

THE HARDY COUNTY ZONING ORDINANCE

ARTICLE I: GENERAL PROVISIONS

SECTION 1. TITLE

This ordinance shall be known as and may be cited as the “Hardy County Zoning Ordinance.”

SECTION 2. AUTHORITY

Whereas, by act of the West Virginia State Legislature, as recorded in the West Virginia Code in Chapter 8A, Article 7, Section 1, as amended, the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction into districts of such number, shape and size as it may deem best suited to carry out the purpose of zoning, and in each district it may regulate the following:

- (a) The use of land, buildings structure, and other premises for agricultural, business, industrial, residential, floodplain, and other specific uses.
- (b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, raising or removal of structure.
- (c) The area and dimensions of land, water and air space to be occupied by buildings, structures, and of courts, yards and other open spaces to be left unoccupied by uses or structures, including variations in the sizes of lots, based on whether a public or community water supply or sewer system is available and in use.
- (d) The excavation or mining of soil or other natural resources.

SECTION 3. ENACTMENT

Therefore, be it ordained by the County Commissioners of Hardy County, West Virginia, for the purpose of promoting health, safety or general welfare of the public and of further accomplishing the objectives set out in Chapter 8A, of the West Virginia Code, as amended, that the following be adopted as the Zoning Ordinance of Hardy County, West Virginia.

SECTION 4. PURPOSE

The Hardy County Planning Commission and the Hardy County Commission have undertaken to achieve the delicate balance between the individual property rights of the citizens and the health, safety, and general welfare of the public and accomplish the objects of Chapter 8A of the West Virginia Code, as amended, by reasonable restrictions on those property rights. The purposes of this chapter are:

- (a) To provide for adequate light, air, convenience of access and safety from fire, flood and other dangers.
- (b) To reduce or prevent congestion in the public streets.
- (c) To facilitate the creation of a convenient attractive and harmonious community.
- (d) To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements.
- (e) To promote the preservation of historic areas.
- (f) To protect against one (1) or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health or property from fire, flood, panic or other dangers.
- (g) To encourage economic development activities that provide desirable employment and enlarge the tax base.
- (h) To provide for the preservation of agricultural and forest lands.

SECTION 5. JURISDICTION

These regulations shall apply to all properties within Hardy County, West Virginia; but, do not include the incorporated areas of the county.

SECTION 6. NON-EXCLUSIONARY INTENT

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

SECTION 7. HISTORICAL PRESERVATION

It is not the intent of this chapter to exclude provisions for the protection of historical areas within Hardy County. Preservation methods should be applied to areas that are eligible for the Historic Register. Design and provisions for streets, roads and utilities will be considered in areas of historic importance. Where historic sites are identified, new development will be encouraged to use architecture, in those areas, that will be harmonious to the historic area. Historic sites will be allowed in all zoning districts of Hardy County.

SECTION 8. OFFICIAL ZONING MAP

The Hardy County Zoning Ordinance shall include the ordinance and the accompanying zoning map, which shall be considered an integral part of the zoning ordinance. The Official Zoning Map shall be the map certified by the Clerk of the County Commission of Hardy County. All subsequent amendments (i.e., rezoning) of the Official Zoning Map also shall be certified by the Clerk of the County Commission of Hardy County.

ARTICLE II: DEFINITIONS

For the purpose of these regulations, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, the singular number include the plural and the plural is singular. The word “shall” is mandatory and the word “may” is permissive. The masculine gender includes the feminine and neuter genders. The words “used for” shall include “arranged for”, “designed for”, “intended for”, “maintained for”, “constructed for”, or “occupied for”. The word “person” shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust or the manager, lease agent, servant, officer or employee of any of them. The word “lot” includes “structures.” The word “used” or “occupied” as applied to any local building shall be construed to include the words “intended, arranged or designed to be used or occupied.” The word “land” shall include water surface and land under water.

Abandonment

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

Accessory Use

A structure or use which is customarily incidental and subordinate to the principal building or use which is located on the same lot as the principal building. Accessory structures include garages, tool sheds, storage building, swimming pools or other similar structures. An accessory structure having any part of a wall in common with a dwelling is considered part of the main building and must meet those setbacks.

Accessory Dwelling Unit

A secondary dwelling unit established in conjunction with and clearly subordinate to a single family detached dwelling unit.

Addition, Major

A major addition shall include those additions that will directly affect the function of the site or those areas surrounding the site. Any substantial change of use classification, alteration of on-site parking requirements, potential adverse impacts of off-site storm water drainage, increased demand for public water and sewerage, or additions, which will cause the rerouting of traffic circulation, shall be considered “major additions.”

**Adjacent/Confronting
Affected Property Owner**

The owner of property adjacent to or confronting a proposed development (including the properties across any road, right of way or easement) which will be impacted either positively or

negatively by that proposed development. Names and addresses of affected property owners will be taken from current tax records in the Hardy County Courthouse.

Adult Entertainment

Uses that are commonly associated with adults only, including but not limited to: bars, lounges, dance clubs, adult arcades, adult cabarets, adult motion picture theatres, massage parlors, sexual encounter establishments and other similar businesses.

Adult Uses (clubs)

Uses that are commonly associated with adults only, including but not limited to: bars, lounges, dance clubs, stripping establishments, adult book stores, clubs, adult arcades, adult cabarets, adult motion picture theatres, massage parlors, sexual encounter establishments, and other similar businesses.

Aggrieved Person

A person who is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county may suffer.

Agricultural Use

The exclusive use of land for a bona fide farming operation. This includes activities such as tilling of soils, the growing of crops or plant growth of any kind (including forestry), the raising of poultry and livestock, pasturage, dairying, horticulture, floriculture, viticulture (the cultivation of grapevines), fish culture, animal and poultry husbandry, fish, meat and poultry processing.

Amenities	Utilities, roadways, and public services that make a particular site more attractive for development.
Applicant	Any person commencing to develop land under the Subdivision Ordinance or any person requesting an appeal to this Ordinance.
Area, Land	Land area refers to new land area, exclusive of streets and other public space. Synonymous with the word “tract” which is a piece of land capable of being described with such definiteness that its location may be established and boundaries definitely ascertained.
Billboard	A structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located. (See Sign, Outdoor Advertising)
Board	The Hardy County Zoning Board of Appeals
Buffer	An area on a property defined by a distance from the property line or other specifically defined line such as floodplain, wetland limit, or stream bank. Said area is intended to absorb, lessen or neutralize the impacts of one land use from another. The nature of the buffer will depend on the impact (s) being neutralized.
Building	Any structure which has one or more floors and a roof . The term building shall include manufactured homes.
Building, Height of	The vertical distance measured from the level of the curb or the established curb grade opposite the middle of the front of the structure to the highest point of the roof if a flat roof, to the deck line of a mansard roof, or to the mean height level

between the eaves and ridge of a gable or gambrel roof. For buildings set back from the road line, the height shall be measured from the average elevation of the ground surface along the front of the building.

Building Line

The line established by law beyond which a building shall not extend as determined by front, side and rear yards herein.

Change of Use

Any use which is different than the previous use of a building or land.

Clear-Cutting

Removal of an entire stand of trees and shrubs.

Clustering

Grouping structures in closely related groups at higher densities than normally permitted in certain areas in order to preserve other areas as parks, recreational areas or sensitive natural areas. Overall density of the total parcel remains within acceptable limits. See chart for minimum area per dwelling unit and minimum lot area.

Commercial

Any wholesale, retail, or service business activity established to carry on trade for profit.

Commission

The Hardy County Planning and Zoning Commission.

Community Uses

Community facilities are integral parts of the physical structure of a community. They influence the community's appearance and livability. Their availability and adequacy are also a definite measure of the quality and desirability of a community. Community facilities can generally be grouped into five categories:

1. Parks and Recreation Facilities
2. Museums and Cultural Facilities
3. Schools
4. Public Buildings

5. Health Services

Comprehensive Plan

A plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body's jurisdiction.

Conditional Use

A use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the zoning board of appeals and upon issuance of a conditional use permit, and subject to the limitations specified in the zoning ordinance.

Conditional Use Permit

A permit issued upon approval of the Commission that allows for the proper integration of compatible uses into the community.

Condominium

A common interest community in which portions of the real estate are designated for separate fee simple ownership of cubic air interior spaces and the remainder of the real estate is designated for common ownership solely by owners of those portions. Said common interest community may be residential, commercial or industrial depending on other provisions of this ordinance. All such projects are subject to the West Virginia Uniform Common Interest Ownership Act. In the event that a specific requirement within the Uniform Common Interest Ownership Act is inconsistent with a commercial or industrial project, that specific requirement shall not apply.

Contiguous

Lots, parcels, county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easement, streams, rivers, and other natural topography are not to be used to determine lots, parcels, county boundaries as contiguous.

Conventional Subdivision

The subdivision of a lot in accordance with the lot size requirements and bulk regulations specified in the district regulations.

Curb level

The level of the established curb in front of a building or structure measured at the center of such front. Where no curb level has been established, it shall be deemed to be the established level of the center line of the street surface in front of a building or structure measured at the center line of such front.

Day Care

The care of one or more children on a regular basis, for periods of less than 24 hours per day, in a place other than the children's own dwelling unit. Day care includes family day care and group day care as defined in this ordinance.

Day Care Center, Family

A dwelling in which an occupant (permanent) of the dwelling, licensed by the County or State, provides for the care of no more than six children, excluding children of the day care provider, who do not all have the same parentage, for a portion or all of the day and on a regular schedule more often than once a week. For the purpose of this ordinance, such activities shall meet all requirements of the home occupation.

Day Care Center, Group

A person, agency, or institution licensed by the County or State offering or supplying group care for (1) between seven and twelve adults or children who do not have the same parentage or (2) care of thirteen or more adults or children other than a private home setting, for a portion of all of the day and on a regular schedule more often than once a week.

Development

The subdivision of land; construction, reconstruction, conversion, structural alteration, relocation or enlargement of

any structure, installation of a sign; and any mining, landfill or land disturbance, such as grading, paving and excavation.

Dwelling, Attached

One of a series of three or more attached dwelling units and not occupied by more than one family.

Dwelling Unit

One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and containing independent cooking and sleeping facilities.

Dwelling, Detached

A building containing only dwelling units surrounded by yards or other open area on the same zoning lot.

Dwelling, Multi-Family

A building containing three or more dwelling units.

Dwelling, Single

A building containing not more than one dwelling unit and not occupied by more than one family.

Dwelling, Townhouse

One of a series of three or more attached dwelling units separated from one another by continuous vertical party walls without openings from basement floor to roof.

Dwelling, Two-Family

A building located on one zoning lot containing not more than two dwelling units, arranged one above the other or side by side, and not occupied by more than two families.

Easement

A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.

Engineer

A person registered by the State of West Virginia through the Board of Registration of Professional Engineers.

Essential Utilities and Equipment

Means underground or overhead electrical, gas, communications not required by the federal communications commission, water and sewage systems, including pole structures, towers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith.

Existing Use

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

Expanded Use

The further development of a developed site.

Exterior Architectural Features

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

Factory Built Homes

Are modular and manufactured homes.

Family

One or more persons living together as a single housekeeping unit.

Farming

Commercial agricultural uses in general and especially crop, dairy, stock, and poultry

farming, commercial greenhouses on three (3) acres or more.

Flood-prone Area

Areas subject to the 100-year flood as determined by the latest Flood Insurance Study proposed by the Federal Emergency Management Agency (FEMA). Also, any other areas which may, in the future, be determined to have repeated flood problems. (Flood Insurance Study prepared by the Federal Insurance Administration for Hardy County.) A land area adjoining a river, stream, watercourse, or lake for which a floodway and floodplain has not been determined with respect to any specific flood frequency, but for which the potential for flooding can be identified by soils, geological evidence or other data.

Flood-prone Soils

Any areas designated as flood-prone soils in the Soil Survey of Hardy County, West Virginia prepared by the Department of Agriculture, Soil Conservation Service.

Forest

A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes: (a) areas that have at least 100 trees per acre with at least 50 percent of those trees having a two-inch or greater diameter at 4.5 feet above the ground and larger; and (b) forest areas that have been cut but not cleared.

Forest Management

The application of business methods and forestry principles to the operation of a forest property for the purpose of maintaining forest resources and producing a continuous supply of forest products. Forest management practices include, but are not limited to, site preparation, planting, harvesting, road construction, insect and disease control, inventory, and fire protection.

Forestry

Generally, a profession embarking the

science, business, and art of creating, conserving, and managing forest and forest lands for the continuing use of both commodity and non-commodity benefits.

Frontage, Street

All property on the side of a street between two intersecting streets (crossing or ending), or if the street is dead-end, then all the property abutting on one side between an intersecting street and the dead-end of the street.

Garden

A piece of ground, usually partly grassed and adjoining a private house, used for growing flowers, fruit, or vegetables, and as a place for recreation.

Gardening

Cultivate or work in a garden.

Glare

The effect produced by the brightness sufficient to cause annoyance, discomfort, or lessen visual performance and visibility.

Governing Body

The body that governs a county.

Grandfather Clause

See Nonconforming Use.

Group Residential Facility

A dwelling owned or leased by a governmental or non-profit organization and used to house a group of persons not necessarily related by blood. The parent agency or institution has the administrative, supervisory and service responsibility for the group home.

Historic District

A geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

Historic Landmark

A site, building, structure or object designated as historic on a national, state or local register.

Historic Site

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

Home Occupation

Any use conducted either/or entirely within a dwelling or within an accessory structure which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, to indicate that the building is being used for any purpose other than that of a dwelling.

Home Occupation, Level 1

An occupation conducted in a dwelling unit for gain provided that:

- A. No person, other than members of the family residing on the premises, shall be engaged in such occupation. Said members must be full-time residents of the premises.
- B. The use shall be conducted wholly within the dwelling unit and shall not exceed 25 percent of the floor area of the dwelling unit.
- C. There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation.
- D. Traffic generated by such home occupation must not exceed twenty (20) vehicle visits per week at the premises. Any need for parking generated by the conduct of such home occupation shall be met off street and other than in a required front yard.
- E. It is clearly incidental and subordinate

to the use of the dwelling unit as a residence.

- F. No equipment or process shall be used in such a home occupation which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibration perceptible, outside the dwelling unit.
- G. No business which includes the storage of weapons such as firearms (other than residents' hunting, protection and leisure weapons) shall be permitted.

Home Occupation, Level 2

An occupation, conducted in a dwelling unit for gain, provided that:

- A. The occupation must be conducted by a full-time resident of the property. Up to six (6) nonresident employees also may be permitted to work on the premises.
- B. The use shall be conducted wholly within the dwelling unit or accessory unit and shall not exceed one third (1/3) of floor areas of the dwelling unit.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct if such home occupation other than one sign, not exceeding one square foot in area, non-illuminated.
- D. Not exceed thirty (30) business-related vehicle visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.
- E. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.

- F. No equipment or process shall be used in such a home business, which create offense manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibration perceptible, outside the dwelling unit.
- G. No business that includes the storage of weapons such as firearms (other than residents' hunting, protection, and leisure weapons) shall be permitted.
- H. Home businesses do not include boarding or rooming homes or bed and breakfast establishments.

Impervious Surface

Any structure, material, or surface which reduces and prevents absorption of storm water into the earth.

Improvement Location

A permit issued by a county through its planning office, in accordance with its subdivision and land development ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

Improvements

Modifications to land which increase its value or utility. Improvements include, but are not limited to, buildings and structures, road grading, road surfacing, landscaping, curbs, gutters, storm sewers and drains, sidewalks, street signs, modifications to water courses, water supply facilities, sewage disposal facilities, and park and recreation equipment.

