

**Article 4
ZONING ORDINANCE
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**ARTICLE 4
ZONING**

A. General Provisions.

1. **Title.** This article shall be known and may be cited as the "Zoning Ordinance, City of Hagerstown."
2. **Interpretation.** In interpreting and applying this ordinance, its provisions shall be held to be the minimum requirements for promoting the public health, safety, comfort, convenience and general welfare, except that when the provisions imposed by any statute, other ordinance, rule, regulation or permit or by any easement, covenant or agreement are more restrictive than the provisions of this ordinance, the provisions of such statute, other ordinance, rule, regulation, permit, easement, covenant or agreement shall be applicable.

In interpreting the appropriateness of proposed uses, the North American Industry Classification System (U.S. 2002) will be considered along with other factors to determine similarity to delineated uses in the zoning districts.

The regulations set forth herein are designed to be uniform for each class or kind of use throughout an entire district. In any case where it is not clear from the provisions of this ordinance that a proposed use is intended to be prohibited in a district, the provisions of that Section setting forth the uses permitted in that district shall prevail, and if the proposed use is not one in the list of those permitted, it shall be prohibited as though it were included in the prohibitions.

3. **Essential Utility Equipment.** Essential utility services shall be permitted in any district as authorized and regulated by law and ordinances of the City of Hagerstown. It is the intention to exempt such essential services from the application of this ordinance; except that, without in any way altering or otherwise affecting such exemption, the plans of any overhead electric transmission line of sixty-nine and zero-tenths (69.0) kilovolts or more, on metal or wooden poles or towers or pole structures or of any cross-country telephone trunk line including microwave, transmission pipe line, natural gas line, trunk sewer line or substation proposed to be erected or installed in any residential or historic district shall be submitted, before the beginning of construction, to the Planning Commission for its approval. Regulations pertaining to the erection or installation of wireless communications antennas, poles, and towers are specified in Section Q.
4. **Definitions.** Article 3 of the Land Management Code shall govern all definitions as they apply to this Article.
5. **Applicability.** All departments, officials and public employees of the City of Hagerstown vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this ordinance.

6. **Compliance With This Article.** Except as hereinafter specified, no land, building, structure or premises shall hereafter be used and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located.

However, in any residential district, for existing dwellings and new construction of single-family dwellings, any lot recorded among the land records of Washington County prior to the effective date of this ordinance shall be deemed to meet the lot area and width requirements of the district.

Where, by proper subdivision, lots are created from a lot recorded among the land records of Washington County prior to the effective date of this ordinance; and where each lot so created contains a residential dwelling that existed prior to the effective date of this ordinance; and where the purpose of the subdivision is for the transfer of ownership and not for building development, then the lots so created shall be deemed to meet the lot area, width and setback requirements of the district.

7. **Severability.** Should any Article, section, subsection or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Zoning Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

8. **Establishment of Districts, Filing of Map and Ordinance.**

a. **Districts.** The city is hereby divided into zones, or districts, as shown on the official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

b. **Map and Ordinance.** The official Zoning Ordinance and Map shall be filed in the office of the City Clerk for the City of Hagerstown, Maryland, among the official records and shall be recorded among the plat records in the office of the Clerk of the Circuit Court for Washington County, Maryland, and among the Acts, ordinances and resolutions (incorporated towns) in the office of the Clerk of the Circuit Court for Washington County, Maryland.

9. **Amendment of the Zoning Ordinance and/or Map.** The Mayor and City Council may from time to time amend, supplement, change, modify or repeal this ordinance including the Zoning Map.

a. **Generally; Findings for Reclassification.** Such regulations, restrictions and boundaries may from time to time be amended, supplemented, modified or repealed. Where the purpose and effect of the proposed amendment is to change the zoning classification, the Mayor and City Council shall make findings of fact in each specific case, including but not limited to the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the Planning Commission and the relationship of such proposed

amendment to the jurisdiction's plan; and may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all the members of the Council shall be kept.

- b. Restriction Upon Acceptance of Application for Reclassification.** An application for a reclassification shall not be accepted for filing by the Mayor and City Council if the application is for the reclassification of the whole or any part of land the reclassification of which has been opposed or denied by the Council on the merits within twelve (12) months from the date of the Council's decision.
- c. Source of Proposals.** Proposals for amendment, supplement, change, modification or repeal may be initiated by the Mayor and City Council on its own motion, by the Planning Commission or by petition of one (1) or more owners of property to be affected by the proposed amendment. Forms available from the Planning Department shall be used for this purpose.
- d. Effective Date.** No such amendment, supplement, change, modification or repeal shall become effective until at least ten (10) days after one (1) review and one (1) public hearing are held. One (1) review shall be held by the Planning Commission within forty-five (45) days of receipt of application and recommendation of findings forwarded to the Mayor and City Council. One (1) public hearing shall be held by the Mayor and City Council who shall determine if the amendment, supplement, change, modification or repeal shall be granted at which time the parties in interest and citizens shall have an opportunity to be heard. Notice for the public hearing shall be given as follows:

 - (1) Legal Notice. Notice of the time and place of the public hearing, together with a summary of the proposed regulation, restriction or boundary, shall be published in at least one (1) newspaper of general circulation in the city once each week for two (2) successive weeks, with the first such publication of notice appearing at least fourteen (14) days prior to the hearing.
 - (2) Written Notice. Send written notices of hearing to other interested persons, organizations or agencies at the Council's discretion.
 - (3) Additional Notice. Except for a Historic District or Landmark, when the proposed hearing concerns a Zoning Map change altering the classification of fewer than twenty-five (25) lots of record, the following additional notice is required:

 - (a) Posting in a conspicuous place on the property involved a notice of pending action containing the same information as in Subsection d, (1), above, such posting to take place at least fifteen (15) days prior to the date fixed for public hearing.

- (b) Giving written notice of the time and place of such hearing sent by certified mail to the applicant and to the owners of property contiguous to or opposite the property affected.

10. Rules of Interpretation of District Boundaries. Where uncertainty exists as to the boundaries of districts as shown on the official Zoning Map, the following rules shall apply:

- a. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines.
- b. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- c. Boundaries indicated as approximately following city limits shall be construed as following city limits.
- d. Boundaries indicated as following railroad lines shall be construed to be midway between the right-of-way lines.
- e. Boundaries indicated as approximately following the center lines of streams, lakes or other bodies of water shall be construed to follow such center lines.

11. Zoning Districts.

- a. For the purpose of this ordinance, zoning districts are hereby established as follows:
 - AT District (Agricultural Transition)
 - R1 District (Residential)
 - R2 District (Residential)
 - R3 District (Residential)
 - R4 District (Residential)
 - N-MU (Neighborhood - Mixed Use)
 - D-MU (Downtown - Mixed Use)
 - C1 District (Commercial Local)
 - C2 District (Commercial General)
 - C4 District (Regional Shopping Center)
 - POM District (Professional Office - Mixed)
 - I-MU (Industrial - Mixed Use)
 - IR District (Industrial Restricted)
 - IG District (Industrial General)
 - PUD District (Planned Unit Development) *(An Overlay District)*
 - Conversion District *(An Overlay District)*
 - Conversion Local District *(An Overlay District)*
 - Historic District *(An Overlay District)*
 - Landmark *(An Overlay District)*
- b. For the purpose of this ordinance, the zoning districts established by Subsection a

above shall be shown on the city Zoning Map adopted and incorporated herein in its entirety as a part of this ordinance.

