general subdivision plan) shall be at a scale of 200 feet to one inch or larger and shall show all existing conditions required above in topographic data and shall show all proposals including and not necessarily limited to the following:
- A. Streets: Names, right-of-way and cartway widths; approximate grades and gradients.
  - B. Easements: Location, width and purpose.
  - C. Utilities: Location, type and approximate size; this information may be shown on a separate exhibit.
  - D. Lots: Lot lines, numbers and block numbers.
  - E. Sites: If any, to be reserved for parks, playgrounds or other public uses.
  - F. Sites: If any, for shopping centers, churches, industry, multi-family dwellings or any other non-public use exclusive of single-family dwellings.
  - G. Building lines: Give dimensions of minimum building setback lines.
  - H. Site data: Including number of residential lots, typical lot size, and acres in other public and non-public land uses.
  - I. Title, scale, north arrow and date.



- (3) Other preliminary plans. When required by the Planning Commission, the preliminary plat shall be accompanied by profiles showing existing ground surface and proposed street grades; typical cross-sections of the roadway and sidewalks; a preliminary plan of proposed sanitary and storm water sewers, and water mains with grades and size indicated.
- (4) Draft of protective covenants. Whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development.

(d) Plats and Data for Final Approval. Prior to final approval by the Planning Commission and in strict accordance with the regulations and procedures of these Subdivision Regulations all final plats (subdivision plans) shall be submitted for final approval as follows:

- (1) Final plat or final subdivision plan shall be drawn in ink on tracing cloth in sheets not larger than thirty-six inches wide by twenty-four inches long and shall be at a scale of 100 feet to one inch or larger. Where necessary, the plat may be on several sheets accompanied by an index sheet showing the entire subdivision. The final plat shall show:
  - A. Primary control points, approved by the Municipal Engineer, or description and "ties" to such control points, to which all dimensions, angles, bearings and similar data on the plat shall be referred.
  - B. Tract boundary lines, right-of-way lines of streets, easements and other rights of way, and property lines of residential lots and other sites with accurate dimensions, bearings or deflection angles, and radii, arcs and central angles of all curves.
  - C. Name and right-of-way width of each street or other right of way.
  - D. Location and dimensions and purpose of easements.
  - E. Number to identify each lot or site.
  - F. Purpose for which sites other than residential lots, are dedicated or reserved.
  - G. Minimum building setback line on all lots and other sites.
  - H. Location and description of survey monuments.
  - I. Names of record owners of adjoining unplotted land.
  - J. Reference to recorded subdivision plats of adjoining platted land by record name, date and number.
  - K. Certification by surveyor or engineer certifying to accuracy of survey and plat.
  - L. Certification of title showing that applicant is the land owner.
  - M. Statement by owner dedicating streets, rights of way and any sites for public uses.
  - N. Title, scale, north arrow and date.
- (2) Cross sections and profiles of streets showing grades approved by the Municipal Engineer.
- (3) Protective covenants, if any, in form for recording.
- (4) Other data: Such other certificates, affidavits, endorsements, or dedications as may be required by the Planning Commission or the Governing Body of the Municipality in the enforcement of these Regulations.

- (e) Filing of Application for Approval of Final Plat.
- (1) The final plat shall conform substantially to the approved preliminary plat and if desired by the subdivider it may constitute only that portion of the approved preliminary plat which he only proposes to record and develop at one time provided however that such portion conforms to all requirements of these Regulations.
  - (2) When filing an application for examination of a final plat or final subdivision plan, the subdivider shall submit duplicate copies of all plans and other information. One copy of such plans and information shall be retained by the Planning Commission and the other copy shall be returned to the subdivider.
  - (3) At the time of filing the application and submission of plans, the subdivider shall pay to the Commission, for use by the City, a fee to be used to defray the cost of processing such plans and showing same upon the official map of Municipality. The fee shall not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) for each plan, or part thereof submitted for final approval, the amount to be determined the Commission, based upon the estimated cost of processing each plan.
  - (4) An final plats shall submitted to the Clerk Treasurer, ten days prior to the regular meeting of the Council at which it is desired to seek approval thereof and shall bear the signatures of a majority of the members of Commission to a certified statement that all plan procedure requirements have satisfactorily been met.  
(Ord. 8-14-62.)