Infilled Development

Is to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

Institutional Uses

Institutional Uses should be focused on activities that directly or indirectly

benefit the general public, including public facilities and uses that meet the public goals. While lands incorporated into this designation are primarily intended for governmental agency use or quasi-public use, some mixed-use (public/private) orientations may be appropriate under special permit regulations.

Kennel Operation & Care

A place prepared to house, board, breed, handle or otherwise keep or care for domestic animals for sale or housed in return for compensation.

Land Development

The development of one or more lots, tracts or parcels of land by any means and for any purpose, but does not include easements, rights-of-way or construction of private roads for extraction, harvesting or transporting of natural resources.

Land Surveyor

A person registered by the State of West Virginia through the Board of Examiners of Land Surveyors.

Light Industrial

Any industry that does not use a significant amount of water except for domestic purposes. Industrial uses that do not create noise, odor, smoke and objectionable nuisances or hazards. All other perceived light industrial uses shall be referred to the Hardy County Rural Development Authority for a recommendation. The final decision shall still be made by the Planning Commission.

Livestock

Generally accepted outdoor farm animals (i.e. cows, goats, horses, pigs, barnyard fowl, etc.) not to include cats, dogs, and other house pets. Farm animals kept either in open fields or structures for training, boarding, home use, sales, or breeding and reproduction.

Lot

A measured portion or parcel of land separated from other portions or parcels by description in a site plan or a recorded plat,

or by metes and bounds, intended to be a unit for the purpose, whether immediate or future, of transfer of ownership, or of development or separate use. The term applies to units of land whether in a subdivision or a development.

Lot Area

The total horizontal area included within the rear, side and front lot lines or proposed street lines of the lot.

Lot Line

Any boundary line of a lot defined herein. When applicable, a lot line shall coincide with a STREET LINE. Where a lot line is curved, all dimensions related to said lot line shall be based on the chord of the arc.

Lot Line, Front

The side or sides of an interior or through lot which abut a street; in a corner lot both sides abutting the streets forming the corner shall be considered front lot lines. Front lot lines shall be measured from the Road Improvement Easement where one exists.

Lot Line, Rear

On a corner lot, the rear lot line shall be defined as the line at the rear of the house that separates other lots. On lots with one side abutting a street or right-of-way, the line at the opposite end of the property shall be defined as the rear lot line.

Lot Line, Side

Any lot line other than a front lot line or a rear lot line. In a corner lot there must be at least one rear lot line.

Lot of Record

A written or graphic description of a lot that is on record in the office of the Clerk of the County Commission of Hardy County at the adoption of this Ordinance.

Manufactured Homes

Homes built entirely in the factory under a federal building code administered by the U.S. Department of Housing and Urban Development (HUD). They may be single

or multi-section and are transported to the site and installed. The federal standards regulate manufactured housing design and construction, strength and durability, transportability, fire resistance, energy efficiency and quality.

Massage Parlor

An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, certified massage therapist, or similar professional person licensed by the State. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

Mobile Home

A transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Act of 1974.

Mobile Home Court

Any site, area, tract or parcel of land upon which two or more mobile homes used or occupied for dwelling purposes are parked either free of charge or for monetary consideration and shall include any roadway, building, structure, installation, enclosure, or vehicle used or intended for use as a part of the facilities of said mobile home court.

Modular Unit

Any structure that is wholly, or in substantial part, made fabricated, formed, or assembled in manufacturing facilities

for installation or assembly and installation on a building site and designed for long-term residential use and is certified as meeting the standards contained in the state fire code encompassed in the legislative rules promulgated by the state fire commission pursuant to section five-b, article three, chapter twenty-nine of the West Virginia State Code.

Multi-Residential Use

A deeded lot or parcel on which two or more dwelling units are located.

Natural, Undisturbed Condition

This exists where the terrain has not been altered in form by human activities such as cutting, filling, blasting or leveling and where natural vegetation exists.

Natural Vegetation

This occurs when a property is allowed to revert to a wild condition with native plants. No cutting, trimming or cultivation takes place in areas of natural vegetation.

Nonconforming Use

A use of a building or of land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the district in which it is located. Any new lines of division within a subdivision of a parcel that is a nonconforming use shall meet the regulations of this ordinance.

Non-traditional Zoning Ordinance

An ordinance that sets forth development standards and approval processes for land uses within the jurisdiction, but does not necessarily divide the jurisdiction into distinct zoning classifications or districts requiring separation of different uses, and does not require a zoning map amendment.

Notification

An owner, tenant, user, or operator of any lands, business, structure, or building within the District shall submit a Notification to the County Planner of his/her intentions to construct or conduct any of those uses listed as “permitted uses” before beginning any

such project within the zoning district. The County Planner will make official Notification forms available.

Nursing or Retirement Home

This term includes rest homes, nursing homes, convalescent homes for children and homes providing chronic and convalescent care.

Office Building, Class A

A principal building that was originally constructed as a one-family or two-family dwelling and that is converted by proper permit to office use without any external enlargement for the purpose of creating the office space or otherwise accommodating the office use. For the purpose of this definition, enclosure of a porch of a house or the addition of an exterior stairway at the side or rear of the building does not constitute external enlargement.

Office Building, Class B

A principal building used for offices and which is not a Class A office building.

Open Space

Open space provisions are intended to encourage development approaches reflective of the guidelines of the comprehensive plan by permitting flexibility in design. More specifically, open space is intended to serve such varied comprehensive plan objectives as:

- Provision of active/passive recreation;
- Protection of areas sensitive to development;
- Buffering between dissimilar uses; and
- Preservation of agricultural activity.

To this end, in any rezoning, site plan, or sketch plan proposing inclusion of open space areas, the Planning Commission shall consider the appropriateness of such areas for the intended use in terms of such factors as location, size, shape, and topographic characteristics.

Unless otherwise permitted by the Planning Commission in a particular case, open space shall be maintained in a natural state and shall not be developed with any man-made feature. Where deemed appropriate by the Planning Commission, open space may be used for one or more of the following uses subject to the regulations of the zoning district in which the development is located:

- Agriculture, forestry, and fisheries including appropriate structures;
- Game preserves, wildlife sanctuaries and the like;
- Noncommercial recreational structures and uses;
- Public utilities
- Storm water detention and flood control devices.

In addition, in reviewing development proposing incorporation of open space, the Planning Commission may require inclusion in such open space of:

- Areas deemed inappropriate for or prohibited to development such as but not limited to: land in the one hundred year flood plain and significant drainage swales; land in slopes of twenty-five (25) percent or greater; major public utility easements; storm water detention and flood control devices; and lands having permanent or seasonally high water tables;
- Areas to provide reasonable buffering between dissimilar uses within such development and between such development and adjoining properties.

The Planning Commission may require redesign of such proposed development to accommodate open space areas as may be required under this provision; provided that, in no case shall such redesign result

in reduction of the total number of proposed dwelling units otherwise realizable under this ordinance for conventional development.

Open Space, Active

That open space within the boundaries of a given lot that is designed for recreational purposes, to include but not to be limited to such uses as ball fields, multi-purpose courts, swimming pools, tennis courts, golf courses, play lots and playgrounds, boating docks, walking, bicycle or bridle trails, and shuffleboard courts.

Open Space, Amenities

That open space within the boundaries of a given lot that is designed to enhance privacy and the amenity of the development by providing landscaping features, screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness. Landscaped open space may include but need not be limited to lawns, decorative planting, flower beds, sidewalks/walkways, ornamental objects such as fountains, statues and other similar natural or artificial objects, wooded areas, and water courses, any or all of which are designed and arranged to produce an aesthetically pleasing effect within the development.

Open Space, Passive:

Land area not suited for “active open space.”

- Areas deemed inappropriate for or prohibited to development such as but not limited to: land in the one hundred year flood plain and significant drainage swales; land in slopes of twenty-five (25) percent or greater; major public utility easements; storm water and flood control devices; and lands having permanent or seasonally high water tables;
- Areas to provide reasonable buffering

between dissimilar uses within such development and between such development and adjoining properties.

Open Space, Usable

For the purposes of this ordinance, usable open space means an area that:

- (1) Is not encumbered with a substantial structure,
- (2) Is not devoted to use as a roadway, parking area, or sidewalk,
- (3) Is left (as of the date development began) in its natural or undisturbed state if wooded, except for the cutting of trails for walking or jogging, or, if not wooded at the time of development, is landscaped for ball fields, picnic areas, or similar facilities, or is properly vegetated and landscaped with the objective of creating a wooded area,
- (4) Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation, and
- (5) Is legally and practicably accessible to the residents of the development out of which the required open space is taken, or to the public if dedication of the open space is required, and
- (6) Consists of land no more than 25 percent of which lies within a floodplain or floodway.

Permitted Use

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

Plan

A written description for the development of land.

Planning Commission

A county planning commission.

Plat

A scaled, graphic drawing of a land subdivision project prepared according to the provisions of this Ordinance. A plat depicts the design and layout of a

project as well as the location of existing and proposed property boundaries and easements. A plat also includes all terms, conditions and performance requirements established prior to the approval of a subdivision.

Preferred Development Area

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

Preliminary Plat

A professionally prepared drawing of a proposed subdivision which is not a record plat but which contains detailed information concerning the proposed development.

Primary Highway

State designated and U.S. routes.

Principal Permitted Use

The primary or predominant use of any site.

Prohibited Use

A use that is not permitted.

Public Highway

Any highway or road in Hardy County which is part of the Federal or West Virginia public highway system and which is so identified and numbered on the most recent General Highway Map published by the West Virginia Department of Highways.

Public Place

Any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government

Public Uses

Government properties (County, State and Federal) are considered Public Uses. Public Uses areas are separate and distinct from other planning area designations. The public use designation is applied as an individual parcel. Educational institutions (schools and colleges), churches and cemeteries, and utilities are also classified under this category.

Residential Dwelling	Any detached or attached structure that is used for permanent living quarters and has kitchen facilities.
Right-of-Way	A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted.
Road	A prepared surface within a right-of-way which is intended for vehicular use. Road does not include shoulders.
Seasonal Uses	A use that is carried on for not more than a single three-day consecutive period in each of the four solar seasons.
Sensitive Natural Area	An area of wetlands, stream or river banks, and forest which exists as a habitat supporting rare or endangered species or which has been dedicated perpetually to environmental preservation by easement, covenant, or the legal instrument or which is otherwise protected for environmental purposes by State or Federal statute.
Setback Line	That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed.
Shopping Center	A commercial facility on a single lot with common parking facilities that uses or leases separate areas of space to retail or service oriented business.
Shrub, Evergreen	A low growing, usually several stemmed, woody plant which has foliage that remains green and functional through more than one growing season.
Sign	Any object, device, display or structure, or part thereof, situated outdoors or

indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

Sign, Animated

A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.

Sign, Business

A sign which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.

Sign, Freestanding

A sign supported by a permanent structure, other than a building, that is affixed to the earth and placed on the same parcel of land on which the business or service advertised by the sign is located.

**Sign,
Outdoor Advertising**

A sign structure which directs attention to a business, commodity, service, or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located. This term shall include billboards.

Site Plan

A required submission, prepared and approved in accordance with the provision of Article 1003.III.C, which contains detailed engineering drawings of the proposed uses and improvements required in the development of a given lot.

Soil Value

A relative numeric value assigned to soil groups based on the group's potential for agricultural production.

Species, Rare or

Any species listed with the West Virginia

Endangered	Department of Natural Resources Heritage Program Species List or by the U.S. Department of Interior, Department of Fish and Wildlife Management.
Sprawl	Poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural area, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.
Staff	Those persons employed by the Commission or Board, whether under direct employment or by contractual agreement.
Standard Details	These are minimum acceptable details approved by the County for use in preliminary plats, site plans, and related improvement plans. Said approval does not relieve the subdivider, the design consultant, or the builder of the responsibility for structural adequacy and sound construction.
Standard Industrial Classification	A multi-digit code utilized by the federal Executive Office of Management and budget to classify establishments by type of activity in which they are engaged.
Storage Building	An enclosed structure where goods, materials, or personal property is placed and kept for more than twenty-four (24) consecutive hours.
Streets	Streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways.
Subdivision	The partition or division of land into two or more lots, tracts, parcels or units for the purpose, whether immediate or future, of conveyance, building construction or land use. Subdivision applies to all forms of development, including residential, commercial and industrial.

Timber	Trees or wooded land considered as a source of wood.
Timbering	Timber or work made of it.
Town House	A unit with separate ownership, separated from adjacent units by a vertical wall with no openings, providing a dwelling for a single family, in which separate access to the outside is provided, and in which the major orientation of the unit is vertical rather than horizontal; and the ownership to include the land located under the unit.
Travel Trailer	A recreational vehicle eight and one-half feet wide or less which may be a manufactured dwelling, a recreational dwelling, or a prefabricated structure not used for commercial or business purposes. It is constructed for movement on public highways and is titled and registered for highway use by the Department of Motor Vehicles.
Unit of Government	Any federal, state, regional, county or municipal government or governmental agency.
Urban Area	All lands or lots within the jurisdiction of a municipal planning commission.
Use	An activity that constitutes a legal employment of a land parcel or lot exclusive of ancillary parking and drives.
Utility	All lines and facilities related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, power, information, telecommunication and telephone cable, and includes facilities for the generation of electricity. A public or a private agency may provide these services.

Variance	A departure from the terms of these regulations.
Vehicle Sign	A sign or advertising device which is painted, mounted, affixed, or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or other activity on or off the premises or public right-of-way where such vehicle sign is located. This does not include identification signs on vehicles, which are moved regularly and used in normal, day-to-day, operation of the business.
Wetland	An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions commonly known as hydrophytic vegetation. The substrata is predominantly hydric soil.
Zoning	The division of a county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zone.
Zoning Map	A map that geographically illustrates all zoning district boundaries within a county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

ARTICLE III: LAND USE

SECTION 1. FLOODPLAIN DEVELOPMENT

Purpose:

The purpose of this section is to prevent the loss of life and property, to prevent the creation of health and safety hazards, to prevent the disruption of commerce and governmental service, to prevent extraordinary and unnecessary expenditure of public funds for flood protection and relief, and to prevent the impairment of tax base by:

- a. Regulating uses, activities and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- b. Restricting or prohibiting certain uses, activities and development from locating within areas subject to flooding.
- c. Requiring certain uses, activities and developments that occur in flood-prone areas to be protected or flood-proofed, or both, against flooding or flood damage.

Applicability:

This division shall apply to all lands within the unincorporated areas of Hardy County and identified as being flood-prone as stated on the latest published FEMA Floodplain Management Maps.

Compliance:

No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered without complying with the Hardy County Flood Ordinance and all aspects of this zoning ordinance. However, the provisions of any ordinance which are more restricted than this division shall remain in full force and effect.

Establishment of floodplain districts base:

The various floodplain districts shall include areas subject to inundation by waters of the 100-year flood. The basis for the delineation of these districts shall be the most current Flood Insurance Study for Hardy County prepared by the Federal Emergency Management Agency, Federal Insurance Administration or as may be amended.

Description of District:

- a. The approximated floodplain district shall be that floodplain area for which no detailed flood profile or elevations are provided but where a 100-year floodplain boundary has been approximated. Such areas are shown on the floodplain boundary map as on the flood insurance rate map, or both. For these areas, the 100-year flood elevations and floodplain information from federal, state and other acceptable sources shall be used when available. In determining the necessary elevations for the purpose of this ordinance, data from the following may be used:
 1. Corps of Engineers – Floodplain information reports;
 2. Known high water marks from past floods which are documented.
- b. The special floodplain district shall be that floodplain area where 100-year flood profiles or elevations have been provided in the flood insurance study. All building permit applications issued for any of the various floodplain areas shall incorporate the following information:
 1. For structures that have been elevated, the elevations of the lowest floor (including basements);
 2. For structure that have been flood-proofed (nonresidential only), the elevation to which the structure has been flood-proofed;
 3. The elevation of the 100-year flood;
 4. The zoning approval for this use.