- c. The regulations as set forth in this ordinance within each district shall be minimum regulations except as hereinafter provided.

12. Newly Annexed Areas.

- a. **Shall Be Assigned Zoning Classification.** All areas annexed to the City of Hagerstown after the effective date of this ordinance shall be zoned in accordance with the applicable resolution pertaining thereto as duly adopted by the Mayor and Council in accordance with the then applicable provisions of the Annotated Code of the Public General Laws of Maryland, Article 23A entitled, "Corporations - Municipal, Section 19, Annexation".
- b. **Annexation of Inventoried Historic Properties.** When County designated historic districts and County inventory properties are annexed into the City, they will be considered City Potential Landmarks. If demolition is proposed for any such Potential Landmarks, the review process in Section T.6 must be followed.

13. Effective Date of Adoption.

This Article was adopted as Chapter 68 (Zoning) by the Mayor and City Council, effective March 3, 1977, and subsequently amended. Effective September 26, 2008, this Article was reformatted for structural purposes with minor amendments and incorporated into this Chapter. It shall be interpreted to be the Ordinance as adopted on March 3, 1977 and subsequently amended.

14. Violations and Penalties.

The treatment of violations of this Ordinance, and penalties for those violations shall be in accordance with Article 8 of this Chapter.

B. AT (Agricultural Transition) District.

1. Purpose.

The purpose of the AT District is to enable agricultural uses to continue on newly annexed land, if desired by the property owner, as a temporary use until such time that the land is rezoned for development.

2. Principal Permitted Uses.

- a.** Farms in existence on the date of adoption of this ordinance, or at the time of annexation into the city, may continue in use; however, these uses may not be expanded with respect to area or intensity of usage, nor may the type of agricultural use be altered.
- b.** Commercial enterprises used solely for the purpose of fostering, nurturing and promoting agricultural industry and related enterprises, including but not limited to fairgrounds and educational institutions.
- c.** Residential dwellings, single-family.
- d.** Recreation areas and centers, including but not limited to parks, country clubs, swimming pools, golf courses, summer camps.
- e.** Nurseries. The raising of plants for sale with an attached commercial outlet.
- f.** Kennels.
- g.** Residential facilities with in-house professional care, for up to three residents with mental and/or physical disabilities.

3. Special Exception Uses, as provided for in Section U, Sub-Section 8.

Safety services such as police, fire and rescue operations shall be permitted as a special exception.

4. Accessory Uses.

- a.** Accessory buildings and uses customarily incidental to any principal permitted use or authorized special exception use.
- b.** Living quarters for persons employed on the premises.

5. Maximum Building or Structure Height.

Thirty-five (35) feet. Agricultural silos shall not be subject to this maximum height

requirement.

6. Minimum Lot Area, Lot Width and Yard Requirements.

AT DISTRICT DIMENSIONAL REQUIREMENTS								
	Lot Area (sq. ft.)	Lot Width (ft.)	Lot Area Per Dwelling Unit (sq. ft.)	Front Yard Depth (ft.)	Rear Yard Depth (ft.)	Min. Aggregate Width of Side Yards (ft.)	Minimum Width of Side Yards (ft.)	Number of Side Yards Required
Dwellings	40,000	100	40,000	40	50	20	10	2
Other principal-permitted or conditional uses	3 acres	300	---	50	50	100	40	2

C. (Reserved)

D. Residential Zoning Districts.

1. Purpose.

The purposes of the various residential zoning districts are as follows:

- a. **R-1 District** - To provide areas for low-density residential development.
- b. **R-2 District** - To provide areas for moderate-density residential development.
- c. **R-3 District** - To provide for areas of high-density residential development. Also permitted are businesses of a type which serve nearby residents.
- d. **R-4 District** - To provide for office uses in residential neighborhoods containing large houses to make continued use of these properties feasible; and to provide a buffer between residential and commercial areas.

2. Uses.

Uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Section U, Sub-Section 8, or not permitted as follows. Any use that does not appear on this chart shall be deemed not to be permitted in these districts.

- a. **Use Chart** - Use are permitted in the residential districts based on the following chart. Letter codes pertaining to use correspond as follows:

Blank - Not permitted
 P- Permitted Principal Use
 P* - Permitted Principal use in accordance with parking requirements (Section O)
 SE - Special Exception Use

Use	R-1	R-2	R-3	R-4
Dwelling, single family	P	P	P	P
Dwelling, two family	P	P	P	P
Dwelling, semi-detached	P	P	P	P
Dwelling, townhouse		P	P	P
Dwelling, Quadraplex, in cluster developments only		P	P	P
Dwelling, Triplex, in cluster developments only		P	P	P
Dwelling, Multiple family, including but not limited to apartments and condominiums			P	SE
Adult Day Care Services (624120)	SE	SE	SE	SE
Ambulance Services (621910), Fire Protection (922160) and Police Protection (922120)	SE	SE	SE	SE

Use	R1	R2	R3	R4
Bed and Breakfast Inns (721191) in Existing Structures	SE	SE		SE
Child Day Care Services (624410)	SE	SE	SE	SE
Uses permitted by right in the C2 District			SE	
Community Centers, including but not limited to cultural, civic and educational centers	SE	SE	SE	SE
Educational Services (611)	SE	SE	SE	SE
Fitness and Recreational Sports Centers	SE	SE	SE	SE
Funeral Homes (81221)	SE	SE	SE	P*
Hospitals (622) including psychiatric, substance abuse and specialty hospitals	SE	SE	SE	SE
Nursing Homes and Assisted Living Facilities for the Elderly	SE	SE	SE	P
Residential facilities with in-house professional care for up to three residents with mental and/or physical disabilities	P	P	P	P
Mixed Use Building of Commercial & Residential Units			SE	
Public and Private Parks, Playgrounds and Cemeteries	SE	SE	SE	SE
Religious Organizations (8131)	SE	SE	SE	SE
Dwellings, multiple-family, where a structure in existence prior to the effective date of this ordinance is substantially rehabilitated and involves no increase in the gross floor area of the structure.				P*
Ambulatory Health Care Services, with exception of Outpatient Mental Health and Substance Abuse Centers (621420)				P*
Professional, Scientific & Technical Services (54), except Veterinary Services.				P*
Administrative Support Services (561).				P*
Other Finance and Insurance (52).				P*

b. Special Exception Uses.

Compliance with use and development requirements - Any special exception use shall not be granted by the Board of Zoning Appeals unless the use is found to be in accordance with the following requirements:

- (1). The off-street parking requirements of Section O.
- (2). The specific performance criteria of individual special exception uses (if applicable) as found in Section U.8.a(7) of this Ordinance.
- (3). The site plan requirements of Section S, Section 2, if applicable, following the Board's granting of the special exception.

c. Accessory Uses.

The following accessory uses shall be permitted in residential zoning districts:

- (1). Private detached garages for not more than three (3) motor vehicles cumulatively totaling not over nine hundred (900) square feet and not more than one story in height, and garden, tool or storage sheds.
- (2). Uses and structures customarily and incidental to any principal-permitted use or authorized special exception.
- (3). In the R-3 District, Commercial and Community swimming pools, provided that the pool shall not be located nearer than seventy-five (75) feet from any property line nor nearer than one hundred twenty-five (125) feet from any existing dwelling.
- (4). Home workstations, subject to the provisions Subsection K.7.