#### **1385.04 VARIANCES.**

Where the Planning Commission finds that extraordinary hardships may result from strict compliance with these Regulations, it may vary the Regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the interest and purpose of the general community plan or these Regulation.

- (a) Large Scale Development. The standards and requirements of these Regulations may be modified by the Commission in the case of a plan or a program for a new town, a complete community or a neighborhood unit which in the judgment of the Commission shall provide adequate public space and improvements for circulation, recreation, light, air and service needs of the tract when fully developed and populated and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.
- (b) Conditions of Variance. In granting variances and modifications, the Commission may require such conditions as will, in judgment, secure substantially the objectives of the standards or requirements so varied or modified. The granting of variances or modifications by the Commission shall be conditional and subject to the final approval of the Governing Body of the Municipality in cases where standards or requirements are reduced, varied or modified.  
(Ord. 8-14-62)

**1385.05 DESIGN STANDARDS.**

(a) Streets. The arrangement, character, extent, width, grade and location of all streets shall conform to the general community plan and shall be considered in their relation to existing and planned streets, to topographic conditions, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets and shall conform to the following design standards in a manner acceptable to the Planning Commission:

- (1) Where not shown on the general community plan, the arrangement of streets in a subdivision shall either:
  - A. Provide for the continuation or projection of existing principal streets in surrounding areas; or
  - B. Conform to a neighborhood plan to meet a particular situation where topographic or other conditions make continuance or projection of existing streets impracticable.
- (2) Minor streets shall be so laid out that their use by through-traffic will be discouraged.
- (3) Where a subdivision abuts or contains an existing or proposed arterial street or a railroad right of way or rail crossings, access thereto shall be limited to a minimum number of intersections as practicable and such major access intersections with arterial streets and/or rail crossings shall be determined with due regard for sight distance, distance between intersections, approach grades and requirements for future grade separations.
- (4) Marginal access streets paralleling such limited access arterial streets shall be required, in such cases where practicable, reversing the frontage of residential properties with a screen planting contained in a non-access reservation strip along the rear of the and between the property line and the arterial street right of way; such reserve strips shall be prohibited except where their control is definitely placed with the Municipality.
- (5) Street jogs with centerline offsets of less than 125 feet shall be avoided.
- (6) A tangent at least 100 feet long shall be introduced between curves on arterial and collector streets.
- (7) When connecting street lines deflect from each other more than ten degrees, they shall be connected with a curve with a radius adequate to assure sight distance.
- (8) Streets shall be laid out to intersect as nearly as possible at right angles and no street shall intersect any other street at less than sixty degrees.
- (9) Street rights-of-way widths shall be not less than as follows:
 

Arterial streets	60 to 80 feet	
Minor streets	32 to 50 feet	To be approved
Marginal access streets	32 to 50 feet	by Planning
Alley	20 feet	Commission
- (10) Dead-end streets, designed to be so permanently, shall not be longer than 600 feet and shall be provided with a turn around having an outside road diameter of at least eighty feet and a property line diameter of at least 100 feet.

- (11) No street grade shall be less than two percent (2%) or more than ten percent (10%) unless topographic conditions make a steeper grade necessary.
- (12) No street names shall be used that duplicate existing names or in any way can cause confusion in the provision of police and fire protection, refuse collection or the distribution of mail by the U.S. Postal Service.

(b) Easements. Easements across lots, centered on rear or side lot lines, or where necessary for utilities, watercourse, drain way, channel or stream shall be not less than fifteen feet wide.

(c) Blocks.

- (1) The length, width and shape of blocks shall be determined with due regard to:
  - A. Provisions of adequate building sites for the special type of use contemplated.
  - B. Requirements as to lot size and dimensions.
  - C. Needs for convenient access, circulation, control and safety of street traffic.
  - D. Limitations and opportunities of topography.
- (2) Block lengths shall not exceed 1,800 feet.
- (3) In case where the block length exceeds 600 feet and/or where deemed essential to provide pedestrian circulation to schools, playgrounds, shopping centers and other community facilities an easement for a crosswalk shall be provided of not less than ten feet wide.

(d) Lots.