Official Floodplain Maps:

The boundaries of the floodplain zones are established as shown on the flood boundary and floodplain maps and flood insurance rate map which shall be on file at the County Planner's Office.

SECTION 2. AGRICULTURAL "A" DISTRICT

This district comprises the residual unincorporated lands in the county after "P", "R", "C", "I" and the floodplain areas have been designated. It is recognized that some land in the county must be available for innovative ideas and less restrictive uses. The "A" District provides this land. Agricultural uses are encouraged in "A" district, but the following uses are also permitted there:

1. Single and two-family dwellings, including mobile homes, provided that mobile homes shall be placed no nearer than 100 ft. from any existing permanent dwelling on adjacent property.

2. Churches and parish houses, religious camp meetings, schools and colleges, including dormitories, public buildings, structures and properties for recreation, conservation, culture, or administrative use.
3. Private recreation areas and centers, including country clubs, hunting or fishing clubs, swimming pools, golf courses, and summer camps, public and private forests, wildlife preserves, and similar conservation areas.
4. Private summer homes, cabins, trailers and mobile homes for seasonal and not permanent year-around occupancy, located on a lot which need not abut upon a public road.
5. Commercial green houses and nurseries.
6. Cemeteries.
7. Forest and production of forest products, including sawmills, provided that any sawmill shall be located not less than 600 ft. from any dwelling not located on the same premises.
8. Circus, carnival or similar transient enterprise, provided that such use shall not exceed ten (10) days and does not include any permanent structures.
9. Any of the following uses when conducted at or adjacent to the house of the proprietor:
 - a. A country general store, including automobile fuel pumps.
 - b. An antique or gift shop.
 - c. A repair shop for automobile, farm equipment, furniture and the like; including welding, blacksmithing, and similar operations.
10. Accessory buildings and uses customarily incidental to any principal use or authorized conditional use.
11. Any person may maintain an office or carry on a customary home occupation in the dwelling house used by him as his private residence.
12. Temporary buildings, including trailers for uses incidental to construction work, complying with requirements of the Health Department, which building shall be removed upon completion or abandonment of the construction work.
13. Kennels

14. Essential utilities and equipment

15. Historical sites

The following conditional uses may be authorized in any “A” District with the approval of the Zoning Appeals Board, which may establish distance and other requirements as it deems necessary:

1. Hospitals, sanatoriums, and institutions for human care and the treatment of diseases, rest homes, dental or medical clinics and offices, and nursing homes for convalescent patients as well as institutions for the treatment of the insane or liquor or drug addicts, group resident facilities provided that any such new establishment shall have a minimum lot area of five acres.
2. Motels, with or without restaurants, along primary highways.
3. Commercial summer gardens, swimming pools, fishing resorts, stables, gun clubs, trap-shooting ranges, 3-D ranges and clothes optional facilities.
4. Camp grounds are subject to a minimum of 2 acres. The minimum requirement for RV camp sites is 2,500 square feet and for tent camp sites, 600 square feet plus parking.
5. Public utilities structures and properties, other than essential services, as defined in Article IX, Paragraph 1.
6. Penal and correctional institutions on a minimum 20-acre site.
7. Public or private airports or landing fields.
8. The business of garbage feeding of hogs and fur farms or farms for the raising of animals for experimental or test purposes, such as rats, mice, monkeys, and the like.
9. Sewage disposal plants and sites for the disposal of garbage or refuse.
10. Livestock sales yards and buildings.
11. Fairgrounds and race tracks or courses for the conduct of seasonal or periodic meets of horses, dogs, aircraft, automobiles, motorcycles and the like.
12. Auto sales, scrap-metal, salvage, or auto wrecking yards, including the salvaging and sale of auto parts, provided that every such yard and the contents thereof shall be fully screened from public view by hills, woods, or otherwise, and shall be set 1000 ft. from any public road and shall be screened there from. The foregoing will be subject to the Hardy County

Salvage Yard Ordinance.

13. Housing subdivisions meeting the Hardy County Subdivision Ordinance shall contain buffers and restrictive covenants to allow existing agricultural practices to continue on neighboring properties without hampering the agriculture enterprise and threatening ground water quality. The buffer zone shall be a minimum width of 50 feet maintained within the boundary of the subdivision in which no structures can be built.

HEIGHT REGULATIONS: No structures shall exceed three stories or 40 feet in height, except that farm and utility structures may be built to any required heights.

LOT AREA, WIDTH AND YARD REQUIREMENTS: The following minimum requirements shall be observed in all districts:

	Min. Lot Area	Min. Lot Width	Lot Area per Family	Front Yard Depth from Right-of-Way Boundary	Side Yard Width	Rear Yard Depth
Dwelling (including mobile homes)	20,000 sq. ft.	100 ft.	15,000 sq. ft.	40 ft.	15 ft.	50 ft.
Motels	3 acres	200 ft.		40 ft.	30 ft.	
Churches	2 acres	200 ft.		40 ft.	25 ft.	50 ft.
Public Util. Uses	20,000	100 ft.		40 ft.	20 ft.	50 ft.
Other Permitted						
Uses	3 acres	200 ft.		40 ft.	30 ft.	50 ft.
Trailer Parks & RV Sites	2 acres	200 ft.	2,500	100 ft.	50 ft.	50 ft.

SECTION 3. PUBLIC “P” DISTRICT

This district contains areas in the county under the ownership and management of state and federal land agencies, particularly national and state forest land and national park land, for the purposes of natural resource management and public recreation use.

Permitted Uses:

Within the public district “P”, this chapter has no effect on land in federal and state ownership.

After a state or federal agency acquires land through a transfer or exchange, that land is automatically amended as public district (“P”) to the official zoning map. After federal or state land is transferred to private ownership, that land is automatically amended to the official zoning map and assumes the zoning district of the majority of surrounding and nearby private lands, unless an amendment for another zoning district is submitted and approved under this ordinance.

SECTION 4. RESIDENTIAL “R” DISTRICT

This district is composed of residential areas and certain other areas which are conducive to residential development. It is primarily designed to provide and encourage a safe and suitable environment for family life. The regulations of this district are designed to stabilize and protect the essential character of this district through the careful development of both density and type of structure. Development in this district should be flexible in order to preserve the basic quiet nature of a residential neighborhood.

This district provides for one-family and two-family residential development protected from the intrusion of incompatible land uses. It is intended to encourage such development around existing residential areas where soil conditions are suitable for such development and in those areas that can be economically and readily served by utilities and municipal facilities. All parcels, lots, tracts that are used in this district shall conform to the “Dimensional Requirements” list in this ordinance.

NOTE: In no case shall a “mobile home” manufactured or assembled prior to July 1976 be allowed as a residence, office or temporary housing in Hardy County. This date is the date that Mobile Home Standards for Safety were established.

RESIDENTIAL ZONES

Old Fields:

An area encompassed as follows: Beginning at a point in the center of the South Branch of the Potomac River and in the Hampshire County line, thence in a southwesterly direction with the center of said river to a point on the center of the railroad bridge over said river, thence leaving the river and in a westerly direction to a point in the center of the bridge at Reynolds Gap and Co. Rt. 2, thence in a southerly direction with the centerline of Co. Rt. 2 till it intersects with the Old Fields Commercial Zone, thence in a westerly direction with said Commercial Zone until it intersects again with Co. Rt. 2, thence leaving the Old Fields Commercial Zone and in a northerly direction with Co. Rt. 2 until it intersects with the Grant Co. line, thence leaving Co. Rt. 2 and in a northeasterly direction with the Grant Co. line to the point where it intersects with Mineral Co. and Hampshire Co., thence leaving Grant and Mineral Counties and with the Hampshire Co. line to the Beginning.

NOTE: This area shall not include the area described as the Old Fields Industrial Park.

Trough Farms:

This area shall be the area encompassed by the surveys as recorded in Map Book 1 at Pages 90 & 97 and Map Book 2 at Page 35, and known as South Potomac Trough Farms (Sec. "A – C") and the survey in Map Book 4 at Page 76 and known as Rolling Pines Subdivision.

Ogden Farm:

This area shall be encompassed by the following: Beginning at a point in the center of the South Branch of the Potomac River (the south corner to the C.W. Meneffee Lots at Ogden Hole), thence N 47°51'22" W 125.00 feet to a white oak found marked on the top of the river bank, thence N 47°35'27" W 195.89 feet to a 5/8" steel rod (the southwestern corner to the Meneffee Lots), also being a corner to Tract "A" as recorded in Map Book 6 at page 47, thence N 47°34'16" W 1765.47 feet to a point, thence N 56°10'22" E 1550.24 feet to a point in the line of Tract "B", thence S 54°05'30" E 1000.00 feet to a 5/8" steel rod, thence N 31°26'22" E 756.35 feet to a 5/8" steel rod, thence S 72°02'39" E 765.65 feet to a point in the South Branch of the Potomac River, thence with the river, S 31°18'11" W 875.97 feet, S 46°07'37" W 209.49 feet, S 60°42'25" W 216.08 feet, S 54°34'10" W 423.02 feet, S32°31'27" W 1006.08 feet to the Beginning.

Carla Acres:

The subdivision known as Carla Acres Sec. 1 and Sec. 2 as recorded in Map Book 3 at page 108 and Map Book 4 at page 108.

Rig:

An area encompassed as follows: Beginning at a point at the intersection of Co. Rt. 10/6 and the Grant Co. line, thence leaving the Grant Co. line and with the centerline of Co. Rt. 10/6 in a southeasterly direction to a point at the intersection of Co. Rt. 10/6 and Co. Rt. 10/7, thence leaving Co. Rt. 10/6 and with the centerline of Co. Rt. 10/7 in a southerly direction to a point at the intersection of Co. Rt. 10/7 and Co. Rt. 10/1, thence leaving Co. Rt. 10/7 and with the centerline of Co. Rt. 10/1 in an easterly direction to a point at the intersection of Co. Rt. 10/1 and Co. Rt. 10, thence leaving Co. Rt. 10/1 and with the centerline of Co. Rt. 10 in a southwesterly direction to a point where it intersects with the Rig Commercial Zone, thence in a northwesterly direction with said Commercial Zone until it intersects again with Co. Rt. 10, thence leaving the Rig Commercial Zone and with the centerline of Co. Rt. 10 to a point at the intersection of Co. Rt. 10 and U.S. Route 220, thence leaving Co. Rt. 10 and with U.S. Route 220 in a westerly direction to the Grant Co. line, thence leaving U.S. Route 220 and with the Grant Co. line in a northerly direction to the Beginning.

Durgon:

An area encompassed as follows: Beginning at a point at the intersection of Co. Rt. 220/4 and U.S. Route 220, thence leaving U.S. Route 220 and Co. Rt. 220/4 and with straight line in a southerly direction to the Elkhorn Rock Triangulation Station monument in the Grant Co. line, thence in a northwesterly direction with the Grant Co. line until it intersects with the South Branch Valley Railroad tracks, thence leaving the Grant Co. line in an easterly direction with the centerline of the railroad until it intersects with the centerline of U. S. Route 220, thence leaving the railroad and in an easterly direction with the centerline of U.S. Route 220 until it intersects with the east boundary line of "Hickory Hill Farm" as recorded in Map Book 5 at page 103, thence leaving U. S. Route 220 and with the boundary line of "Hickory Hill Farm" in a northerly direction to the centerline of the railroad tracks, thence leaving "Hickory Hill Farm" and with the centerline of said railroad tracks in an easterly direction to a point where the railroad tracks intersect with Mitchell Run, thence leaving the railroad tracks and in a southerly direction with Mitchell Run to the intersection of Mitchell Run and U.S. Route 220, thence leaving Mitchell Run and with the centerline of U.S. Route 220 in an easterly direction to the point of Beginning

Mathias:

An area to be encompassed as follows: Beginning at a point at the intersection of the Mathias Commercial Zone and County Route 12 (Howards Lick Road), thence in a northwesterly direction with the centerline of Howards Lick Road to the southeast bounds of the Lost River State Park, thence leaving said Howards Lick Road and in a northeast direction with the bounds of said Lost River State Park to the northeasterly corner of said park, thence leaving the park and with a line due East to a point of intersection with Shoemaker Road, thence in a southern direction with the centerline of said Shoemaker Road to the intersection of Shoemaker Road and State Route 259, thence south with the centerline

of State Route 259 to the intersection of Strawderman Road, thence westerly with the centerline of Strawderman Road to the intersection at Mongold Road, thence easterly with the centerline of Mongold Road to its intersection with State Route 259, thence south with the centerline State Route 259 to a point on the Mathias Commercial Zone, thence in a westerly direction with the Mathias Commercial Zone to the Beginning.

South 220

An area encompassed as follows: Beginning at a point at the in intersection of Co. Rt. 220/4 and U.S. Route 220, thence in an easterly direction with the centerline of U.S. Route 220 for approximately 3400 feet to a point where U.S Route 220 intersects with a drain, thence leaving U.S. Route 220 and in a northerly direction with said drain for a distance of approximately 1325 feet to a point where said drain intersects with the main drainage system, thence with said main drain system for a distance of approximately 3900 feet to a point where it intersects with the first drain south of the “Black Barn”, thence in an easterly direction with said drain to a point where it intersects with U.S. Route 220, thence in a northeasterly direction with the centerline of U.S. Route 220 to the south corner of Unit 1 as shown on a plat of “Potomac Valley View” recorded in Map Book 4 at Page 88, thence leaving U.S. Route 220 and with the southwest side of said subdivision to a point of intersection with the railroad tracks, thence with said railroad tracks in a northeasterly direction for a distance of approximately 3900 feet to a point where the railroad tracks intersect with a drain, thence leaving the railroad and with the drain in a southeasterly direction until it intersects with U.S. Route 220, thence in a northerly direction with the centerline of U.S. Route 220 to the intersection of U.S. Route 220 and Co. Rt. 220/6 (Cold Spring Road), thence leaving U.S. Route 220 and in a southeasterly direction with the centerline of Co. Rt. 220/6 (Cold Spring Road) for a distance of three miles to a point in said Cold Spring Road, thence in a straight line in a northwesterly direction to the east corner of Lot 7 of the Summit Oaks Subdivision as recorded in Map Book 5 at Page 40, thence with the southeast boundary of the Summit Oaks Subdivision to the south corner of Lot 9, thence leaving the Summit Oaks Subdivision and with a straight line in a southwesterly direction to the south corner of Lot 3 as shown on a plat recorded in Deed Book 250 at page 231, thence northwest with the southern line of Lot 3 to a point 1000 feet southeast of the centerline of U.S. Route 220, thence southwesterly and 1000 feet from and parallel to U.S. Route 220 to a point in the first described line of the Durgon Residential Zone, thence northerly to the point of Beginning.