3. Parking Requirements.

Off street parking shall be provided in accordance with Section O of this Ordinance. However, in the R-4 District, existing residential buildings shall not be altered or modified for the purpose of creating additional residential units unless two (2) parking spaces per unit for all the units in the building can be provided or created in the rear yard of the property or in the rear yard of contiguous property under perpetual easement.

Parking and Storage of Certain Vehicles. Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any "R" Districts' property other than in completely enclosed buildings. This provision shall also apply to residential elements of PUD Developments where the base zoning is not a residential district.

4. Height Limitations.

No principal permitted structure shall exceed the following:

Zoning District	R-1	R-2	R-3	R-4
Height	3 stories or 35 feet	3 stories or 35 feet	5 stories or 60 feet	3 stories or 40 feet

5. Minimum Lot Area, Lot Width and Yard (setback) Requirements.

The minimum lot area, lot width and yard (setbacks) requirements for residential districts shall be as stated in the following chart (see next page).

Yards shall be measured and determined in accordance with the standards set forth in Section K.6 of this ordinance.

a. Bulk Requirements Chart.

RESIDENTIAL R4 DISTRICT DIMENSIONAL REQUIREMENTS								
	Lot Area (square feet)	Lot Width (feet)	Lot Area Per Dwelling Unit (sq. ft.)	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
Single-family dwellings	7,500	50	7,500	25	35	15	4	2
Two-family dwellings	10,000	75	5,000	25	35	20	10	2
Single-family semi-detached dwellings	5,000	37.5	5,000	25	35	N/A	10	1
Townhomes	7,000	25	3,500	0 (or to established line in neighborhood if infill)	30	N/A	10 (or to established line in neighborhood, if less)	1 for end units
Multiple-family dwelling (apartments)	20,000	100	2,000	25	20	20	10	2
Multiple-family dwellings in R4 District	40,000 sq. ft.	100	4,000	25	20	10	4	2
Accessory uses	---	---	---	25	5	8	4	2
Other permitted or special exception uses in R1 and R3 Districts	20,000	100	---	25	40	20	10	2
Other permitted or special exception uses in R2 and R4 Districts	15,000	80	---	25	20	20	10	2
Schools	12 acres	400	---	150	50	200	50	2
Hospitals	5 acres	400	---	150	50	200	75	2
Churches	2 acres	200	---	100	50	100	40	2
Nursery schools, day-care centers	3 acres	300	---	50	50	10'	40	2
Funeral homes	2 acres	200	---	100	50	100	40	2

b. Lot Averaging on Residential In-fill Lots.

Where at least sixty-six (66%) per cent of all lots on both sides of the same street block as the subject lot have been developed:

- (1) The front yard setbacks of the subject lot shall conform to the average established front yard setbacks,

- (2) The side yard setbacks of the subject lot shall not be less than the average side yard setbacks, and
- (3) For single-family residences, the lot area and width requirements shall be not less than the average lot area and width.

Not to be Used For Lot Area and Width on Two-family and Semi-Detached Dwellings. Regardless of whether sixty-six (66%) per cent of the block has been developed, for the construction of two-family and semi-detached residences, the lot area and widths of the subject lot shall conform to the minimum lot area and width requirements established for the zoning district.

c. Projections Into Yards.

- (1) If attached to the main building, a one-story, open porch, with or without a roof may extend into a front yard not more than thirty (30%) percent of the existing front yard depth.
- (2) Projections such as bay windows, chimneys, entrances, vestibules, balconies, eaves, and leaders may extend into any required yard not more than four (4) feet, provided that such projections (excepting eaves) are not over ten (10) feet in length and no closer than four (4) feet to any property line.
- (3) If attached to the dwelling, a one-story open deck without a roof may extend into the required rear yard not more than twenty-five (25%) percent of the required setback.

d. All Public Street Frontages Are Front Yards. On corner lots and through lots, all sides of a lot adjacent to streets shall be considered front yards, but only the side of the lot opposite the frontage of the building shall be considered the rear yard.

e. Townhouse Developments.

- (1) Streets, storm water management facilities, and parking lots shall be excluded from the required lot area.
- (2) The minimum horizontal distance between facing walls of any two (2) buildings on one (1) lot shall be fifty (50) feet.
- (3) Where common open space is provided for a townhouse development in the R4 District, the minimum may be reduced to two thousand (2,000) square feet provided the gross density does not exceed fifteen (15) dwelling units per acre.

f. Apartment Developments.

- (1) The minimum horizontal distance between facing walls of any two (2)

buildings on one (1) lot shall be fifty (50) feet.

- (2) When a new apartment building or complex is approved via special exception by the Board of Zoning Appeals in the R4 District, it shall only be done so when the proposed development is in accordance with the lot area, setback and maximum unit per acre requirements found in Section D.5.a.

6. Cluster Development.

- a. **Description.** Clustering is an alternative type of development which provides for reduction in minimum lot size for residential development. It permits a reduction in the size of individual lots while maintaining the maximum gross density allowed in the district in which it is located. This land development technique involves siting clusters of home sites on smaller lots than those permitted under conventional development regulations with the remaining “saved” land being retained as common open space.
- b. **Use of Open Space.** The permanent, common open space, legally dedicated through subdivision plat recordation and deed restriction, can be used for natural conservation and/or recreational facilities for community benefit.
- c. **Site Design Criteria.**
 - (1) Subdivision Approval for Cluster Development.
 - (a) No cluster development may be constructed except in accordance with a Development Plan and Final Subdivision Plat approved by the Planning Commission under the Subdivision Regulations.
 - (b) Wherever the yard and lot dimensional requirements are less than those required in non-cluster developments, they shall be shown and identified on the Development Plan and Final Subdivision Plats.
 - (2) Open Space.
 - (a) Lot reduction shall be compensated for by the provision of one (1) square foot of open space for each square foot of area that each lot in the subdivision is reduced below non-cluster lot area requirements, providing such minimum open space is configured for the use and enjoyment of the residents of the subdivision as the Planning Commission determines to be suitable to meet the intent of this Ordinance. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land which provide for the preservation of significant natural features on the land, and/or provide recreational amenities for the use of the residents of the development. The Planning Commission must be furnished

satisfactory evidence as a condition of approval that such open space area will be continued and that perpetual maintenance is provided for.

- (b) Up to twenty-five (25%) percent of this area may be designated forest retention areas intended to meet the requirements of the Forest Conservation Ordinance, provided that at least seventy-five (75%) percent of the forest conservation requirement is being met within the development (retention, afforestation and street trees). The Planning Commission may consider a deviation from this forest conservation standard to allow up to fifty (50%) percent of open space area designated for forest retention areas intended to meet the requirements of the Forest Conservation Ordinance, provided that one hundred (100%) percent of the Forest Conservation requirement is being met within the proposed development.
- (c) "Open space" does not include public or private streets, rights of way, or off-street parking.
- (d) The open space shall be either publicly or privately owned. A deed with covenants or other legal arrangements shall specify ownership of the cluster open space; method of maintenance; responsibility for maintenance; maintenance taxes and insurance; compulsory membership and compulsory assessment provisions; guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Planning Commission and any other specifications deemed necessary by the Planning Commission. Unless specifically agreed to by the Mayor and Council, approval of the cluster open space does not commit the City to maintenance of the cluster open space.