- (1) Pending the adoption of a zoning ordinance by the Municipality, the lot size, width, depth, shape and orientation, and the minimum building setback lines shall be appropriate for the location of the subdivision and the type of development and use contemplated, and shall generally conform to the following:
  - A. Residential lots where not served by public water or sanitary sewers shall be not less than 100 feet wide at the building line nor less than 20,000 square feet in area, per family.
  - B. Residential lots where served by one public facility, that is either public water or sanitary sewers shall be not less than 100 feet wide at the building line, nor less than 15,000 square feet in area, per family.
  - C. Residential lots where served by both public water and sanitary sewers shall be not less than fifty feet wide at the building line, nor less than 5,000 square feet in area, per family.
  - D. Depth and width of properties reserved or laid out for commercial, industrial, fraternal or club purposes shall be adequate to provide for off-street service and parking facilities.
- (2) Corner lots for residential use shall have extra width of at least ten percent (10%) of the above required width to permit appropriate building setback from and orientation to both streets.

- (3) The subdividing of the land shall be as such as to provide, by means of a public street, each lot with satisfactory access.
- (4) Building lines shall not be less than fifty feet from the center line of the street; except that on a corner lot it shall be not less than forty feet from the center line of the intersecting side street; however, where existing or proposed rights of way are eighty feet or more in width, the building line shall be not less than thirty feet from the rights of way.
- (5) Side and rear building lines shall be not less than ten feet from the side and rear lot lines, or according to the Zoning Ordinance.
- (6) Lot side lines shall be substantially at right angles or radial to street lines.
- (e) Public Sites and Open Spaces. Where a proposed park, playground, school or other public use shown in the general community plan and/or in the opinion of the Planning Commission is necessary, the Commission may require the dedication or reservation of such area within the subdivision in a reasonable manner.
- (f) Sewers. When a subdivision is reasonably accessible to a municipal sewer system, the subdivider shall provide the subdivision with a complete sanitary sewer system to be connected to the municipal sanitary sewer system.  
When no municipal sewer system is available or is not reasonably accessible to the subdivision, the subdivider shall provide the subdivision with a complete sanitary sewer system, which shall connect with a sanitary sewer outlet approved by the West Virginia Department of Health, except that when such approved outlet is not available, one of the following methods of sewage shall be used:
  - (1) A complete sanitary sewer system to convey the sewage to a treatment plant, to be provided by the subdivider in accordance with minimum requirements of the West Virginia State Department of Health, with adequate provision for the maintenance of such plant.
  - (2) Private sewage disposal systems on individual lots consisting of septic tanks and tile absorption fields or other approved sewage disposal systems, when laid out in accordance with minimum standards approved by the West Virginia State Department of Health as specified in the booklet entitled, "Household Sewage Disposal for Rural and Suburban Areas."
  - (3) Cesspools. Under the terms of these Subdivision Regulations, no new installation of cesspools for the disposal of sewage shall be permitted.
 The plans for the installation of a sanitary sewer system shall be prepared by the subdivider and approved by the engineer and the West Virginia State Department of Health. The engineer shall inspect the sewer line before it is covered over. Upon the completion of the sanitary sewer installation, one copy each of the plans for such system as built shall be filed with the Commission and the Municipality. Storm sewers shall not be connected with sanitary sewers.  
(Ord. 8-14-62.)

### **1385.06 IMPROVEMENT AND CONSTRUCTION REQUIREMENTS.**

- (a) Street Identification. Signs shall placed at all block corners, angle points, points of curves in streets and at intermediate points as may be required by the Planning Commission. The signs shall be of such material, size and length as may be approved by the Commission.
- (b) Utility and Street Improvements.
  - (1) Utility and street improvements shall provided in each new subdivision in accordance with standards and requirements described in the following schedules.

- (2) The standards and specifications for each general type of development shall be as follows, and as indicated in subsection (c) hereof:
- A. For apartment, row house, similar multi-family types, improvements to be in accord with Standard A.
  - B. For one-family detached dwellings with typical lot widths of seventy-five feet, improvements to be in accord with Standard B.
  - C. For country homes with typical lot widths greater than "B" above. Above improvements to be in accord with Standard C.
  - D. For commercial, industrial and other special type uses, the standards shall as determined by the Planning Commission.