Mathias Estates:

This area shall be the area encompassed as follows: The subdivision known as “Mathias Estates” recorded in Map Book 4 at pages 1, 2 and 3. It shall also include the tracts shown on said plats labeled “Donna See, Robert Clemens, Garnet Mongold and John Strawderman” Also included in this area shall be the “Cove Mountain Estates Subdivision” recorded in Map Book 1 at page 36. Also, the area encompassed as follows: Beginning at the northern corner of Lot 20 of the Cove Mountain Estates, thence northerly along Tract 5 as recorded in deed book 137 at page 714 and continuing northerly along the tracts as recorded

in deed book 136 at page 451, thence southeast along Tract 1-B and continuing to the north corner to Lot 15 of "Mountain Park Estates Subdivision" as recorded in Map Book 2 page 99, thence continuing southeast to the corner to of Tract 21-A, thence southerly along Tract 21-A and the 3.36 acre tract (recorded in deed book 215/549) to a point in the line of the Charles L. Emswiler Sec. 2 subdivision at recorded in Map Book 1 at page 99, thence along the north and east bounds of a tract recorded in deed book 175 at page 743, thence continuing with Emswiler Sec. 2 back to the Beginning

East Moorefield:

An area to be encompassed as follows: Beginning at a point north of Moorefield, at the intersection of the South Branch Valley Railroad and the Moorefield Commercial Zone, thence north with the South Branch Valley Railroad to the intersection of said railroad and County Route 15, thence southeasterly with the center of County Route 15 to the intersection of State Route 55, thence southwesterly with the center of State Route 55 to the intersection of Fort Run Road, thence southeasterly with the center of Fort Run Road to the intersection of Dover Run Road, thence southeasterly with the center of Dover Run Road to the intersection of Dover Run, thence southeasterly with Dover Run to the intersection of Sawmill Run, thence with a straight line in a southwesterly direction to the corner of Tevebaugh cemetery, thence southwesterly to a point in the center of the South Fork River, 1525 feet southeast of County Route 7, thence northwesterly with the center of said river to the center of said County Route 7, thence northeasterly with the centerline of County Route 7 to a point where it intersects with the Moorefield Commercial Zone, thence northeasterly with the Moorefield Commercial Zone to the Beginning.

Needmore:

An area to be encompassed as follows: Beginning at the intersection of County Route 8 and State Route 55, thence northwesterly with the center of State Route 55 to the intersection of Sec. Route 23/4, thence northerly with the center of Sec. Route 23/4 to the intersection of Sec. Routes 23/4 , 8/1 and 1/5, thence northeasterly with the center of Sec. Route 1/5 until it intersects with Route 1, thence northeasterly with Route 1 until it intersects with Sec. Route 1/6, thence due North with a line to the Hardy – Hampshire County line, thence easterly with the county line to the Rio Commercial Zone, thence southerly with the Rio Commercial Zone to a point that is one-half mile (2640 feet) northwest and perpendicular to County Route 3, thence southwesterly with a line 2640 feet northwest of and parallel to County Route 3, until it intersects with Sec. Route 3/2, thence with a straight line in a southerly direction to Corridor "H" Centerline Station 214+250, thence westerly with said centerline of Corridor "H" until it intersects with County Route 8, thence southerly with the center of County Route 8 to the point of Beginning.

Lost River Valley:

An area to be encompassed by the following list of recorded plats:

Map Book 2 pages 22, 23, 24, 25, 26, 27, 28, 29.

2 pages 36, 37, 38, 39, 40.

2 pages 42, 43 and 44.

2 pages 72, 73, 74, 75 and 76.

2 pages 84 and 85.

2 pages 90 91, 92, 93 and 94.

Also included is any area surrounded by these surveys.

Thorn Bottom Cove:

All that private land surrounded by National Forrest at the intersection of Rock Bridge Road, Sager Hollow Road and Old Woodstock Road.

Trout Pond Subdivision Area:

An area to be encompassed by the following:

A) a 12.5 acre tract, Plat recorded in Deed Book 184 at page 715.

B) Trout Pond Subdivision as recorded in Map Book 3 at pages 13, 14, 15.
Including the Joseph Sager Lot.

C) a 14.6 acre tract, Plat recorded in Deed Book 174 at page 647.

D) Thorn Bottom Farm Subdivision as recorded in Deed Book 130 at page 648.

E) Lost River Tract Subdivision as recorded in Map Book 7 at page 32

F) The 12 acre Bell Property as recorded in Deed Book 112 at page 1.

Rockridge / Pine Ridge Subdivision Area:

An area to be encompassed by the following list of recorded plats:

Map Book 2 page 112 – Excluding Lots 18-20 (Pine Ridge Ranchetts)

3 page 23 (Pine Ridge Ranchetts Sec. 2)

3 page 75

4 page 62 – Excluding Lot 17 (Rock Ridge Acres)

Also included is any area surrounded by these surveys.

Lost River Ridge Subdivision Area:

An area to be encompassed by the following list of recorded plats:

Map Book 2 page 67 – Excluding Lots 22-25 (Section One)

2 page 79 (Section Three)

2 page 81 – Lot 1 ONLY

2 page 97 (Section Four)

Also included is any area surrounded by these surveys.

Warden Lake/River Ridge Subdivision Area:

An area to be encompassed by the following list of recorded plats:

Warden Lake

- Map Book 2 page 110 (Section "A")
- 2 page 111 (Section "B")
- 2 page 116 (Section "C")
- 2 page 117 (Section "D")
- 2 page 118 (Section "E")

River Ridge

- Map Book 6 page 101 (Section 4)
- 6 page 107 (Section 7)

Also included is the area West of State Route 259, North of the Reymann Memorial Farm/WVU Ag. Station, South of the Hampshire County line and East of River Ridge Subdivision.

Wardensville NE:

An area to be encompassed as follows: Beginning at the northern corner of a survey as recorded in Deed Book 206 at page 292 and Sec. Route 5/4, thence southeasterly with Sec. Route 5/4 to the intersection of Co. Route 5 (North Mountain Road), thence southwesterly with Co. Route 5 until it intersects with the corporate limits of the Town of Wardensville, WV, thence northwesterly with the corporate limits to a point 810 feet southeast of the intersection of State Route 55 and 259, this also being a corner to the **Wardensville NE Commercial Zone**, thence northeasterly with said commercial zone to the point of Beginning.

Evergreen Subdivision:

An area to be encompassed as follows: Beginning at a point in the center of State Route 55, said point being 1.25 miles radially from the intersection of Carpenter Avenue and State Route 55, thence east with the center of State Route 55 to a point where State Route 55 enters the George Washington National Forest, thence southerly with the bounds of said National Forest and continuing around and including Evergreen Farms Subdivision and continuing with the extension of the southern line of Evergreen Farms Subdivision to a point in Sec. Route 5/1, thence northerly with the center of Sec. Route 5/1 to the intersection of Sec. Route 5/1 and Evergreen Farms Drive, thence southeasterly with Evergreen Farms Drive to a point, said point being 1.25 miles radially from the intersection of Carpenters Avenue and State Route 55, thence northerly with said radius to the point of Beginning.

Sauerkraut/Pine Ridge Road

Beginning at a point at the intersection of State Route 55 and Sec. Route 23/8 (Pine Ridge Road), thence leaving State Route 55 and in a northerly direction with the center of Sec. Route 23/8 to the intersection of Sec. Route 23/8 and Sec. Route 23/9, thence leaving Sec. Route 23/8 and with Sec. Route 23/9 in a easterly direction and continuing in a southerly direction to the intersection of Sec. Route 23/9 and State Route 55, thence leaving Sec. Route 23/9 and with State Route 55 in a westerly direction to the Beginning.

PERMITTED USES:

1. One and two-family dwellings and buildings and structures accessory thereto. Homes shall conform to dimensional requirements.
 - A. During the construction of a permitted residential dwelling, the use of an approved temporary structure shall not exceed a period of one (1) year.
 - B. Any person may maintain an office or carry on a customary home occupation in the dwelling house used by him as his private residence, providing such does not involve any extension or modification of said dwelling to alter its outward appearance as a dwelling, and providing such use does not involve any outward evidence of such use other than a sign as authorized in Article VII of this ordinance.
 - C. All homes shall be placed or constructed on a permanent foundation.
2. Individual mobile homes used as permanent or seasonal residences or temporary use on a separate parcel. Mobile Home Courts are a conditional use (see item 3 under "Conditional Uses").
3. Essential utilities and equipment.
4. Historical sites.

USES AUTHORIZED BY CONDITIONAL USE:

1. Multi-family (3 or more) dwelling units i.e. condominiums and town houses
2. Rooming or boarding houses. Tourist homes or Beds & Breakfast
3. Mobile Home Courts – subject to the provisions of the Mobile Home Court Ordinance.
4. Utility Lots necessary for supplying adequate utilities

5. Day care, childcare center or play school provided the buildings are located not less than 100 feet from any other lot in this district, and there is established and maintained in connection therewith, a completely fenced and screened play lot of adequate size.
6. Rest homes and nursing homes for convalescent patients, as well as group resident facilities.
7. Churches, schools, colleges or universities for academic instruction. Public libraries, museums, community centers, fire stations, parks or playgrounds. Cemeteries when accessory to a church and provided no burial lots are located within 100 feet of a well or residential dwelling.
8. Country clubs, golf courses and other private or commercial recreation areas and facilities.

**DIMENSIONAL REQUIREMENTS
FOR
“R” DISTRICT**

Building Height	40' Maximum
Required Lot Area (sq. ft.)	Minimums
One-Family	20,000 sq. ft.
Two-Family	30,000 sq. ft.
Multi-Family	1 acre
Mobile Home	9,000 sq. ft.
Churches	2 acres
Floor Area of Residence (sq. ft.)	
1 Bedroom	800 sq. ft.
2 Bedroom	900 sq. ft.
3 Bedroom	1,000 sq. ft.
Minimum Residence Width	20 ft.
Yard Requirements (Principal building setbacks)	
Front	40 feet from road right-of-way
Rear	20 feet
Side	15 feet
Storage or Accessory Building setbacks	10 feet

Wells and or water storage tanks shall be a minimum of 50 feet from “A” District.

SECTION 5. COMMERCIAL “C” DISTRICT

This district is composed of those areas located along main road corridors and in areas of high concentrations of commercial activities. These districts contain certain sites where strategic location and public accommodation make them suitable for the uses permitted within this district. It is aimed at preventing scattered or strip development incompatible with adjoining existing uses. It is further intended to widen the economic base of Hardy County and provide a balance of concerns in accordance with the objectives of the comprehensive land use plan.

COMMERCIAL ZONES

Old Fields:

An area to be encompassed by a one half (1/2) mile (2640 feet) radius from the intersection of U.S. Route 220 and Co. Route 2 (Old Fields Road), in all directions.

Moorefield:

An area encompassed as follows: Beginning at a point north of Moorefield, WV and being an intersect point, 2.25 miles (11,880 feet) from the intersection of U.S. Route 220 (Main Street) and WV State Route 55 (Winchester Ave.) and the centerline of U.S. Route 220, thence in an easterly direction with a radius of 2.25 miles (11,880 feet) from the intersection of U.S. Route 220 (Main Street) and WV State Route 55 (Winchester Ave.) to a point at which it intersects with the centerline of Sec. Route 220/6 (Cold Springs Road), thence in a northwesterly direction with the centerline of Sec. Route 220/6 (Cold Springs Road) to a point at which it intersects with the centerline of U.S. Route 220, thence in a northeasterly direction with the centerline of U.S. Route 220 until it intersects with the Corporate Limits of the Town of Moorefield, thence in an easterly direction with the Corporate limits until it intersects with U.S. Route 220 on the north side of the Town of Moorefield, thence continuing with the Corporate limits to a point, one fourth (1/4) mile (1320 feet) northwesterly and perpendicular to U.S. Route 220, thence in a northerly direction and 1320 feet west of the centerline of U.S. Route 220 to a point even with the end of the Moorefield Levee, thence easterly and perpendicular to U.S. Route 220 to a point at the centerline of U.S. Route 220, thence in a northerly direction with the centerline of U.S. Route 220 to the Beginning. (Note of Exclusion: The area described as the “Robert C. Byrd Industrial Park”)

U.S. Route 220:

An area to be encompassed by lines running parallel on both the East and West sides of and one fourth (1/4) mile (1,320 feet) from the centerline of U.S. Route 220. Beginning at

the Old Fields zone and continuing South until it meets the Moorefield zone. (Note of Exclusion: The area west of U.S. Route 220, south of the Parson's Ford Bridge (over South Branch River) and north of the end of the Moorefield Levee).

Rig:

An area to be encompassed by a one fourth (1/4) mile (1320 feet) radius from the intersection of County Route 10 and Sec. Route 10/9, in all directions.

Baker:

An area to be encompassed as follows: Beginning at a point in the center of State Route 259, being 2 miles radially from the intersection of State Route 55 and Route 259, thence leaving Route 259 and in a northwest direction and 2 miles radially from the intersection of State Route 55 and Route 259, to a point in the center of Leisure Acres Road, thence in a southwesterly direction with the centerline of Leisure Acres Road to a point in the center of State Route 55, thence continuing in the same direction to the center of the Lost River, thence in a northwesterly direction with the center of said Lost River to a common point with the Baker Industrial Zone, thence leaving the Lost River and in a northwesterly direction around the Baker Industrial Zone in a counter-clockwise direction to a point in the center of said Lost Rive, thence leaving the Baker Industrial Zone and in a southerly direction with the center of said Lost River to a point 2 miles radially from the intersection of State Route 55 and Route 259, thence leaving Lost River to the Beginning.

Crider's Store:

An area to be encompassed by a one half (1/2) mile (2640 feet) radius from the intersection of Old State Route 55 and the access ramp (County Route 1) of Corridor "H", in all directions.

Cunningham Lane Intersection:

An area encompassed as follows: Beginning at a point in the center of County Route 15, being 2,640 feet radially from the intersection of Corridor "H" and old State Route 55, thence running southeasterly with County Route 15 to the intersection of old State Route 55 and County Route 15, thence running easterly with old State Route 55 to a point 2,640 feet radially from the intersection of Corridor H and old State Route 55, thence leaving old State Route 55 and running southerly with a radius line of 2,640 feet from the intersection of Corridor "H" and old State Route 55, back to the point of the Beginning.

Rio:

An area to be encompassed by a one (1) mile (5280 feet) radius from the intersection of State Route 29 and Hampshire Co. Route 11, in all directions in Hardy County.

Wardensville NE:

An area to be encompassed as follows: Beginning at the intersection of State Route 259 and State Route 55 and the corporate limits of the Town of Wardensville, WV, thence in a southwesterly direction with the corporate limits of Wardensville to a point where it intersects with the center of the Cacapon River, thence leaving the Wardensville corporate limits and in a northerly direction with the centerline of the Cacapon River to a point where it intersects with State Route 259, thence leaving the Cacapon River and with State Route 259 in a southwesterly direction to a point where the southern boundary line of the Wardensville Industrial Park, as recorded in Deed Book 5 at page 118, intersects with State Route 259, thence leaving State Route 259 and with the southwestern boundary of said industrial park in a southeasterly direction to a point where it intersects with State Route 55, thence leaving State Route 55 and continuing with the southwestern boundary of said industrial park until it intersects with Sec. Route 5/4, thence southeasterly with Sec. Route 5/4 to the northern corner of a survey as recorded in Deed Book 206 at page 292, thence leaving Sec. Route 5/4 in a southwesterly direction with the northwest line of said survey for a distance of 253 feet to the northeastern corner of Lot 7 of the Capon Street Subdivision as recorded in Plat Book 3 at Page 119, thence in a southwesterly direction with the northwestern boundary of said Capon Street Subdivision for a distance of approx. 431 feet to the northwest corner to Lot 1 of said subdivision, thence in a southerly direction with Lot 1 for approx. 24 feet to the corner of Lot 2 of a survey as recorded in Deed Book 148 at page 146, thence leaving the Capon Street Subdivision in a southwesterly direction with the northwestern boundary of said Lot 1 and 2 (DB 148 pg. 146), continuing same course, crossing Sec. Route 5/1 to a point in the northeastern corporate line of the Town of Wardensville, 810 feet southeast of the intersection of State Route 55 and 259 and thence with the corporate line in a northwesterly direction to the Beginning.