(3) Buffer Zones.

Buffer zones shall, where appropriate, be included to prevent or minimize adverse impacts from adjoining areas having different types or densities of development by providing separation and barriers to objectionable views, glare, and noise. Several types of buffers may be required by the Planning Commission.

- (a) Landscaping and buffer strips may be required to reduce noise or visual impacts between developments.
- (b) Common open space, if appropriately located, may be used in satisfying buffer requirements, provided that the open space is adequately landscaped to prevent or minimize the adverse effects of the proposed development.

(4) Cluster dimensional requirements.

- (a) Lot area requirements shall be based on the average for the entire development.
- (b) Maximum number of townhouse units per building: eight (8).
- (c) The minimum lot area, lot width and yard requirements for dwellings in cluster subdivisions shall be in accordance with the requirements set forth in the following chart.

CLUSTER MINIMUM DIMENSIONAL REQUIREMENTS SCHEDULE									
	Minimum Lot Size Permitted in Non-Cluster	Minimum Lot Area (sq. ft.)	Lot Width (minimum) (feet)	Minimum Lot Area Per Dwelling Unit (sq.ft.)	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
Single-family dwellings	7,500	5,000	40	5,000	15	30	10	4	2
Two-family	10,000	5,000	65	2,500	15	30	10	4	2
Triplex	6,000 (A)	4,500	65	1,500	15	30	10	5	2
Quadraplex	8,000 (A)	6,000	65	1,500	15	30	10	5	2
Townhouse	3,500	1,500	20	1,500	10	30	10 between bldgs.	5	1 (end unit)
Accessory					15	5		4(B)	

NOTES:

- (A) Triplexes and quadraplexes permitted in cluster developments only. This shall be applied as if they were permitted in other districts, and in accordance with the provisions of Subsection 6.c(2) above.
- (B) Accessory structure side setback shall not apply on lots containing attached dwellings, along the lot line containing a party wall if the accessory structure is a garage attached to another garage on the adjacent property.

7. Zero Lot Line Development.

Zero lot line development as defined in this Chapter, is not permitted within the limits of the City of Hagerstown.

E. Mixed Use Districts.

1. Purposes.

The purposes of the mixed use districts are as follows:

- a. **D-MU (Downtown - Mixed Use).**

- (1) Promote development of a compact, pedestrian-oriented city center consisting of a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors, and residents;
- (2) Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and city center businesses;
- (3) Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction;
- (4) Create a place that represents a unique, attractive, and memorable destination for visitors and residents; and
- (5) Enhance the community's character through the promotion of high-quality urban design.

b. N-MU (Neighborhood - Mixed Use).

- (1) Accommodate mixed-use buildings serving retail, service, and other uses on the ground floor and residential units above the nonresidential space;
- (2) Allow for commercial uses of a scale and intensity compatible with a residential neighborhood.
- (3) Allow for exclusively residential buildings of a scale and intensity compatible with the City's traditional neighborhood building design.
- (4) Encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets;
- (5) Provide flexibility for adaptive re-use of old, non-residential buildings in these areas; and
- (6) Promote the health and well-being of residents by encouraging physical activity, allowing for transportation alternatives, and providing for interaction of uses during day and evening hours.

2. Uses.

Uses in these districts shall be either permitted, permitted by special exception (in accordance with general and specific performance criteria found in Section U, Subsection 8), or not permitted as follows. Any use that does not appear on this chart shall be deemed not to be permitted in these districts.

- a. (1) Use Chart**

Blank- Use Not Permitted P-Permitted Principal Use SE -Special Exception Use

Use	N-MU	D-MU
Ambulance Services (621910), Fire Protection (922160), Police Protection (922120)	SE	SE
Ambulatory Health Care Services, with exception of Outpatient Mental Health and Substance Abuse Centers (621420)	P	P
Amusement and Recreation Establishments (713120, 71395 and 713990)	P	P
Banks, Savings Institutions & Credit Unions (521-522), except pawn shops	P	P
Bed and Breakfast Inns (721191)	P	P
Broadcasting (515)		P
Child Day Care Services (624410)	P	P
Civic and Social Organizations (8134)	P	P
College Dormitories		P
Community Centers, including but not limited to cultural, civic and educational centers	P	P
Convenience Stores without Fuel Pumps (445120)	P	P
Drinking Places (722410) within the Smart Growth A & E District		P
Drinking Places (722410) outside the Smart Growth A & E District	SE	SE
Dry-cleaning and Laundry Services (8123)	P	P
Educational Services (611)	P	P
Entertainment Club	SE	SE
Public Administration (92), Except Correctional Institutions (922120)	P	P
Finance and Insurance (52), Monetary Authorities - Central Bank, Credit Intermediation and Related Activities (521-522), except Pawn Shops (522298)	P	P
Fitness and Recreational Sports Centers (71394)	P	P
Funeral Homes (81221)		P
Hair, Nail and Skin Care Stores (81211)	P	P
Hospitals (622) including psychiatric, substance abuse and specialty hospitals		P
Hotels and Motels (72111)		P
Internet Publishing and Broadcasting (516)	P	P
Internet Service Providers, Web Search Portals and Data Processing Services (518)	P	P
Use	N-MU	D-MU
Medical and Diagnostic Laboratories (6215)		P
Motion Picture and Sound Recording Industries (512)		P
Museums (712110)	P	P
Newspaper Publishers (511110)		P
Nursing Homes and Assisted Living Facilities for the Elderly		P

Offices, Business and Professional (55 and 56), except Waste Management and Remediation Services (562)	P	P
Other Personal Care Services (812199), subject to location limitations in Sub-Section 2.a(4)	SE	
Parking Lots and Garages (812199)	P	P
Pawn Shops (522298), subject to location limitations in Sub-Section 2.a(4)	SE	
Performing Arts Companies (7111)		P
Personal and Household Goods Repair and Maintenance (8114)	P	P
Photo Finishing (81292)	P	P
Professional, Scientific and Technical Services (54)	P	P
Radio and Television Broadcasting (5131), except transmission points		P
Religious Organizations (8131)	P	P
Residential Uses - Single-family, two-family, mansion apartment house, courtyard apartments, stacked apartment units and townhouse dwellings, subject to the limitations in Sub-Section E.6.	P	P
Residential facilities with in-house professional care for up to three residents with mental and/or physical disabilities	P	P
Restaurants (722110 and 722211)	P	P
Retail Trade (44-45) Provided no individual retail space exceeds 15,000 square feet in net floor area, excluding Auto and Other Motor Vehicle Dealers and adult entertainment	P	
Retail Trade (44-45) Provided no individual retail space exceeds 75,000 square feet in net floor area, excluding Auto and Other Motor Vehicle Dealers and adult entertainment		P
Warehouse & Storage (493) in existing buildings only		P
Tanning and Depilatory Salons	P	P
Telecommunications (517)		P
Theaters, Movie (512131)		P
Theaters, Performing Arts (711310)		P
Transit and Ground Passenger Transportation (485)	P	P
Visual and Performing Arts Studios		P

b. Special Exception Uses.