(c) Schedule of Required Utilities and Street Improvements. All utilities and street improvements shall be installed in a manner and in accordance with specifications of the Municipality and generally outlined as follows:

STANDARD

A   B   C

- |   |   |   |   |
|---|---|---|---|
| X | X |   | (1) Public Water.   |
| X | X |   | (2) Public sanitary sewer where a central disposal plant is available.  |
| X | X | X | (3) Arterial streets: cross section in accordance with general community plan and as determined by Planning Commission and/or Department of Highways. |
| X | X | X | (4) Streets: 40 to 60 ft. r/w, 26 ft. pavement.   |
|   |   |   | (5) Minor and marginal access streets;  |
| X | X | X | A. 50 ft. r/w, 32 ft. pavement, 5 ft. sidewalk, 32 ft. r/w, 22 ft. pavement.  |
| X | X | X | B. 50 ft. r/w, 26 ft. pavement, 32 ft. r/w, 22 ft. pavement.  |
| X | X | X | (6) Alleys: paved full width  |
| X | X | X | (7) Grading and centerline gradients of streets: per approved plans and profiles.   |
| X | X | X | (8) Storm sewer system and other drainage improvements: per approved plans and profiles.  |
|   |   |   | (9) Curb:   |
| X | X |   | A. 24" x 6" top rolled and battered to 8" bottom Portland Cement Concrete.  |
| X | X |   | B. Integral curb with gutter. 26" x 6" x 6" battered and rolled Portland Cement Concrete.   |
|   |   |   | C. 6" ID-2 bituminous material where approved by the Municipal Engineer and the State Department of Highways.   |
|   |   |   | D. 6" Portland Cement Concrete with 6" rolled curbing poured monolithically.  |

## STANDARD

A B C

		X	(10) Rolled bituminous gutter.
			(11) Pavement base:
X	X		A. 7" Portland Cement Concrete.
	X	X	B. 6" slag or crushed stone compacted and chocked.
X	X		C. 8" slag or crushed stone in two 4" courses, compacted and chocked.
X	X	X	D. 6" soil cement.
			(12) Pavement wearing surface:
X	X	X	A. 2-1/2" asphaltic concrete plant mixed.
X	X	X	B. AT-1 bituminous surface - As per State Department of Highway Specifications.
X	X	X	C. CP-2 bituminous surface - As per State Department of Highway Specifications.
			(13) Pavement:
X	X	X	A. 7" Portland Cement Concrete reinforced.
X	X	X	B. 6" Portland Cement Concrete with 6" rolled curbing poured monolithically.
X	X	X	(14) Sidewalks: 4" Portland Cement Concrete.
	X	X	(15) Street trees: 2-1/2 caliper - 40 ft. to 60 ft. apart.
X	X	X	(16) Seeding of planting strips.
X	X	X	(17) Street name signs at all intersections.
X	X	X	(18) All road construction, and any matter co-related thereto, must meet specifications as outlined in latest revised data by the State Department of Highway, and as approved by the Municipality.

(Ord. 8-14-62)

**1385.07 CONDITIONS OF ACCEPTANCE.**

(a) Subdivision Control. No subdivision of any lot, tract or parcel of land shall be effected, and no street, sanitary sewer, storm sewer, water main or other facilities in connection therein shall be laid out, constructed, opened or dedicated for public use and travel, or in common use of occupants of buildings abutting thereon, except in strict accordance with the provisions of these Subdivision Regulations.

(b) Recording. Within thirty days after the date of approval of the final plat, the subdivider shall record an approved duplicate copy of same in the office of the County Recorder of Deeds, and file with the secretary of the Governing Body, a recorder's certificate that the approved plan has been recorded with the deed book and page numbers indicated and approval shall not become final and effective until such certificate has been filed.

- (1) After an approved subdivision plan shall have been officially recorded, the streets, parks and other public improvements shown thereon shall be so considered to be a part of the official plan of the Municipality.

- (2) Streets, parks and other public improvements shown on a subdivision plan that is recorded as provided herein, shall be deemed to be a private street, park or improvement, until such time as the same shall have been offered for dedication to the Municipality and accepted by ordinance or resolution, or until it shall have been condemned for use as a public street, park or other improvement.
- (3) Every street, park or other public improvements shown on a subdivision plan to be recorded may be offered for dedication to the Municipality by formal notation thereof on the plan, or the owner may note on such plan that any such improvements have not been offered for dedication to the Municipality.