Wardensville SW:

An area to be encompassed as follows: Beginning at the intersection of Trout Run and the centerline of State Route 259, thence southeasterly with State Route 259 to a Corporate limits of the Town of Wardensville, thence southeasterly with said corporate limits to Sec. Route 23/10, thence southwesterly with said road for a distance of 1900 feet, thence northwesterly and perpendicularly right to a point where it intersects with Sec. Route 23/12, thence northeasterly with Sec. Route 23/12 to the intersection of Sec. Route 23/12 and State Route 259, thence northerly with a line perpendicular to State Route 259 to a point in the center of the Cacapon River, thence easterly for a distance of 2800 feet to a point in the Cacapon River, thence in a southerly direction with a line perpendicular to State Route 259 to a point in the center of State Route 259, thence easterly with said State Route to the point of Beginning

Mathias:

An area to be encompassed by a one (1) mile (5280 feet) radius from the intersection of County Route 20 and Sec. Route 20/1, in all directions.

Lost River – Lost City:

An area to be encompassed by: A fifteen hundred (1500) feet radius in all direction from the intersection of State Route 259 and County Route 16, and a fifteen hundred (1500) feet radius in all direction from the intersection of State Route 259 and County Route 59, and fifteen hundred (1500) feet northwest and southeast of the centerline of State Route 259 between County Route 16 and County Route 59.

The following uses and no other except as mentioned elsewhere in this ordinance shall be deemed “C” District uses and are permitted in all “C” Districts.

1. Any use permitted as regulated in the “A” and “R” Districts shall be permitted in a “C” District, however, “A” and “R” District restrictions apply.
2. Any retail business or service, including (but not limited to) stores, offices, banks, personal service shops, shopping centers, restaurants, bowling halls, funeral homes, roadside stands and the like.
3. Automobile service stations, general repair and storage garages, and commercial parking lots for passenger vehicles.
4. Drive-in eating and drinking establishments, summer gardens, and roadhouses, including entertainment and dancing.
5. Hotel, motels, and beds & breakfast.
6. Carpenter, electrical, plumbing, heating, sheet metal, sign printing, upholstery, furniture repair, painting or interior decorating shops.
7. Commercial greenhouses and nurseries.
8. Bakery, laundry, clothes cleaning and/or dyeing establishments.
9. The following uses are not to be located within 200 ft. of any lot in any “R” District:
 - a. Automobile, tire, battery, trailer or implement establishments for the display, hire, or general repair, including sales lots.
 - b. Drive-in theatres, provided the screen shall be set back not less than 100 ft. from all street lines and shall be arranged so that the picture is not visible from adjacent streets.
 - c. Animal hospitals, veterinarian clinics or kennels.
 - d. Commercial swimming pools, dancing, skating, golf driving ranges, livery

stables, riding academies, amusement parks, circus, carnival, target ranges, or similar open-air recreational uses and facilities, except race tracks.

- e. Building materials sales yards.
 - f. Contractor's equipment, storage yard or plant, or storage and rental equipment commonly used by contractors.
 - g. Storage, sale, and incidental milling or other processing of grain and livestock feed, or storage and sale of solid fuel.
 - h. Stone or monument works.
 - i. Storage rental units
- 10. Any other use that is determined by the Zoning Board to be of the same character as the above permitted uses, including any kind of manufacturing or treatment incidental to the conduct of a retail business on the premises.
 - 11. Wireless transmitting stations, transformers, boosters, railroad lines and stations.
 - 12. Accessory uses and structures customarily incidental to any permitted use.
 - 13. The manufacture, processing, or treatment of goods for sale, primarily at retail on the premises, or the cleaning, laundering, repairing, or other treatment of objects as a retail service to customers on the premises.
 - 14. Essential utilities and equipment.
 - 15. Historical sites

Zone Border: A border with a minimum width of 50 feet shall be maintained within and around the boundary of each "C" District in which no structure or open processing/storage may be constructed or maintained. This border may be used for paved or stone-stabilized vehicular parking areas. Maintenance of vegetative cover is encouraged. Where districts with border width requirements adjoin, only the wider requirement need be maintained.

SECTION 6. INDUSTRIAL "I" ZONES

The purpose of this district is to permit certain industries which are not likely to create offensive noise, vibrations, dust, heat smoke, odor, safety hazard, glare or other objectionable influence to adjacent zoning districts. Such uses generally being light industries that manufacture, process, store, and distribute goods and materials. These industries should be located in established Industrial Parks whenever possible.

INDUSTRIAL ZONES

Old Fields:

This area shall be the area encompassed by the survey as recorded in Map Book 5 at Page 35, and known as the “Judy Industrial Park”. Lots 1-12 totaling 94.72 acres.

Wardensville:

This area shall be the area encompassed by the survey as recorded in Map Book 5 at Page 118. Known as the “Wardensville Industrial Park”. Tract “A” of 40.48 acres, has been partially subdivided into Lots 1-5 with a residue. Tract “C” of 16.50 acres, has been divided into Lots 6-11.

Moorefield:

This area shall be the area encompassed by the survey as recorded in Map Book 1 at Page 49. Known as the “Moorefield Industrial Park”. Lots 1-6 plus the 14.02 acres “Rockingham Tract / grain elevators”. Total area 37.76 acres. Also included in this area is everything north of the “Moorefield Industrial Park”, south of County Route 13, east of the railroad tracts, and west of US Route 220.

Robert C. Byrd Industrial Park:

This area shall be the area encompassed by the survey as recorded in Map Book 6, Page 12. Known as the “Robert C. Byrd Industrial Park”, Lots 1-11 plus the Phase II Future area. Also included in this industrial zone shall be the 160 acres +/- as designated as Tax Map 265, parcel 12, as of the date of this ordinance.

Baker Area:

An area to be encompassed as follows: Bounded on the north by Corridor “H”, on the east by Lost River, to the southwest by Baker Run and to the northwest by Route 259.

The following uses and no other except as mentioned elsewhere in this ordinance, shall be deemed “I” District uses and are permitted in all “I” Districts:

1. Warehouses and bulk plants.
2. Automobile, truck, trailer, bus, implement or similar equipment, assembly, recapping plants.
3. Foundry, casting, lightweight non-ferrous metals or electrical foundry.
4. Railroad yards and engine service facilities.
5. Natural gas pumping stations.
6. Manufacturing, fabricating, assembly and milling facilities for lumbers, metals, plastics or other manmade materials.
7. Any extractive type industry that extracts and or processes non-renewable resources.
8. Wholesale business establishments engaged in warehousing, storage and distributing to retail sales points.
9. Crushing, mixing and distribution facilities for bulk asphaltic and mineral concrete.
10. Trucking or motor freight station or terminal.
11. Any other use that is determined by the zoning board to be of the same general character as the above permitted uses.
12. Any use customarily accessory and incidental to permitted uses.
13. Food processing plants, abattoirs, slaughter houses, and similar uses.
14. Essential utilities and equipment.
15. Historical sites.

Zone Border: A border with minimum width of 150 feet shall be maintained within and around the boundary of each “I” District in which no structure or open processing/ storage may be constructed or maintained. This border may be used for paved or stone stabilized vehicular parking areas. Maintenance of vegetative cover is encouraged. Where districts with border width requirements adjoin, only the wider requirement need be maintained.

The following uses are conditional and may be established in any “I” District with approval of the Zoning Board, which may establish distance and other requirements, as it deems necessary:

1. Abattoirs, slaughterhouses and stockyards.
2. Distillation of bones.
3. Fat rendering, fertilizer or glue manufacturing.
4. Protein conversion, landfills, recycling, conversion of garbage or non-hazardous material for garbage.
5. Explosive or hazardous material storage, however, temporary storage is allowed on building construction sites when stored according to federal and state guidelines.
6. Facilities engaged in chemical, biological, or radiological research or manufacturing.

The above conditional uses must have the following:

Zone Borders: A border with minimum width of 300 feet shall be maintained within and around the boundary of each “I” District in which no structure or open processing/storage may be constructed or maintained. This border may be used for paved or stone-stabilized vehicular parking areas. Maintenance of vegetative cover is encouraged.

ARTICLE IV. DEVELOPMENT STANDARDS

SECTION 1. NON-CONFORMING USES

For the purpose of this ordinance, non-conforming use shall be deemed a building, structure or premise, legally devoted or occupied by or for a use that does not conform to the provisions of this ordinance or the amendments thereto for the district in which located.

1. A non-conforming use existing at the time this ordinance takes effect may be continued except that if it is discontinued for one (1) year or more, it shall then be deemed abandoned and any further use must be in conformity with the uses permitted in such districts. If, before two continuous years of non-use passes, the owner of said land applies to the Zoning Appeals Board for any extensions, the board may grant extension for up to, but not over, two additional years beyond the initial two year hiatus, but only one such extension may be granted.
2. Any building arranged, intended, or designed, for a non-conforming use at the time of the passage of this ordinance, for which a permit has been issued, or any application,

the approval of which is pending, that could be approved under the existing regulations, may be completed and put to such use, provided it is done within one (1) year after this ordinance takes effect or any extensions provided by the Zoning Appeals Board.

3. Any building or structure existing as a non-conforming use at the time this ordinance takes effect, which is destroyed by fire or the elements, may be reconstructed and restored, providing same is done within two (2) years of said destruction. Any extensions must be requested from the Zoning Appeals Board.
4. A building or structure devoted to a non-conforming use at the time this ordinance takes effect may not be altered or enlarged so as to extend such non-conforming use without the approval of the Zoning Appeals Board. However, the zoning ordinance cannot prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operations as stated in 8A, Article 7, Section 10 of the West Virginia Code.
5. Whenever a non-conforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted or non-conforming use.
6. Any new lines of division within a subdivision of a parcel that is a nonconforming use shall meet the regulations of this ordinance.

Any extensions to the above items must be from the Zoning Appeals Board.

SECTION 2. OUTDOOR ADVERTISING

1. For the purpose of this ordinance, outdoor advertising shall be classified as a business use, and shall be permitted in all “A”, “R”, and “I” Districts, provided signs shall not be placed nearer any street or road than the minimum building setback line, except where the topography prevents such setback. All sign structures and context thereon shall conform to the West Virginia Department of Transportation rules and regulations.
2. Temporary signs not exceeding twenty (20) square feet, shall be set back from the street line one-half the distance of the required setback for the principal building on the lot and no zoning certificate shall be required for the erection of such sign.

Temporary signs larger than twenty (20) square feet must be set back from the street line at least a distance in feet equal to one-half the number of square feet in the sign,

but in no case less than forty (40) feet or more than one hundred (100) feet.

3. Signs not larger than five (5) square feet in area are permitted when the use of the sign is in direct relation to the use of the premise and may be located anywhere on the lot.
4. In any "Agricultural District", farm signs identifying the farm, displaying the name of the owner and the nature of the farm and its product, not exceeding ten (10) square feet in area, may be erected anywhere on the lot. Such signs, if exceeding ten (10) square feet, must be set back at least twenty-five (25) feet from any property line.
5. No sign more than five (5) square feet in area shall be located within one hundred (100) feet of any road intersection.
6. Any illuminated sign shall be so shaded so as not to interfere with the vision of persons on the highway.

SECTION 3. EXCEPTIONS AND MODIFICATIONS

This ordinance shall not apply to essential services which are defined as follows:

ESSENTIAL SERVICES:

1. Essential services are those provided by municipal or governmental agencies, public utilities or public corporations. These agencies are franchised to engage in serving the public directly or indirectly. These services pertain to the erection, construction, alteration, replacement, use and maintenance. They are necessary for the furnishing of adequate services to the public. Such facilities shall be limited to underground or overhead electrical, gas, communications, water or sewage systems, sub-stations, fire alarm boxes, police call boxes, traffic signals, hydrants, regulating and measuring devices, including the structures in which they are housed, and other similar equipment and accessories in connection therewith.
2. In any district, a single-family dwelling may be located on any recorded lot or parcel as of the effective date of this ordinance irrespective of its area or width, or the width of the road on which it fronts, subject to the following requirements:
 - a. The sum of the side yard widths on any such lot or plot need not exceed thirty (30) percent of the width of the lot, but in no case shall any one side yard be less than ten (10) percent of the width of the lot.
 - b. The depth of the rear yard on any such lot need not exceed twenty (20) percent of the depth of the lot, but in no case shall it be less than ten (10) feet.
3. The building height limitations of this ordinance shall not apply to penthouses or

roof structures for housing stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, fire or parapet walls, towers, steeples, flag poles, silos, smoke stacks, masks water tank, monuments, or other superstructures that project into the air, fire towers, towers, steeples, flag poles, silos, smoke stacks, cooling towers, grain elevators, gas holders, or other structures where the manufacturing process requires a greater height, provided, however, all such structures above the heights otherwise permitted in the district shall be distant not less than fifty (50) feet in all parts from every lot line not a street lot line. (See Communication Tower Ordinance).

4. In any district where either any acceptable community water supply or sanitary sewer is available or provided, or where an acceptable water supply is accessible but no sanitary sewer facilities are available, the prevailing regulations of the West Virginia Bureau of Public Health shall determine the minimum lot size.

5. The building line setback requirements shall not apply in a case where there is at least one (1) existing principal building on each side of the lot or tract proposed to be built upon, on the same side of the road and in the same block, and within two hundred (200) feet of the centerline of such lot or tract, or in the case of a corner lot on one side. In such cases, the setback required for the proposed building shall be the average distance of the existing buildings within two hundred (200) feet, but not less than thirty-five (35) feet from the edge of right-of-way.

6. No building or structure or any portion thereof, shall be erected within the required setback line.

7. A setback building line on a corner lot shall be in accordance with the provisions governing the road or street on which the building faces. If possible, the side yard clearance on the side street should conform to the setback line for an inside lot on said road or street, but in no event shall said side yard clearance be less than forty-five (45) feet from the edge of the right-of-way.

8. No dwelling or apartment house shall be erected or altered or used unless the same shall have access to a public street, and if located in the rear of another building and has no immediate street frontage, then a permanent easement for access shall be provided over an unoccupied strip of land at least thirty (30) feet in width and such reserve strip may not form a part of any lot width or lot yard of lot area required by this ordinance.

9. Fences, walls and the like may be located in the required yards, subject to the following:

- a. In any "R" District, fences and walls not exceeding four (4) feet in height may be located in any front yard.
- b. In any "R" District, fences and walls not exceeding eight (8) feet in

height may be located in any rear or side yard.

- c. On any corner lot, no fence, structure or planting that would interfere with traffic visibility shall be permitted within twenty (20) feet of the intersection of the road right-of-way lines.

10. Housing for farm animals, cows, horses, sheep, poultry, swine, and kennels shall be erected at least three hundred (300) feet from the nearest residential building not on the same premises. Where observation of this distance would result in a hardship because of small lot size and proximity of neighbors, application may be made to the Zoning Appeals Board for reduction.

SECTION 4. PARKING FACILITIES

1. All dwellings, mobile homes, and apartment houses shall provide parking facilities off the road or street and outside of the public right-of-way, together with means of ingress and egress thereto, for not less than two (2) motor vehicles per dwelling unit or apartment, and not less than two hundred (200) square feet of area shall be deemed necessary for each vehicle.
2. All “C ” and “I” District users shall provide parking facilities off the road or street, outside of the public right-of-way, and not more than three hundred (300) feet distant from an entrance to said establishment of one (1) parking space of not less than two hundred (200) square feet for each one hundred fifty (150) square feet of area of the first floor of said establishment which it serves.
3. Every arena, auditorium, church, stadium, theatre, building or ground used for the assembling of persons to attend services, theatrical performances, shows, exhibitions, contests, concerts, lectures, entertainment or similar activities, shall provide off the street or road and outside of the public right-of-way, not less than two hundred (200) square feet of space suitable for parking automobiles and other vehicles for every two (2) persons to be accommodated. Such parking area shall be within four hundred (400) feet of an entrance to such use, shall provide adequate means of ingress and egress, and shall be available for the use of such persons.
4. All “I” District users shall provide adequate parking facilities off the road or street and outside of the public right-of-way for vehicles delivering to, unloading, loading or taking away from said user, goods, materials, supplies, or wastes in connection with said business or use.
5. All “I” Districts users shall provide parking facilities off the road or street outside of the public right-of-way, not more than three hundred (300) feet distant from an entrance or gate to said establishment of one (1) parking space of not less than

two hundred (200) square feet for each person for fifty (50) percent of the number of workers on the maximum shift.