Compliance with use and development requirements - Any special exception use granted by the Board of Zoning Appeals shall only be approved when the use is found to be in accordance with the following requirements:

- (1) The off-street parking requirements of Section O of this Article.
- (2) The specific performance criteria of individual special exception uses (if applicable) as found in Section U.8.a(7).

(3) The site plan requirements of Section S, if applicable, following the Board's granting of the special exception.

c. Accessory Uses.

Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception.

3. Parking Requirements. As applicable under Section O of this Article.

a. Location. Off-street parking spaces must be located to the rear of the principal building.

b. Reduction. A development can reduce the required off street parking spaces up to fifty percent when it can be demonstrated, in a parking-traffic study, prepared by a traffic engineer, that use of transit or demand management programs, special characteristics or customer, client, employee or resident population will reduce expected vehicle use and parking space demand for their development, as compared to standard Institute of Transportation Engineers vehicle trip generation rates and city parking requirements.

c. Small Commercial Exception. No off-street parking is required for nonresidential uses in this district unless such uses exceed 3,000 square feet of gross floor area.

4. Minimum and Maximum Height Requirements.

a. Height Limitation Chart.

	N-MU	D-MU
Height	4 Stories	7 Stories

b. Special Exceptions for Height.

The Board of Zoning Appeals may grant a special exception to increase the height of a building, pursuant to the general criteria for special exceptions found in Section U.8.A, as follows:

	N-MU	D-MU
Maximum permitted height by Special Exception	6 Stories	12 Stories

c. Minimum Height Requirements.

All Structures shall be at least 2 stories in height.

5. Minimum Lot Area, Lot Width and Yard (setback) Requirements.

The minimum lot area, lot width and yard (setbacks) requirements for residential districts shall be as stated in the following chart:

a. Bulk Requirements Chart.

MIXED USE DISTRICT MINIMUM DIMENSIONAL REQUIREMENTS					
All Buildings					
Zoning District	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
N-MU	0	5	0	0	0
D-MU	0	0	0	0	0

Yards shall be measured and determined in accordance with the standards set forth in Section K.6 of this Ordinance.

b. Maximum Setback Requirements.

- (1) The maximum front and street side building setback may not exceed the average front yard depth of the nearest two lots on either side of the subject lot or 15 feet, whichever is less.
- (2) If one or more of the lots required to be included in the averaging calculation are vacant, such vacant lots will be deemed to have a yard depth of 0 feet.
- (3) Lots fronting a different street than the subject lot or separated from the subject lot by a street or alley may not be used in computing the average.
- (4) When the subject lot is a corner lot, the average setback will be computed on the basis of the 2 adjacent lots that front on the same street as the subject lot.
- (5) When the subject lot abuts a corner lot fronting on the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two lots that front on the same street as the subject lot.
Calculating Setbacks Example: (12 ft. + 8 ft.+12 ft.+ 0 ft.)/4 = 8 ft.
- (6) A portion of the building may be set back from the maximum setback line in order to provide an articulated facade or accommodate a building entrance feature, provided that the total area of the space created must not exceed one square foot for every linear foot of building frontage.
- (7) In order to accommodate an outdoor eating area, a building may exceed the average front yard depth. However, in order to preserve the continuity of the streetwall, the building may be set back no more than 15 feet from the front

or street side property line. The total square footage of an outdoor eating area that is located between a public sidewalk and the building facade may not exceed 12 times the building's street frontage in linear feet.

6. Residential Uses.

a. Minimum Unit Area Requirements.

Single-family, two-family, mansion apartment house, courtyard apartments, stacked apartment units, and townhouse dwellings are permitted, provided any new units created meet the following minimum square footage requirements:

Efficiency Unit	500 square feet
One-bedroom Unit	650 square feet
Two-bedroom Unit	800 square feet
Three-bedroom Unit	1,000 square feet

b. Minimum Facilities.

Each newly created unit shall contain a complete kitchen and bathroom facility. A complete kitchen includes a room with a utility connection suitable for servicing a range or oven, food preparation, refrigeration, and dishwashing area. A bathroom facility contains a sink, toilet, and a tub or shower.

c. Densities.

Permitted residential densities in the mixed-use districts will vary based on the planning process, but it is anticipated that the average density in the downtown mixed-use district will be between 10-22 units per acre and the average density in the neighborhood mixed-use district will be between 6-10 units per acre. Individual sites within the mixed-use districts may have much higher densities, however the average for all properties in a single district is anticipated to be as stated above.

7. Commercial Establishments in the Neighborhood Mixed Use District.

a. Maximum size.

The gross floor area of an individual commercial establishment shall not exceed 15,000 square feet.

b. Commercial Appearance.

For new construction, a minimum of 70 percent of the street-facing building façade between two feet and eight feet in height above grade must be comprised of clear windows that allow views of indoor space or product display areas. For old, non-residential buildings which are adapted for mixed-use, the exterior of the building need not be modified to provide for the previously cited 70% window coverage requirement if such modifications would detract from the historic character of the building.

c. Ground Floor Restriction.

For new construction, commercial uses are restricted to the ground floor. This restriction does not apply to Bed and Breakfast Inns.

d. Commercial Uses in Upper Floors of Existing Buildings.

For master planned projects containing multiple buildings, existing non-residential buildings may be adapted to include upper floor commercial uses, however the total amount of commercial space in such master planned projects shall not exceed 20% of the total square footage for the entire development.

8. Street Graphics.

Street Graphics in the mixed use districts should be done to clearly provide information, should be at an appropriate scale to the buildings, and should focus on the proximity of the slow vehicle and pedestrian traffic. Where possible, the graphic should be an integral part of the building. Creativity is encouraged. Graphics may be fabricated of mixed media, including metal reverse illuminated letters, suspended neon letters, illuminated individual letters, signs etched or cutout of solid material such as wood or brass and illuminated from behind.

a. Windows can have painted or etched lettering for the business.

b. Graphics shall be centered between architectural elements and shall be placed facing primary pedestrian streets.

c. Wall mounted graphics shall not project more than six inches from the building.

d. Building mounted or wall graphics for retail shops shall be located in the store front area above the door height and below canopy, typically eight feet above the floor.

e. Overhanging, building mounted, or projecting graphics which hang from the canopy, arcade or building front are permissible. Such graphics shall not have an area of more than eight square feet or exceed two inches in thickness. The bottom of the sign should not be lower than eight feet above the ground.

f. Channel letter height shall not exceed eighteen inches. Larger first letters up to twenty four inches will be permitted.

g. Length of the graphic shall not be more than two-thirds of the overall leased facade area. Each graphic is calculated separately and shall conform to all applicable maximum area limitations. Calculated maximum areas are not transferable to other facades. No more than two facades, per business, may have graphics.

h. Graphics displayed on awnings are allowed.