(c) Sale of Lots; Issuance of Building Permit; Erection of Building. No lot in a subdivision may be sold and no permit to erect, alter or repair any building upon land in a subdivision may be issued, unless and until a plan of such subdivision shall have been approved and properly recorded, and until improvements required by the Governing Body shall have been constructed or guaranteed as herein provided. Where owing to special conditions, a literal enforcement of this provision would result in unnecessary hardship, the Governing Body may make such reasonable exception thereto as will not be contrary to the public interest, and may permit sale of a lot, issuance of a permit or erection of a building subject to conditions necessary to assure adequate streets and other public improvements.

(d) General Provisions.

- (1) The Governing Body shall not approve any subdivision plan except in strict conformance with the provisions of these Regulations.
- (2) The Governing Body may alter any subdivision plan and specify alterations, changes, or modifications therein which it deems necessary and may make its approval subject to such alterations, changes or modifications.
- (3) No road, street, land, alley or related improvement shall be accepted as a part of the highway system of the Municipality or for maintenance unless opened, laid out, graded and improved in strict accordance with standards and specifications of the Municipality.
- (4) Before acting to approve any subdivision plan, the Governing Body may arrange a public hearing thereon, after giving such notice as may be deemed desirable in each case.
- (5) Before approving any subdivision plan, the Governing Body shall require a written agreement that the necessary grading, paving, street improvements, curbs, sidewalks, street lights, fire hydrants, water mains and sanitary sewers, as may be required by the Governing Body shall be installed in strict accordance with the standards and specifications by the subdivider within a specified time period. The written agreement which shall include a bond, deposit of funds or other securities sufficient in amount as shall be determined by the Municipal Engineer, to cover the cost of such improvements. If the improvements shall not have been completed



within the time required and in accordance with the standards and specifications such deposit shall be forfeited to the Municipality. Upon written certification by the Municipal Engineer that such improvements have been satisfactorily completed, the deposit shall be returned to the subdivider. (Ord. 8-14-62.)

**1385.99 PENALTY.**

Whoever violates any provision of this article, shall be fined a sum not exceeding one hundred dollars (\$100.00). Each day that a violation is permitted to exist after notice in writing has been served by the Building Inspector, shall constitute a separate offense. (Ord. 8-14-62.)

**ARTICLE 1386**  
**Limited Video Lottery Establishments**

**1386.01 Definitions.**  
**1386.02 Requirements.**

**1386.03 Operation prior to passage of article not held in violation of article.**

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**1386.01 DEFINITIONS.**

“Limited Video Lottery Establishments (LVL)” are any establishment within the City in which limited video lottery machines are operated.  
(Ord. 12-17-05.)

**1386.02 REQUIREMENTS.**

Prior to limited video lottery machines being operated in an establishment within the City by a conditional use permit approved by the City Board of Zoning Appeals, such permit shall be approved subject to the following conditions:

- (a) The limited video lottery establishment shall not be located within 1,000 feet of a church, or place of worship, school, park, community or recreation facility, or other limited video lottery establishment.
- (b) The 1,000 feet from a school, park, community or recreation facility shall be measured in straight line from the nearest point of the wall of a limited video lottery establishment to the nearest property line of a school, park, community or recreation facility.
- (c) The 1,000 feet measured from a church or place of worship shall be measured in a straight line from the nearest point of the wall of the portion of the building in which a limited video lottery is conducted to the nearest point of a wall of a building in which church worship services or related activities are conducted.
- (d) The 1,000 feet from another limited video lottery establishment shall be measured in a straight line from the nearest point of the wall of the portion of the building in which a limited video lottery is conducted to the nearest point of a wall in which another limited video lottery may be conducted.

The provisions hereof shall not be deemed applicable to any limited video lottery establishment that was in operation as of May 23, 2005.  
(Ord. 12-27-05.)

**1386.03 OPERATION PRIOR TO PASSAGE OF ARTICLE NOT HELD IN VIOLATION OF ARTICLE.**

Any operator or assignee of an operator of limited video lottery machines licensed to operate the same according to the laws of the State of West Virginia at a specific address in the City prior to the passage of this article shall not be held in violation of this article, provided that their license to operate the same at said location is not void, lost or abandoned for more than six months in time. (Ord. 1-12-10.)