ARTICLE V: ADMINISTRATION AND ENFORCEMENT

SECTION 1. ADMINISTRATION OF ZONING ORDINANCE

1. The County Commission shall designate an officer who shall serve as the County Planner, provided, however, that a deputy inspector may be designated by the County Planning Commission with the approval of the County Commission. It shall be the duty of the Zoning Inspector to enforce the provisions of this ordinance and all applications for Improvement Location Permits and the action taken thereon. All Improvement Location Permit applications shall be placed on file in the planner's office after approval from all agencies except as provided in "2" below, application shall be made to the County Zoning Inspector for an Improvement Location Permit before construction, changing the use of or enlarging any building, including accessory buildings, or changing the use of any premise. The application shall indicate the exact location of the proposed construction, alteration or change of use, and shall include a plot plan showing a proposed location in dimensions, height of building, and the proposed use. The Zoning Inspector shall issue an Improvement Location Permit if the application complies with the requirements of this ordinance and any necessary certificates have been issued by the County Health Officer, State or County Roads Supervisor, the Sanitary Commission, Public Service District, Flood Plain Officer, and the application is accompanied by the proper fee.
2. When the area of new construction or enlargement does not exceed one hundred (100) square feet or \$500 in cost, and when no change in use is involved, no zoning certificate shall be required. In the "I" District, when the proposed use is industrial in nature, a zoning certificate shall be required only when the floor area of new construction exceeds two thousand (2,000) square feet. This paragraph shall not in any way exempt such construction or enlargement from compliance with the other requirements of this ordinance.

SECTION 2. RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT

A. It shall be the duty of the County Planner, or designated Zoning Administrator, to administer the provisions of this ordinance, except as otherwise expressly provided in this ordinance.

1. It shall be the duty of the County Planner to:

- a. Perform reviews of permit applications and notifications as necessary to determine compliance with the provisions of this ordinance.
- b. Interpret and recommend exceptions to rules and regulations in the classes of cases or particular situations as may be specified in this ordinance in accordance with Chapter 8A, Article 8, Section 9 of the West Virginia State Code as amended.
- c. Interpret and recommend special uses to the terms of this ordinance upon which the County Planner is required to act under the ordinance in accordance with Chapter 8A Article 8, Section 1 of the West Virginia State Code as amended.
- d. Interpret and recommend, in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to general conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, so that the spirit of the ordinance shall be observed and substantial justice done.
- e. Collect fees from applicants for Notifications and Improvement Location Permits.
- f. Keep and preserve all Notifications and applications for Improvement Location Permits, and all requests for rezoning, exceptions, special permits, and variances for this zoning ordinance; to keep and preserve all building plans, development plans, plats, maps and other documents submitted to the County Planner in the course of his duties.
- g. Conduct investigations as necessary to determine compliance with or violations of this ordinance.
- h. Participate in the abatement of violations of this ordinance and aid in the prosecution of such violations.
- i. Maintain, in current status, the official planning and zoning maps.
- j. Provide information on planning and zoning upon request by citizens and public agencies.
- k. Perform such additional tasks and duties as may be prescribed by the Hardy County Commission.

SECTION 3. GENERAL PROVISIONS

- A. No commission, board, agency, officer, or employee of Hardy County shall issue, grant, approve, or accept any permit, license, certificate, notification, or any other authorizations for any construction, or reconstruction, alteration, enlargement or relocation of any building or structure, or for any use of land or building, that would not be in compliance with the provisions of this ordinance.
- B. No Improvement Location Permit or Notification pertaining to the construction, enlargement, moving, and reconstruction of a structure or change of use shall be issued unless approval of the application has been granted by the County Planner.

SECTION 4. ZONING REVIEW

- A. No Improvement Location Permit or Notification pertaining to the construction, enlargement, moving, and reconstruction of a structure or change of use shall be issued unless approval of the application has been granted by the County Planner.
- B. The County Planner's report on an application is intended to be submitted to the applicant by the end of approximately fourteen (14) calendar days following the day on which a completed application is received.
- C. All applications for permits for non-residential, multi-family housing, or single family attached housing and subdivisions of more than three lots shall be accompanied by the following:
 - 1. A site plan (1 original and 2 copies), drawn to scale, that includes the following (if applicable) for the County Planner:
 - a. The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered professional engineer, licensed by State of West Virginia. Said survey to be provided by the applicant;
 - b. The exact sizes and locations on the lot of existing structures, if any;
 - c. The location, square footage, and dimensions of the proposed structure or alteration;
 - d. The location of the lot with respect to adjacent right-of-way;

- e. The existing and proposed uses of the structure and land;
 - f. The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
 - g. The location and dimensions of off-street parking and means of ingress and egress for such space;
 - h. Height of the structure;
 - i. Setbacks;
 - j. Buffer yards and screening, if applicable;
 - k. Location of garbage collection and screening;
 - l. Location of signs;
 - m. Street typical for internal roadways;
 - n. Location and size of drainage structures;
 - o. Location of storm water detention system (if applicable);
 - p. Utility lines and easements; and
 - q. Signature of applicant
2. Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, typical of all swales, and a design of drop inlets.
 3. If applicable, design of storm water detention system and drainage calculations that bear the name, address, and a seal of a registered professional engineer (and that meet the requirements and the design standards of the United States Natural Resource Conservation Service).
 4. Location of parking.
 5. Location, size and type of landscaping.
 6. Location, size, description of signs,
 7. Approved WV Division of Highways Access Permit, if applicable.

8. Approved State of WV NPDES General Permit for Storm Water Associates with Industrial (Construction) Activity, if applicable.
 9. Any other such information concerning the lot or neighboring lots as may be required by the County Planner to determine conformance with, and provide for the enforcement of, this Ordinance.
 10. Where the County Planner determines that any of these items (a) through (h) above is unnecessary, the requirements may be waived.
- D. Three copies (an original and two copies) of a Sketch Plan shall be required for all other applications for Improvement Location Permits and Notifications.
 - E. No site plan shall be accepted unless it is complete and is verified as to the the correctness of information given by the signature of the applicant attesting thereto.
 - F. The County Planner may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The County Planner, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to make sure that a structure placed on his property according to his approved site plan or sketch plan and as required by any applicable county ordinance.
 - G. Site plans and sketch plans approved by the County Planner authorize only the use, arrangement, and construction set forth in such approved site plans. The approval of a site plan or sketch plans shall not be construed to be approval of any violation of the provisions of this Ordinance. The issuance of an Improvement Location Permit based upon site plans and sketch plans given approval by the County Planner, shall not prevent the County Planner from thereafter requiring the correction of errors in said site plans and sketch plans or from preventing operations from being carried on thereunder in violation with this Ordinance.
 - H. One copy of the site plan or sketch plan submitted for a permit as required in the subsection above for the County Planner shall be returned to the applicant after the County Planner has marked such copy as either approved or disapproved as the provisions of this Ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the County Planner.

SECTION 5. CERTIFICATION OF COMPLIANCE WITH ZONING ORDINANCE

- A. Certificate of Compliance with the Zoning Ordinance shall be required for

all non-residential, multi-family housing, and single family attached house.

- B. The County Planner shall withhold issuance of a certificate of compliance to the Zoning Ordinance for a building or premises when such building or premises do not conform to the provisions of this Ordinance.
- C. A Certificate of Compliance with the Zoning Ordinance must be issued by the County Planner prior to the occupancy of any non-residential, multi-family housing or single family attached housing.

SECTION 6. NOTIFICATION

Regarding the submission of a Notification, the enforcement procedures to be adopted in said ordinance of zoning shall allow an individual notified to submit an official Notification, if the individual has not already submitted a Notification, within a period of five (5) days after receiving notice by the County Planner. If the Notification is not submitted to the County Planner within said period of time, the County Planner shall be empowered to resort to the remedies afforded to him in this Ordinance.

SECTION 7. PROCEDURES FOR VIOLATIONS

- A. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and bases thereof, shall be filed with the County Planner. He shall record properly such complaint, conduct appropriate investigations, and take action thereon as provided by this Ordinance.
- B. If the County Planner finds that any of the provisions of the Ordinance are being violated, whether reported by private citizen or by any commission, board, agency, officer, or employee of the County, or by his own observation, he shall notify in writing the person responsible for such violation. Service of written notice shall be deemed complete upon sending notice by certified mail to the last known address of such person. Such notice shall include the following:
 - 1. Street address or legal description of the property involved;
 - 2. A statement indicating the nature of the violation;
 - 3. A specification of the section of this ordinance upon which the notice of violation is based;
 - 4. A description of the action required to correct the violation;
 - 5. A statement indicating the time within which compliance with this ordinance must be accomplished;
 - 6. A statement advising that upon failure to comply with the requirements of this notice, the County shall take such enforcement

procedures as may be required in this ordinance.

- C. The County Planner may order discontinuance of an illegal use of land, buildings, or structure; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or may take any other action authorized by this Ordinance to ensure compliance with its provisions.
- D. In any case in which a building or structure is or is not proposed to be constructed, reconstructed, altered, maintained or used in violation of the provisions of this Ordinance, the County may, in addition to other remedies provided by law, institute injunction, abatement, or any appropriate action or proceedings to prevent, adjoin, abate, remove or penalize by find such unlawful construction, reconstruction, alteration maintenance or use.

SECTION 8. PENALTIES FOR VIOLATIONS

- A. It shall be the duty of the office of the Planning Commission to enforce this ordinance and to bring to the attention of the Prosecuting Attorney any violations or lack of compliance. Any person, firm, or corporation who fails to comply with, or violates, any of these regulations shall be subject to the laws of the State of West Virginia, code of West Virginia.
- B. Appropriate actions and proceedings may be taken by law to prevent any violation of these regulations, to prevent unlawful construction to recover damages, to restrain, correct, or abate a violation, to prevent illegal occupancy of a building, structure, or premises, and these remedies shall be in addition to the penalties described above.
- C. Each day during which any violation of this ordinance continues constitutes a separate offense. The imposition of a fine or penalty for any violation of, or noncompliance with this ordinance shall not excuse the violation or noncompliance or permit it to continue; any and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated, in non-compliance with this ordinance, may be declared by the Hardy County Commission to be a public nuisance and abatable as such.
- D. Nothing contained herein shall prevent the county from taking other lawful action as necessary to prevent or remedy any violation.
- E. Failure to obtain the certificate prior to occupancy will result in non-compliance with the ordinance and a fine of not less than \$50.00 and

no more than \$500.00 per day for noncompliance. Each day that a violation continues constitutes a separate offense. The daily fine will remain in place until (1) all conditions of the permit are achieved satisfactorily and (2) the County Planner verifies such through site inspection.

- F. The County Planner shall afford any person or entity charged with a violation with due process of law in effecting abatement or removal of the violation. The enforcement procedures to be adopted in said ordinance of zoning shall allow an offender a period of five (5) days after receiving notice of the violation to remove or abate the same. If the violation is not removed or abated within said period of time, the County Planner shall be empowered to resort to the remedies afforded to him hereunder.
- G. Violation of Ordinance: Furthermore, any such violation shall constitute a misdemeanor in accordance with the provisions of Chapter 8A, Article 10, Section 2 of the West Virginia Code, as amended; upon conviction, a violator shall be fined not less than \$50.00 nor more than \$500.00. Each day that a violation continues constitutes a separate offense. In addition to the foregoing, any building or structure, which is erected, raised, modified, or converted in violation of any provision of this ordinance, shall constitute a common nuisance. The owner of such building, structure, land or premise shall be liable for maintaining a common nuisance.
- H. Injunctive Relief: The Hardy County Board of Zoning Appeals, the Hardy County Planning Commission, or the Hardy County Commission may seek an injunction in the Circuit Court of Hardy County to restrain a person, legal entity or unit of government from violating the provisions thereto in accordance with the provisions of Chapter 8A, Article 10, Section 3 of the West Virginia Code as amended. Also, the Hardy County Planning Commission may seek a mandatory injunction in such Circuit Court directing a person, legal entity or unit of government to remove a structure erected in violation of the provisions of this ordinance or any rule or regulation adopted pursuant thereto in accordance with the provisions of Chapter 8A, Article 10, Section 3 of the West Virginia Code as amended.
- I. Injunctive relief for the petitioner is explained in Chapter 8A, Article 10, Section 3 of this ordinance. Furthermore, any decision by the County Planner may be appealed to the Board of Zoning Appeals. Furthermore, the decision of the Board of Zoning Appeals may be appealed to the Circuit Court.

SECTION 9. POWER OF THE COUNTY COMMISSION

Whenever public necessity and the public health, safety and general welfare require, the County Commission may amend, supplement or modify, by ordinance, the planning and zoning district map boundaries or the regulations set forth in this ordinance.

SECTION 10. INITIATION OF AMENDMENT TO THE ORDINANCE

An amendment, supplement, or modification, in the zoning text, planning district maps or zoning maps of this ordinance may be initiated by:

- a. A petition approved by the County Planning Commission; or
- b. A petition duly signed by real property owners of 50 percent or more of the property involved in the petition.

Any proposed amendment, supplement or modification shall first be submitted to the County Planner.

SECTION 11. FILING PROCEDURES

A. Request for rezoning of property

1. A request for rezoning of property shall be filed on prescribed forms with the Office of Planning. The request or application, shall include a list of the property owners' names and addresses located within 250 feet of the affected areas. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president for that subdivision's homeowners association along with a stamped and addressed envelope for that member.
2. The Planning Office will conduct a formal review of the completed application. The Planning Office will endeavor to complete its review within ten (10) days.
3. The Planning Office will publish a legal advertisement describing the request for rezoning in the local newspaper of general circulation thirty (30) days prior to the scheduled public hearing before the Planning Commission. The prepared envelopes notifying the property owners located within 250 feet of the affected property and a homeowners association board member of an affected subdivision and submitted by the applicant will be mailed at the same

time the legal advertisement is submitted to the newspaper for publication.

4. The Planning Commission will hold a duly scheduled public hearing on the rezoning request and the Planning Commission will make a recommendation to the County Commission. The Planning Office will prepare a written report of the decision.
5. Within fifteen (15) calendar days of a decision made by the Planning Commission, the County Commission will hold a public meeting to hear the Planning Commission's recommendation. Attendees at the public meeting will be notified of the date and time of the County Commission's public hearing. The County Commission will endeavor to make a decision on the request and recommendation within ten (10) working days after the County Commission hearing.
6. If the request for rezoning is approved by the County Commission, the applicant will receive approval and will be formally notified by mail by the Planning Office. An original court order will be signed by the County Commission and will be filed with the Clerk of Court of Hardy County within three working days. The Planning Office will amend the zoning map to reflect the approved rezoning.
7. If the request for rezoning is denied by the County Commission, the applicant will be formally notified in writing by the Planning Office of the denial and the right to appeal the decision to the Hardy County Circuit Court within thirty (30) days of the County Commission's decision. An original court order will be signed by the County Commission and filed with the Clerk of Court of Hardy County within three (3) working days and a copy of the order will be mailed to the applicant.

B. Request for Text Amendment to the Zoning Ordinance

1. A request for an amendment, or change to the text of the Zoning Ordinance will be filed on prescribed forms with the Planning Office.
2. The Planning Office will conduct a formal review of the completed application. The Planning Office will endeavor to complete its review within ten (10) days.
3. The Planning Office will publish a new legal advertisement describing the request for the amendment in a local newspaper of general circulation within thirty (30) days prior to the scheduled public hearing before the Planning Commission.