- i. A multi-use building shall have no more than one freestanding street graphic facing each street or highway on which the building has frontage, limited to a maximum height of 12 feet and a maximum width of 8 feet.
 - j. Graphics shall not be animated, have changeable copy, bare-bulb, or flashing illumination, but shall be lit with steady, stationary, and/or shielded light sources directed solely onto the message.
 - k. Roof-mounted graphics and temporary portable street graphics are prohibited.
- i. Projecting Signs in the D-MU Zoning District - Before any projecting sign, as defined in Article 3, over two and one-half (2½) square feet shall be placed or altered in size or location a building permit and a zoning certificate must be issued.
- (1) Size. A total sign area of eight (8) square feet shall be allowed. For the purposes of computing the allowable area, it will be the sum of the area of one (1) face of the sign.
 - (2) Location. No sign shall project more than fifty-two (52) inches from the building wall or within two (2) feet of the curb line. A vertical clearance of at least eight (8) feet shall be provided below all parts of a sign and no portion of a sign shall extend higher than twelve (12) feet above the sidewalk or public thoroughfare.
 - (3) Advertisement. No sign shall be erected on a site or remain on a site that advertises an activity, business, product, or service no longer produced or conducted on site. No sign may remain on a site for more than thirty (30) days if that sign advertises an activity, business, product or service no longer conducted or produced on that site. Upon removal of any sign, all unused brackets and conduits also shall be removed. All holes or other damage shall be patched or repaired and shall be painted as necessary to match the existing wall surface.
 - (4) Nonconforming signs. Projecting signs existing at the time of the enactment of this subsection and not conforming to its provisions, but which did conform to previous laws, shall be regarded as nonconforming signs which may be continued if properly maintained as provided by any other relevant ordinance. Nonconforming signs which are structurally altered, relocated or replaced shall comply immediately with all provisions of this subsection.

9. Development and Design Standards.

a. Facade Orientation.

The facade of a building shall present a public view to the street or pedestrian corridor. It is preferred that new buildings and additions be architecturally compatible with the existing structures and that the exterior wall surfaces of each

individual building be similar in architectural treatment and materials. For large new buildings, modulation should be incorporated in building designs to reduce overall bulk and mass. All rooftop equipment shall be located, screened or shielded so that its visibility is minimized from public view.

b. Amenity Areas.

Amenity areas are encouraged and should be considered as an integral component of site design. Amenity areas include, but are not limited to, public plazas, courtyards, squares or small parks on the site. Examples of design elements that could be included in the amenity areas are seating walls, benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas.

c. Pedestrian Orientation.

Building design concepts should respond to the site plan by forming street edges and by encouraging active, safe street life. Buildings should recognize site patterns and help define entries to interior courtyards, building entrances, and public spaces.

d. Traditional Neighborhood Design.

Use architectural styles that are associated with traditional neighborhood design and multifamily design that delineates separation of the units. Commercial architectural styles should mimic the Main Street concept and take architectural styles from the City's traditional building designs.

e. Lighting.

Lights illuminating off-street parking or loading areas shall be arranged and installed so that no material glare or direct light shall spill over into adjacent parcels or shine upwards. Light standards shall not exceed twenty (20) feet in height and shall be of a directional type capable of shielding the light source from direct view.

f. Outside Storage.

There shall be no outside storage of any equipment, materials or supplies.

g. Drive-Through Facilities.

Drive-through facilities and driveways for non-governmental activities are prohibited when directly accessed off of public streets. No street curb cuts are allowed for lots that abut alleys.

h. Parking Access.

The preferred access for parking facilities is off of a public alley. Street curb cuts are prohibited unless the applicant can demonstrate the necessity for any proposed

curb cut. Visible facades of parking structures shall be designed to be compatible with the architecture of the surrounding structures. The sidewalk level should contain commercial and/or retail space. Where commercial/retail uses are not feasible, other architectural features are encouraged along the street wall; such as murals, display panels, bas-relief, and masonry patterning.

- i. Appropriate Mixed-Use Building Form and Types.**
(Insert Graphics - Reserved)

- k. Appropriate Residential Form and Building Types.**
(Insert Graphics-Reserved)

- l. Preliminary Consultation Required.**

The developer shall submit a comprehensive concept plan for the development for the Planning Commission's review and approval before submitting a site plan or subdivision plan. The Planning Commission may grant modifications of the design provisions of this subsection, if requested in writing by the developer, when the Planning Commission is satisfied that the alternative proposed meets the intent of this subsection. The concept plan shall include a layout of the proposed development of the entire site and preliminary sketches of the exterior treatment of the buildings. Thorough documentation of and justification for any requested deviation from these standards shall be provided. The site plan for the proposed development and the buildings as constructed shall substantially conform with the concept plan approved by the Planning Commission.

F. Commercial Zoning Districts.

1. Purpose.

The purposes of the various commercial zoning districts are as follows:

- a. C-1 (Commercial - Local) -** To provide for the daily shopping and business needs of nearby residents and workers by permitting retail and service uses which are compatible in use and scale with the adjacent residential neighborhood.

Civic and Social Organizations		P	P	
Community Centers, including but not limited to cultural, civic, and educational centers.	SE	P	P	
Drinking Places (722410)	SE	P	P	
Dry-cleaning & Laundry Services (8123)	P	P	P	P*
Educational Services (611)	SE	P	P	P
Entertainment Club		SE	P	
Fitness & Recreational Sports Centers (71394)	SE	P	P	P*
Funeral Homes (81221)	SE	P	P	
Hair, Nail & Skin Care Services (81211)	P	P	P	P
Hotels and Motels (72111)		P	P	P
Internet Publishing and Broadcasting (516)		P	P	P
Internet Service Providers, Web Search Portals and Data Processing Services (518)		P	P	P
Libraries		P	P	
Light Manufacturing/Flex Uses: Computer/Electronic Product (334) Electrical Equipment, Appliance and Components (335) Pharmaceutical and medicine (3254) Printing and Other Related Support Activities (323) Warehouse/Flex space, provided such space does not exceed more than 50% of the total gross floor area of the building.				SE SE SE SE SE
Medical and Health Care Uses are permitted as follows: Ambulatory Health Care Services (621), with exception of Outpatient Mental Health and Substance Abuse Centers (621420) Hospitals (622) including psychiatric, substance abuse and specialty hospitals Nursing homes and assisted living facilities for the elderly Residential facilities with in-house professional care for up to three residents with mental and/or physical disabilities	SE SE SE P	P SE P	P 	P P P
Use	C-1	C-2	C-4	POM
Medical and Health Care Uses (continued): Transitional residential facilities with in-house professional care for up to three transitional residents being treated for substance abuse issues, no closer than 300 feet from another use subject to this limitation and no closer than 1,000 feet from a school Medical and Diagnostic Laboratories (6215)	P			P
Museums (712110)		P	P	
Newspaper Publishers (511110)		P		P
Motion Picture and Sound Recording Industries (512)		P	P	P

Banks and Offices; Government, Business and Financial, but not including medical and health care:				
Offices, Business and Professional (55,56), except Waste Management and Remediation Services (562)	SE	P	P	P
Banks, Savings Institutions, & Credit Unions (521-522), except Pawn Shops	P	P	P	P
Finance and Insurance (52), Monetary Authorities - Central Bank, Credit Intermediation and Related Activities (521-522), except Pawn Shops (522298)	SE	P	P	P
Professional, Scientific & Technical Services (54), except Veterinary Services	SE	P	P	P
Public Administration (92), except correctional institutions (922120)	SE	P	P	P
One- and two-family dwelling units	P			
Other Personal Care Services (812199), subject to location limitations in Sub-Section 2.a(5).		SE	SE	
Parking Lots & Garages (81293), private, commercial and municipal, including offsite parking lots maintained by and designated for a permitted or special exception use on a lot located within 500 feet.		P	P	P
Pawn Shops (522298), subject to location limitations in Sub-Section 2.a(5).		SE	SE	
Personal & Household Goods Repair & Maintenance (8114)	P	P	P	
Photo Finishing (81292)		P	P	P
Religious Organizations (8131), provided parking is provided in accordance with Section O, without variance.	SE	P		
Restaurants (722110 and 722211)	P	P	P	P*
Retail Trade:				
Retail Trade (44-45) subject to size limitations cited in Section 2.a(2) and (7) below, unless otherwise described in the following list of uses	P	P	P	P*
Auto & Other Motor Vehicle Dealers (4411-4412)		P	P	
Beer, Wine & Liquor Stores (4453)		P	P	
Gasoline Stations (447)	SE	P	P	P*
Destination Retail Uses			P	
Use	C-1	C-2	C-4	POM
Social Assistance - Services for the Elderly and Persons with Disabilities (624120)		P		P
Tanning and Depilatory Salons (812199)	P	P	P	
Telecommunications (517)				P
Theaters, Movie (512131)		P	P	
Transit and Ground Passenger Transportation (485)		P	P	
Truck and motor vehicle rental facilities (5321), provided the rental fleet does not occupy parking required by Section O.		P	P	

Veterinary Services (54194), Completely enclosed	SE	P	P	
Veterinary Services (54194), with outdoor runs, not kennels (as defined in Article 3 and permitted in other districts)		SE		

(2) Size limitation on retail trade in the C-1 and C-2 Districts.

- (a) In the C-1 District, retail trade shall not exceed 5,000 gross square feet in area per establishment, and restaurants shall not exceed 3,000 gross square feet per establishment.
- (b) Retail trade in the C-2 district shall not exceed the following:
 - (i) Seventy-five thousand (75,000) square-foot maximum floor area for freestanding building
 - (ii) One hundred fifty thousand (150,000) square-foot maximum floor area for shopping centers with a seventy-five thousand (75,000) square-foot maximum floor area for any individual unit.

(3) Development of Destination Retail Uses.

In the C-4 District, any development containing a “destination retail use” shall be subject to design and maintenance standards cited in Article 5, Section I, Subsection 5.

(4) Maintenance of Abandoned Destination Retail Use Buildings.

Any freestanding building over seventy-five thousand (75,000) square feet in area which is vacated by its owner shall be maintained during its period of vacancy to the following minimum standards:

- (a) The property shall be kept clear of trash;
- (b) Parking lot lights shall be illuminated during the evening business hours of the surrounding commercial area;
- (c) Commercial identification signs shall be removed and the space behind them repainted;
- (d) Landscaped areas and parking lots shall be kept clear of weeds and be properly maintained;
- (e) Buildings shall be kept in good condition (painted areas kept in good condition, windows kept in good and clean condition, walls and other surfaces kept clear of graffiti and other staining elements, destruction caused by vandals repaired, etc.);
- (f) Leasing information shall be posted.

(5) Location Limitations for “Pawn Shops” and “Other Personal Care” Businesses.

- (a) Must maintain a five hundred (500) foot separation from any other personal care services or pawn shop; and
 - (b) Must be located outside the boundaries of the Revitalization Area.
- (6) Adult Uses in the C-2 Zoning District.

Adult book stores, adult motion picture theaters, adult mini motion picture theaters are permitted in the C-2 Zoning district, provided no such use may be permitted within one thousand (1000) feet of the boundary of property upon which exists any:

- (a) church
- (b) school,
- (c) hospital,
- (d) nursing home
- (e) park or
- (f) any multiple-family dwelling owned by public or quasi public authority and intended primarily for use by senior citizens or other similar land uses for human care and needs.

Adult uses, as described above and defined in Article 3 shall not be construed as also being included in other references in this Ordinance to retail trade, movie theaters or performing arts centers.

- (7) Uses identified in the POM District in the Use Chart cited in this Section as a permitted use, but marked with an asterisk shall:
- (a) Not exceed twenty five (25%) percent of the gross floor area of the building, or
 - (b) Not exceed in the aggregate twenty (20%) percent of the gross floor area of a group of buildings designed and approved as a unified development, as designated on the approved Site Plan.
 - (c) Gasoline service stations (4471) are not permitted in the POM District, including incidental sales associated with a convenience store.
 - (d) Retail and restaurant uses shall not be the sole occupant of a structure.
 - (e) See Article 5, Section I, Subsection 7 regarding nonconforming commercial subdivisions.

b. Special Exception Uses.

Compliance With Use and Development Requirements - Any special exception use granted by the Board of Zoning Appeals shall only be approved when the use is found to be in accordance with the following requirements:

- (1) The off-street parking requirements of Section O.

- (2) The specific performance criteria of individual special exception uses (if applicable) as found in Section U.8.a(7).
- (3) The site plan requirements of Section S, if applicable, following the Board’s granting of the special exception.

c. Accessory Uses.

Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception, including but not limited to garages used to store vehicles associated with a use permitted by right or special exception.

3. Parking Requirements. As applicable under Section O of this Ordinance.

4. Height Limitations. No structure shall exceed the following:

a. Height Limitation Chart.

	C-1	C-2	C-4	POM
Height	2 stories or 35 feet	3 stories or 50 feet	60 feet	100 feet

b. Special Exceptions for Height.

The Board of Zoning Appeals may grant a special exception to increase the height of a building, pursuant to the general criteria for special exceptions found in Section U.8.a, as follows:

	C2	C4
Maximum permitted height by Special Exception	6 stories or 90 feet	150 feet

5. Minimum Lot Area, Lot Width and Yard (setback) Requirements.

The minimum lot area, lot width and yard (setbacks) requirements for commercial districts shall be as stated in the following chart:

a. Bulk Requirements Chart.

COMMERCIAL DISTRICT DIMENSIONAL REQUIREMENTS					
All Buildings					
Zoning District	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
C-1	15	30	20	10***	2
C-2	15	30	20	10***	2
C-4	25	50*/**	40	20*	2
POM	15	25****	20	10****	2

* 100 feet when adjoining a residential district.	**20 feet when a pad site adjoins a C-4 Development
*** 25 feet when adjoining a residential district.	
****Where adjoining a residential district, the setback shall be one (1) foot for each foot of building height, but not less than thirty-five (35) feet.	

Yards shall be measured and determined in accordance with the standards set forth in Section K.6 of this Ordinance.

b. Attached Units in Commercial Developments.

A single building may be developed with zero distance side setbacks for interior units, when attached to other units, provided that:

- (1) The building shall conform to the dimensional requirements for the district in which it is located.
- (2) A common access easement for all parking and drive areas shall be attached to the deed of each property.
- (3) A property owner association shall be established with respect to maintenance of the property.
- (4) Each unit and unit sign shall be of consistent exterior design with regard to style, materials and color (except in the POM District, the appearance of which is regulated in subsection 8 of this section).
- (5) Residential uses are not permitted in such a building.

c. All Public Street Frontages Are Front Yards.

On corner lots and through lots, all sides of a lot adjacent to streets shall be considered front yards, but only the side of the lot opposite the frontage of the building shall be considered the rear yard.