4. The Planning Commission will hold a duly scheduled public hearing of the text amendment request and make a recommendation to the County Commission. The Planning Office will prepare a written report of the decision.
5. Within fifteen (15) calendar days of the Planning Commission's decision, the County Commission will hold a public hearing to hear the Planning Commission's recommendations. Attendees at the public hearing will be notified of the date and time of the public hearing. The County Commission will endeavor to make a decision on the request and recommendation within ten (10) working days.
6. If the County Commission approves the request for the text amendment, the applicant will receive approval and will be formally notified by mail by the Planning Office. An original court order will be signed by the County Commission and filed with the Clerk of the County Court of Hardy County within three (3) working days. The Planning Office will amend the zoning ordinance text to reflect the approved amendment.
7. If the request of the text amendment is denied by the County Commission, the applicant will be formally notified in writing by the Planning Office of the denial and the right to appeal the decision to Hardy County Circuit Court within thirty (30) days of the County Commission's decision. An original court order will be signed by the County Commission and filed with the Clerk of the Court of Hardy County within three (3) working days and a copy of the order is mailed to the applicant.
8. The County Planning Commission shall hold a public hearing before acting on a request for a rezoning, a conditional use, or a zoning text amendment. The Commission will establish public hearing dates and times.
9. Notice of a scheduled public hearing for a proposed rezoning, conditional use or zoning, a conditional use, or a zoning text amendment shall consist of the following:
 - a. Publication of a legal advertisement in compliance with the provisions of Chapter 59, Article 3, of the Code of West Virginia;
 - b. The posting of a notice of the public hearing on the subject property; and
 - c. The mailing of notices of the public hearing to the petitioner or applicant, to recorded owners of property within 250 feet of any part of the subject property, and to a homeowners

association board member and affected subdivisions. The list of owners may be established in the Hardy County Assessor's Office; and

- d. Whenever public hearing involves property within 200 feet of an adjoining municipality, written notice of the public hearing shall be sent by certified mail to the clerk of the municipality; and
- e. The notice required for amending the Zoning Ordinance to provide for overall updating and revision of the Zoning Ordinance text and map(s) shall be by: a) publication in a general circulation newspaper as provided in paragraph B.1 above; b) by first-class mail to applicable property owners, only where rezoning of property is involved; and c) mailed notification to a homeowners association board members of the affected subdivision.

- 10. Notice of a scheduled public hearing for a proposed text amendment shall meet the requirements as stated in B.1.
- 11. All notices shall include the time and place of the hearing and the action to be considered. For an overall updating and revision of the Zoning Ordinance, the Planning Office shall not have to specify the change(s) proposed for each parcel land; reference to the overall updating and revision shall be sufficient description of the action to be considered.
- 12. Notices meeting the above requirements in subsections B. through D. shall be deemed adequate notice.
- 13. The Planning Commission shall establish rules and policies governing the order and conduct of public hearings.

C. Application for Conditional Use Permit

- 1. An applicant requesting a conditional use will request pre-application conference with the Planning Office.
- 2. The Planning Office will conduct a preliminary review of the the request. The Planning Office will endeavor to complete its review within ten (10) working days and offer comment to the applicant.
- 3. The applicant will then file a formal and complete application for a conditional use with the Planning Office. The application shall include a list of the property owners' names and addresses located within 250 feet of the affected area, as of record in the

office of the Hardy County Assessor. The subject property, also, shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president of the homeowners association along with a stamped and addressed envelope for that member.

4. The Planning Office will conduct a formal review of the complete application. As for the formal review process, the Planning Office will notify appropriate agencies and request summaries of reviews. The Planning Office will endeavor to complete its review within fifteen (15) working days.
5. The Planning Office will publish a legal advertisement describing the request for a special permit use in a local newspaper of general circulation fifteen (15) days prior to the scheduled public hearing before the Planning Commission. The prepared envelopes notifying the property owners located within 250 feet of the affected property and the president of the homeowners association of an affected subdivision and submitted by the applicant will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.
6. The Board of Zoning Appeals shall hold a duly scheduled public hearing to review the complete site plan and application for the special permit use request.
7. If the Board of Zoning Appeals grants the special permit use, the applicant receives approval and is formally notified by mail by the Planning Office.
8. If the conditional use is denied by the Board of Zoning Appeals, the applicant is formally notified in writing of the denial and the right to appeal to decision to the Hardy County Circuit Court within thirty (30) days.

D. Standards for Approval

1. The Board of Zoning Appeals may approve an application for a conditional use permit, subject to such reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit, if it finds that the following general standards have been met:

- a. The proposed use is compatible with the goals of the adopted comprehensive plan.
- b. The proposed use shall be compatible with the appropriate and orderly development of the district, taking into consideration the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with such use, the size in relation to the use, the assembly of persons in connection with such use, the size in relation to the use, and the location of the site with respect to streets giving access to the site.
- c. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings, taking into consideration the location, nature and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site.
- d. Neighborhood character and surrounding property values shall be reasonable safeguarded.
- e. Operations in connection with the use shall not be offensive, dangerous, destructive of property values and basic environmental characteristics, or detrimental to the public interest of the community. They shall not be more objectionable to nearby properties by reason of fumes, noise, vibration, flashing of or glare from lights, and similar nuisance conditions than the operations of any permitted use not requiring a conditional use permit in the district.
- f. The character and appearance of the proposed use, buildings, structures, and/or outdoor signs should be in general harmony or better, with the character and appearance of the surrounding neighborhood.

E. Other Conditions and Restrictions

The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit.

F. Conditional Approval

A conditional use approval may be denied or revoked where the applicant fails to comply with specific conditions made a part of the approval by the Board, or fails to comply with a reasonable request of the Board or the Planner for furnishing specific information

related to the proposed use. Failure to comply with the conditions of approval shall constitute a violation of the Zoning Ordinance.

G. Expiration

In the case where a Conditional Use Permit has not been used within twelve (12) months after the granting thereof, then without further action it shall be null and void. This may be extended to eighteen (18) months upon prior written request of the Board. The word “used” shall mean that the approved Conditional Use Permit has been activated as evidenced by permits, construction, or required licenses.

H. Miscellaneous Guidelines

If there are other valid reasons for denying a conditional use application, the denial may be sustained even if the proposed conditional use constitutes the highest and best use, which can be made of the subject property. The Board may not deny a permit solely for the purpose of limiting the number of similar uses in an area. However, the Board may require that reasonable minimum distances be maintained between similar uses as a condition of approval.

SECTION 12. FEES

- A. A filing fee shall accompany petitions and application filed by property owners. The purpose of the fee shall be to defray, in part, the expense connected with each application. Such fee shall be waived in the case of a bill to rezone or to amend the text of this Ordinance when offered by the County Planning Commission.
- B. Fees for applications are 1% of construction cost or \$100; whichever is greater.

SECTION 13. PROTEST AND SUPPORT BY CITIZENS

Written petitions or letters to the Hardy County Commission or Hardy County Planning Commission should include the following:

- A. The case to which the petition or letter refers;
- B. Signature and addresses of the petitioners;
- C. Reasons for the protest; and
- D. The date of the petition, letter, or signatures.

Petitions or letters favoring a request also may be submitted and follow the same guidelines as stated in (A) through (D) above.

SECTION 14. CONFLICT OF INTEREST

Any official charged with administering and enforcing this Ordinance shall be bound by the language adopted by the West Virginia Ethics Commission.

- A. It is expected that Officials shall be independent, impartial and responsible to the people; that government decisions and policies shall be made in proper channels of governmental structure; and, that the public shall have confidence in the integrity of its government. In recognition of those goals, this section relating to conflict of interest sets forth those acts or actions that are incompatible with the best interest of the County and directs disclosures by such officials of such interest in matters which may affect the outcome of any decision related to this Ordinance made by the County Commission, Board of Zoning Appeals, or County Planning Commission.
- B. Any public official having a conflict of interest, as defined in subsection C. below, shall declare such conflict and refrain from discussion of, participation in, or voting on any decision relating to the matter in which the official has a conflict of interest.
- C. Interest shall be considered as direct or indirect monetary or material benefits accruing to a public official as a result of any decision relating to this Ordinance which is or may be the subject of an official act or action by the County Commission, Board of Zoning Appeals, or County Planning Commission. For conflict of interest if any of the following relationships are present:
 - 1. Any person related to him by blood or marriage in a degree closer than first cousins, a divorce or separation between spouses shall not be deemed to terminate any such relationship; or
 - 2. Any person or business entity with whom a contractual relationship exists with the public official; it is not intended that this relationship by construed to be affected by minor contractual relationships, such as personal insurance policies, mortgages, bank accounts, or charge accounts; or
 - 3. Any business entity in which the public official is an officer, director, member having a financial interest therein, or by which he is employed; or
 - 4. Any business entity in which in excess of 15 percent of the total stock or total legal and beneficial interest is controlled or owned directly or indirectly by the public official.

SECTION 15. VIOLATIONS AND PENALTIES

It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, or use any building or land in violation of any regulation in, or any provisions of this Ordinance, or any amendment or supplement thereto lawfully adopted by the County Commission of Hardy County or fail to comply with any requirements imposed by the Zoning Board. Any person violating any regulation in, or any provision of this Ordinance or of any amendment or supplement thereto, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty (50) dollars nor more than five hundred (500) dollars. Each day the violation continues may be deemed a separate offense.

ARTICLE VI: THE BOARD OF ZONING APPEALS

SECTION 1. ADMINISTRATION

A. Establishment

A Board of Zoning Appeals shall be established in accordance with Article 8 Chapter 8A-8-1 et. Seq., of the Code of West Virginia. The word “Board” in this article shall mean the Board of Zoning Appeals.

B. Membership and Organization

- a. Board members shall be appointed pursuant to Chapter 8A-8-4 of the Code of West Virginia.
- b. At its first meeting of each year, the Board shall elect a president, vice-president, and secretary from its membership. The vice-chairman shall have the power and authority to act as chairman during the absence or disability of the chairman.

C. Quorum and Official Action

A majority of the members of the Board shall constitute a quorum. No action of the Board shall be official unless authorized by a majority of all of the members of the Board.

D. General Procedures

- a. The Board shall adopt such rules as shall be necessary to carry out its duties under the terms of this Ordinance.
- b. The Board shall keep minutes of its proceeding, records of all official actions, and shall record the vote on all actions taken. All minutes and records shall be filed in the Planning Office and shall be public records.

E. Powers and Duties

A board of zoning appeals has the following powers and duties:

1. Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;
2. Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;
3. Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;
4. Authorize, upon appeal in specific cases, a variance to the zoning ordinance.
5. Reverse, affirm or modify the order, requirement, decision or determination appealed from and have the powers and authority of the official or board from which the appeal was taken;
6. Adopt rules and regulations concerning:
 - a. The filing of appeals, including the process and forms for the appeal;
 - b. Applications for variances and conditional uses;
 - c. The giving of notice; and
 - d. The conduct of hearings necessary to carry out the board's duties under the terms of this article.
7. Keep minutes of its proceedings;
8. Keep an accurate and complete audio record of all the other civil cases.

F. Stay of Work

When an appeal has been filed with the Board, all proceedings and work on the premises in question shall be stopped (by written notice of the Planning Office and sent to the property owner by certified mail) unless the official [or County Planning Commission] from whom the appeal was taken shall certify the Board that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. If such certificate is filed, proceedings or work on the premises shall not be stayed except by a restraining order that would be granted official from whom or which the appeal was taken and the owners of the premises affect and on due cause shown.

G. Filing Procedure for an appeal of an administrative decision

- a. An appeal taken from any order, requirement, decision or determination made by the County Planner charged with the enforcement of this Ordinance shall be filed with the Board on forms prescribed by the Planning Office. The appeal shall specify the reasons for the appeal and shall be made within thirty (30) calendar days of the original action in question unless otherwise prescribed by the Board by general rule and regulation.
- b. The appeal, or application, shall include a list of property owners' names and addresses located within 250 feet of the affected area, as

recorded in the office of the Hardy County Assessor. The subject property also shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president for the subdivision homeowners association along with a stamped and addressed envelope for that person.

- c. The Planning Office will publish a legal advertisement describing the request to appear in a local newspaper of general circulation thirty (30) calendar days prior to the scheduled public hearing before the Board. The prepared envelopes notifying the property owners located within 250 feet of the affected subdivision and submitted by the applicant will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.
- d. The Board shall hold a duly scheduled public hearing on the appeal.
- e. If the Board decides to uphold the administrative decision, the appeal will stand as approved by the Board. The Planning Office will then formally notify the petitioner in writing.

H. Procedures for a Zoning Variance Request

- a. A request for a variance from the terms of this Ordinance shall be filed with the Board on forms prescribed by the Planning Office. The variance request shall specify the reason for the variance. The variance request, or application, shall include a list of the property owners' names and addresses abutting the affected area, as of record in the office of the Hardy County Assessor, including across streets and alleys. The subject property also shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president of the homeowners association along with a stamped and addressed envelope for that person.
- b. The Planning Office will conduct a formal review of the request. As for the formal review process, the Planning Office will notify appropriate agencies and officials and request summaries of reviews. The Planning Office will endeavor to complete its review within fifteen (15) calendar days.
- c. The Planning Office will publish, in a local newspaper of general circulation, a legal advertisement describing the variance request. The legal advertisement will appear (30) days prior to the scheduled public hearing before the Board. The prepared envelopes submitted by the applicant notifying the property owners abutting the affected property, including cross alleys, and the president of the homeowners association of an affected subdivision, will be mailed at the same time the legal advertisement

- is submitted to the newspaper for publication.
- d. The Board shall hold a duly scheduled public hearing on the appeal.
 - e. The Board of Zoning Appeals shall grant a variance to the zoning ordinance if the request meets the following:
 - 1. It will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
 - 2. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were created by the person seeking the variance;
 - 3. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
 - 4. Will allow the intent of the zoning ordinance to be observed and substantial justice done.
 - f. If the Board decides to deny the variance request, the petitioner will be formally notified by mail by the Planning Office, of the right to appeal the decision to Hardy County Circuit Court within thirty (30) days.

I. Public Hearing

- a. Before deciding any case filed with the Board, the Board shall hold a public hearing. At the hearing, any party may appear in person, by agent, or by attorney. The Board shall fix a reasonable time for the hearing and give public notice as follows:
 - 1. Publication in a general circulation newspaper of a Class I legal advertisement (one time) at least thirty (30) days prior to the date of the hearing and give public notice as follows:
 - 2. The posting notice of the public hearing for a variance request on the subject property.
 - 3. Mailing of notices of the hearing at least 15 days prior to the date of the hearing to those parties described below.
 - a. In case of an administrative appeal, notices will be mailed to those owners of record of property within the affected area and to other be affected by the action in question and to the president of the homeowners association of an affected subdivision.
 - b. In the case of an application for a variance, notices will be mailed to those owners of record of properties abutting the subject real estate, including across streets and alleys, and to the president of the homeowners association of an affected subdivision.
 - 4. Both the legal advertisements and the mailed notices discussed above shall include the time and place of the hearing and the action to be considered.
 - 5. Notices of public hearings meeting all the requirements of this section shall be deemed adequate notice.

J. Fees

- a. A filing fee shall accompany applications or appeals filed with the

Board. The purpose of the fee shall be to defray, in part, the expenses connected with each application.

- b Fees for application are 1% of construction cost or \$100.00, whichever is greater.

K. Appeal of a Decision of the Board

- a. Any decision or order of the Board shall be subject to review by certiorari.
- b. Any person or persons jointly or severally aggrieved by any decision or order of the Board may present to the Circuit Court of Hardy County a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition shall be presented to the Court within thirty (30) days after the date of the Board's decision.

ARTICLE VII:EXPANSION OR ENLARGEMENT OF NONCONFORMING USES

It is the intent of this section of the nonconforming provisions article of the zoning ordinance to:

- A. Manage and accommodate the rapid growth and development in Hardy County in a planned and orderly manner.
- B. Provide for greater flexibility of nonconforming nonresidential land uses located in nonresidential zoned districts which provide necessary commercial and industrial amenities to county residents and contribute financially to a viable economy.
- C. Encourage more creative design of nonresidential development than generally is possible under these zoning regulations, and
- D. Decrease the negative impact which may be created by adjacent non-compatible land uses, where one or more of the adjacent land uses is nonconforming.

SECTION 1.

APPLICATION REQUIREMENTS FOR EXPANSION OR ENLARGEMENT OF NONCONFORMING USES

Provided that existing nonconforming uses do not meet the criteria as stated in this ordinance, nonconforming uses may apply for expansion or enlargement.

- A. Initiation by Owner of Record. An application for the expansion or enlargement of a structure or improvement being used for a nonconforming use or for the expansion or enlargement of a nonconforming use, must be initiated by the owner of record of the property for upon which the requested expansion is to occur.

- B. Pre-Application Conference. The applicant shall schedule a pre-application conference with the planner to: (1) discuss the application for expansion or enlargement of a nonconforming use prior to initiating the application process, (2) determine the eligibility of the property for expansion or enlargement prior to the applicant incurring application expenses, and (3) establish the exact requirements for a complete and full submission of an application.
- C. Formal Application. The applicant shall make formal application to the Planning Office requesting the expansion or enlargement of a nonconforming use. The initial application shall include the following:
1. A completed application form as prescribed by the Planning Office, and
 2. The application fee as stated in the fee policy maintained on file in the Planning Office, and
 3. A list of property owners' names and addresses located within 250 feet of the boundary of the property upon which the expansion or enlargement is required, as on record in the Hardy County Assessor's Office. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of the property owners in the affected area. If the list includes a lot within a residential subdivision, the applicant must submit the name of the president of the homeowners' association along with a stamped and addressed envelope for that member, and
 4. A sketch plat drawn to scale that shows the size of the lot, the footprints of the existing structure and the proposed expansion or enlargement.
- D. First Public Hearing Scheduled. If the planner determines that the applicant is eligible to apply for an expansion or enlargement of a nonforming use, according to this ordinance, the first of two public hearings is scheduled before the Planning Commission. The purpose of the first public hearing is to solicit public comment and review staff's report on the proposed expansion or enlargement.
- E. Public Notice of Proposed Land Use Action. The Planning Office shall publish a legal advertisement describing the request for expansion or enlargement of the nonconforming use, structure or improvement in a local newspaper of general circulation fifteen (15) days prior to the scheduled public hearing before the Planning Commission. The prepared envelopes notifying the property owners located within 250 feet of the affected property and a homeowner association board member of an affected subdivision will be mailed at or about the same time the legal advertisement is submitted to the newspaper for publication.

The planning office shall post suitable signs upon the property for which the application has been made giving notice to the public that application has been made for expansion or enlargement of the existing nonconformity.

- F. **First Public Hearing Held Before Planning Commission.** The Planning Commission shall hold the first of two public hearings on the applicant's request and consider public comment and the planner's report. If the Planning Commission determines that the applicant meets the established criteria to expand or enlarge a nonconforming use, the Commission shall approve a Notice to Proceed to the applicant to initiate an overall site development plan. In exercising its judgment and discretion, the Planning Commission shall consider that generally expansion and enlargement of nonconforming structures, improvements and uses are not favored and should only be approved when it can be reasonably expected that the expansion or enlargement can be approved and undertaken upon specific terms and conditions and in such a manner that the existing, expanded and enlarged structure, improvement, and use will constitute an overall improvement to the economic, social and aesthetic betterment of the immediately affected area.
- G. **Denial of Applicant's Request by Planning Commission.** If the request for expansion or enlargement of the nonconforming structure, improvement or use is denied by the Planning Commission, the applicant shall be formally notified in writing by the Planning Office of the denial and shall be advised of his rights to appeal the decision to the Hardy County Board of Zoning Appeals within thirty (30) calendar days from the date of the original decision of the Planning Commission.

The Planning Commission may deny the applicant's request based on one or more of the following:

1. Written denial of the proposed expansion or enlargement by another regulatory entity (e.g. Public Service District, Division of Highways, etc.) for valid and documented reason(s).
2. Inability of the applicant to reasonably meet conformance requirements of the zoning ordinance.
3. The proposed expansion or enlargement will, in the opinion of the Planning Commission, increase the degree of nonconformity of the existing land use with surrounding properties.
4. The applicant does not agree to implement reasonable conditions placed on the overall site development plan, as imposed by the Planning Commission which result from the public input received at the first public hearing.

- H. Approval of Applicant's Request by Planning Commission. If the request for expansion or enlargement of a nonconforming use is approved by the Planning Commission and a Notice to Proceed is issued, the applicant shall within a reasonable time thereafter be formally notified by mail by the Planning Commission of the approval.
- I. Preparation of Overall Site Development Plan. Once the Notice to Proceed is issued, the applicant shall submit an overall site development plan for the proposed expansion or enlargement of the nonconforming use. The overall site development plan shall consist of the following:
1. A site plan (3 copies), drawn to scale, that includes the following for the use of the planner:
 - a. The actual dimensions, size, square footage, and shape of the affected lot as shown on an actual survey by a licensed land surveyor or registered professional engineer licensed by the State of West Virginia, said survey to be provided by the applicant.
 - b. The exact sizes and locations on the lot of all existing structures as well as the proposed expansions or enlargements.
 - c. The location, square footage, and dimensions of the proposed structure or alteration.
 - d. The location of the lot with respect to adjacent rights-of-way.
 - e. The existing and proposed uses of the structure and land.
 - f. The location and dimensions of off-street parking and means of ingress and egress for each space.
 - g. Height of structure.
 - h. Setbacks.
 - i. Buffer yard and screening.
 - j. Location of garbage collection area and screening.
 - k. Location of sign.
 1. Street typical for internal roadways.
 - m. Location and size of drainage structures.

- n. Location of storm water detention system.
 - o. Utility lines and easements
 - p. Signature of applicant.
2. Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets if needed.
 3. If applicable, design of storm water detention system and drainage calculations that bear the name, address, and seal of a registered professional engineer and that meet the requirements of this ordinance and the design standards of the United States Natural Resource Conservation Service.
 4. Parking plan
 5. Landscaping plan
 6. Sign plan
 7. Approved WV Division of Highway Access Permit, if applicable
 8. Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable.
 9. Any other such information concerning the lot or neighboring lots as may be required by the Planner to determine conformance with, and provide for the enforcement of, this ordinance; where deemed necessary, the Planner may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or professional engineer licensed by the State of West Virginia, said survey to be provided by applicant.
 10. A statement listing and explaining any specific variances from provisions of this ordinance which may be necessary and giving the reasons thereof. Request for any variances shall be made to the Hardy County Board of Zoning Appeals and shall be made in accordance with this zoning ordinance.
 11. Where the Planner determines that any of the items (1) through (8) above is unnecessary, he may waive its requirement.

No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.

The Planner may require that the lot and location of the building thereon shall be staked out on the ground before construction is begun. The Planner, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to make sure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable county ordinance.

Site plans approved by the Planner authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approved of any violation of the provisions of this ordinance. The issuance of an improvement location permit based upon site plans given approval by the Planner shall not prevent the Planner from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on hereunder when in violation with this ordinance.

One copy of the site plan submitted for a permit shall be returned to the applicant after the Planner has marked such copy as either approved or disapproved as to the provisions of this ordinance and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planner.

- J. Review of Site Plan. The Planner will conduct a formal review of the completed overall site development plan and will endeavor to complete such review within five (5) days. If the Planner determines the application is complete, a second public hearing shall be held before the Planning Commission for the purpose of approving the overall site development plan.
- K. Second Public Hearing Scheduled Before Planning Commission. Once the Planner has completed his review of the overall site development plan, a second public hearing shall be scheduled. The second public hearing shall be advertised and the surrounding property owners notified in the same manner as described for the first public hearing. The purpose of the second hearing is to allow the public and the Planning Commission to review the overall site development plan and to determine if any specific terms and conditions are required for approval.
- L. Approval of Applicant's Request by Planning Commission. The Planner shall issue an approved Improvement Location Permit to the applicant only after the Planning Commission has formally approved the overall site

development plan. Construction of the proposed expansion or enlargement of the nonconforming use cannot be initiated until an approved Improvement Location Permit is issued by the Planner.

- M. Certificate of Compliance with the Zoning Ordinance. Once the expansion or enlargement of the nonconforming use is completed, the applicant shall contact the Planner to schedule an inspection of the property. A Certificate of Compliance shall not be issued until all elements of the approved overall site development plan are achieved.

SECTION 2.
**STANDARDS FOR REVIEW OF EXPANSION OR ENLARGEMENT OF
NONCONFORMING USES**

The Planner shall give general guidance to the applicant and review all completed applications requesting the expansion or enlargement of a structure or improvement for a nonconforming use according to the following standards:

- A. General conformance with the established regulatory requirements for the zoning district in which the nonconforming use is located. The application must show that, except for the use to which any new, enlarged, or expanded structure or improvement shall be put, the proposed expansion or enlargement will conform, as closely as possible, to all the building, regulatory, subdivision and zoning requirements for the zoning district in which it is located and that any existing structure and all existing improvements will also be made to so conform as a condition for having the application considered by the Planning Commission. The application must demonstrate that the proposed expansion conforms to the minimum standards permitted in the district, as much as possible, except as to use.
- B. Traffic. The West Virginia Division of Highways-Highway Access Permit process shall be used to determine the provisions for the safe and convenient traffic flow onto highway accesses, if appropriate.
- C. Sanitary Facilities. The sanitary services and facilities plan shall be reviewed by, and a report received from, the provider and/or the West Virginia State Department of Health prior to action by the Planning Commission, if appropriate.
- D. Utilities. The plan must demonstrate the location and availability of necessary utility services.
- E. Off-site Impact. The plan must demonstrate that light, heat, glare or any

other use or activity on the subject property shall not deleteriously affect nor discourage orderly development of adjacent properties.

- F. General conformance with subdivision regulations and drainage considerations. The plan must demonstrate that the traffic circulation system conforms with the provisions of the Hardy County Subdivision Ordinance and Zoning Ordinance for the Unincorporated areas of Hardy County. The site shall be suitable for development in the manner proposed without hazards to persons or property, on or off the site; from probability of flooding, erosion, subsidence or slipping of the soil; or other dangers, annoyances, or inconveniences. The condition of the soil, ground water level, topography and drainage plans shall be appropriate to both kind and pattern of intended use.
- G. Site planning. The site shall be planned to provide for good functional relationships between land uses, buildings, parking areas, and recreation areas.
- H. Conformance with Floodplain Management Ordinance provisions. All applicants must comply with the applicable floodplain management requirements.

SECTION 3.

ADHERENCE TO APPROVED PLAN FOR EXPANSION OR ENLARGEMENT OF NONCONFORMING USES; MODIFICATIONS

- A. The applicant and his successors in interest, be it owners, lessees, assigns, occupants, users, or otherwise, shall be bound by the approved terms and conditions as approved and recorded in the Office of the Clerk of the County Commission of Hardy County, until such time as there is a subsequent change or modification approved by the Planning Commission. The approved and recorded final site plan shall control the issuance of all Improvement Location Permits and shall control, govern, limit and restrict the expansion and enlargement upon the property upon which the application has been made and such adjoining property of the applicant, if any, from which the expansion or enlargement emanates.
- B. Any substantial changes, modifications, or amendments to an approved Plan shall require a new application. Any minimal changes, modifications or amendments to an approved plan may be approved by the Planner or the Planner may determine that the changes are substantial and require the approval of the Planning Commission.

- C. The approval of the expansion or enlargement under this article, upon recordation, shall vest a limited and conditional property right in the applicant which right shall be lost for the reasons set forth in the immediately following paragraph or if the applicant or his successors in interest fail to construct, develop, maintain or use the property for whose benefit the expansion or enlargement was granted in strict accordance with the plat, terms and condition of the approval; and, if the Planning Commission decides there has been any such failure and compelled discontinuance of such use as allowed by its previous approval. In the event that the Planning Commission is successful in obtaining a final judicial determination of such failure and loss of the expansion or enlargement of such non conforming use, the Planning Commission shall have a lien against the property having been given the approval for the reasonable costs of its attorney fees and expenses with interest thereon.

SECTION 4.
LOSS OF RIGHT TO EXPANDED NONCONFORMING USE

Approval of the expansion of a nonconforming use shall be null and void if construction work is not begun within one year from the date of approval, or in the event such work is suspended or abandoned at any time after the work is commenced for a period of ninety (90) days. Should the nonconforming use of a structure ease, for whatever reason, for a period of twelve (12) consecutive calendar months, the use of the property shall revert to a land use permitted within the zoning district.

ARTICLE VIII: SUPPLEMENTAL AMENDING ORDINANCES

1. The County Commission may, from time to time, amend, supplement or change the regulations and districts fixed by ordinance pursuant to this article.
2. Petitions for Change of Zoning Regulations – Petitions, duly signed, may be presented to the clerk of the county requesting an amendment or change of the regulation of the zoning ordinance by:
 - a. The Planning Commission
 - b. By the owners of fifty percentum or more of the area involved in the petition.
3. Proposed Changes Action – Any proposed ordinance for the amendment, supplement, change or repeal of the zoning ordinance not originating from petition of the Planning Commission shall be referred to the Planning

Commission for consideration and report before any final action is taken by the county court.

Prior to the submission to the County Commissioner of a Planning Commission petition or a report on a proposed ordinance referred to it for an amendment, supplement, change or repeal of the zoning ordinance, the Planning Commission shall give notice and hold a public hearing in the manner prescribed under Section 8 of the West Virginia Code, except that publication of notice of the time and place of hearing upon amendment, supplement, change or repeal of the zoning ordinance shall be not less than thirty days prior to the date set for such hearing.

ARTICLE IX: MAP AND TEXT AMENDMENTS

SECTION 1. PURPOSE

- A. These regulations, restrictions, provisions and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the county may petition the County Commission for such change.
- B. The County Commission shall refer any amendments or alterations of this ordinance to the Planning Commission for analysis, study, report and recommendations.

SECTION 2. PROCEDURES FOR AMENDMENT

- A. After the adoption of this ordinance, all amendments to it shall be adopted according to the procedures set for the in Section 7 of Chapter 8A of the West Virginia Code, as amended; except, that public publication of notice of the date, time and place of hearing upon amendment of the zoning ordinance need be only fifteen or more days prior to the date set for such hearing, and except that if the County Commission desires an amendment, it may direct the Planning Commission to prepare an amendment and submit it to the public hearing within sixty (60) days after formal written request by the County Commission.
- B. Any property that has requested a rezoning or an alteration of the official zoning map, shall be posted at least fifteen (15) days prior to the public hearing. This posting shall state the time and date of such hearing, as well as, what new zone is being requested on this particular property.
- C. The legal advertisement for the required public hearing shall describe the location and the identification of the subject parcel that is being requested for the rezoning. All such identification will include the current tax district and map and parcel number.
- D. Petitions to the County Commission for a map amendment must contain the following information:

1. Substantiation for the request
2. Tax district, map and parcel number
3. Deed book reference
4. Plat or sketch pursuant to this ordinance
5. Tract size

Dated 19th day of April, 2005.

APPROVED

PRESIDENT, HARDY CO. COMMISSION
WILLIAM E. KEPLINGER, JR.

COMMISSIONER, ROGER CHAMP

COMMISSIONER, STANLEY MOYER, JR.