6. Street Graphics in the POM Zoning District.

Site plan applicants are required to present a Program for Graphics as part of a required site plan that integrates the design of street graphics with the design of the building (and/or development) on which they will be displayed and with the surrounding area. An office park may display no more than one (1) freestanding street graphic at each exit and entrance

a. Dimensional and Design Requirements:

Dimension or Design Element	Requirement
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<p>(a) Freestanding street graphics for entrances and single-use buildings:</p> <p>[i] Shall be of a ground mounted type.</p> <p>[ii] Maximum Height (feet):</p> <p>[iii] Maximum Width (feet):</p> <p>[iv] Construction: The style, color and materials consistent with the main structure.</p>	<p>✓</p> <p>10</p> <p>10</p> <p>✓</p>
<p>(b) Freestanding Street Graphic for multi-use building:</p> <p>[i] A multi-use building shall have no more than one (1) freestanding street graphic facing each street or highway on which the building has frontage.</p> <p>[ii] Maximum Height (feet):</p> <p>[iii] Maximum Width (feet):</p>	<p>✓</p> <p>15</p> <p>10</p>
<p>(c) Wall Graphic:</p> <p>[i] A multi-use building shall have no more than one (1) wall graphic facing each street or highway on which the building has frontage.</p> <p>[ii] Maximum Height (feet):</p> <p>[iii] Maximum Width (percent of the wall on which it is mounted):</p> <p>[iv.] For projects subject to a required site plan, the Planning Commission may consider exceptions for an established logo that will not fit within these dimensions on a case by case basis.</p>	<p>✓</p> <p>3</p> <p>60</p> <p>✓</p>
<p>(d) Projecting Graphics:</p> <p>[i] Maximum Height (feet):</p> <p>[ii] Maximum Width (feet):</p> <p>[iii] Maximum Projection (inches from building wall) or within 2 feet of the curb line.</p> <p>[iv] Minimum Vertical Clearance (feet):</p> <p>[v] Maximum Vertical Clearance (feet):</p>	<p>2</p> <p>4</p> <p>52</p> <p>8</p> <p>12</p>

b. Prohibitions.

The following types of signs are not permitted:

- (1) Animation, changeable copy, bare-bulbs, or flashing illumination. All lighting shall be steady, stationary, and/or shielded light sources directed solely onto the message.
- (2) Roof mounted graphics and temporary portable street graphics.

G. Reserved.

H. Industrial Districts.

1. Purpose.

The purposes of the three industrial zoning districts are as follows:

- a. **IR (Industrial Restricted) -** To provide locations for offices and light industrial uses which do not require special measures to control odor, dust or noise and which do not involve hazardous waste and whose environmental impacts are contained within the property limits.
- b. **IG (Industrial General) -** To provide for those manufacturing, processing and storage uses which should be separated from other uses by reason of characteristics which may conflict with other uses. The exclusion of residential and commercial uses is intended to promote the economic welfare of the city by reserving especially suited areas for industry and by controlling the intermingling of incompatible uses.
- c. **I-MU (Industrial Mixed-Use) -**To provide locations for light industrial parks, office parks, research and development facilities, hi-tech communication and technology facilities, trucking and distribution facilities, and minor commercial uses that support job centers.

2. Uses.

Uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Section U, Subsection 8, or not permitted as follows. Any use that does not appear on this chart shall be deemed not to be permitted in these districts.

- a. **Use Chart -** Uses are permitted in the industrial districts based on the following chart. Letter codes pertaining to use correspond as follows:

Blank - Not permitted
SE - Special Exception Use

P- Permitted Principal Use
P* - With I-MU limitations

Use	IR	IG	I-MU
Abrasive product manufacturing (32791)		P	
Administrative Support Services (561)	P	P	P
Ambulance Services (621910); Fire Protection (922160); Police Protection (922120)	SE	SE	P
Use	IR	IG	I-MU

Ambulatory Health Care Services, with exception of Outpatient Mental Health and Substance Abuse Centers (621420)	P	P	P
Animal food manufacturing (3111)		P	
Apparel knitting mills (3151)		P	
Bakeries and tortilla manufacturing (3118)	P	P	P
Breweries (31212), Wineries (31213), Distilleries (31214)		P	P
Broadcasting (515)			P
Carpet and upholstery cleaning services (56174)	P	P	P
Cement and concrete product manufacturing (3273)		SE	
Child Day Care Services (624410)			P*
Clay building material and refractories manufacturing (32712)		P	
Computer and electronic product manufacturing (334)	P	P	P
Construction and Landscaping Contractors with Storage Yards	P	P	
Cosmetic preparations manufacturing (325620)		P	
Cut and sew apparel manufacturing (3152)	P	P	P
Dairy product manufacturing (3115)	P	P	
Dry-cleaning and laundry services (8123)			P*
Educational Services (611)			P
Electric power transmission, control, and distribution (22112)	P	P	
Electrical equipment, appliance, and component manufacturing (335)	P	P	P
Executive, Legislative and Other General Government Support (921), Except correctional institutions (922120)			P
Fabricated metal product manufacturing (332)		P	
Finance and Insurance (52), Monetary Authorities - central Bank, Credit Intermediation and Related Activities (521-522), except pawn shops (522298)			P
Fitness and Recreational Sports centers (71394)			P*
Footwear manufacturing (3162)	P	P	
Fossil fuel electric power generation (221112)	P	P	
Foundries (3315)		SE	
Frozen food manufacturing (31141)	P	P	P
Fruit and Vegetable canning, pickling, and drying (31142)	SE	SE	SE
Fruit and vegetable preserving & specialty food manufacturing (3114), except canning, pickling, and drying	P	P	P
Other Food Manufacturing (3119)	SE	SE	
Use	IR	IG	I-MU
Furniture and related product manufacturing (337)	P	P	P

General automotive repair (811111)	P	P	
Glass product manufacturing made of purchased glass (327215)	P	P	P
Grain and oilseed milling (3112)		P	
Hospitals (622) including psychiatric, substance abuse and specialty hospitals			P
Hotels and Motels (72111)			P
Internet Publishing and Broadcasting (516)			P
Internet Service Providers, Web Search Portals and Data Processing Services (518)			P
Kennels (812910)	P	P	
Laboratories, chemical, physical and biological	P	P	P
Landfills and Rubble Fills (562212)		SE	
Lime and gypsum product manufacturing (3274)		SE	
Machinery manufacturing (333)		P	
Miscellaneous manufacturing (339)	P	P	P
Motion Picture and Sound Recording Industries (512)			P
Motor vehicle supplies and new parts wholesalers (42112)	P	P	
Municipal recreational facilities and Indoor Private and Commercial Recreational Facilities.	P	P	P
Natural gas distribution (2212)		SE	
Nursing homes and assisted living facilities for the elderly			P
Other Finance and Insurance (52)	P	P	P
Other leather and allied product manufacturing (3169)	P	P	P
Other rubber product manufacturing (32629)		P	P
Other support activity for road transportation (48849)	P	P	
Other wood product manufacturing (3219)		P	
Paint, coating, and adhesive manufacturing (3255)		P	
Petroleum and petroleum products wholesalers (4227)	P	P	
Photographic film, paper, plate, and chemical manufacturing (325992)		P	
Pharmaceutical and medicine manufacturing (3254)	P	P	P
Plastics product manufacturing (3261)		P	
Pottery, ceramics, and plumbing fixture manufacturing (32711)	P	P	P
Printing and other related support activities (323)	P	P	P
Printing ink manufacturing (32591)		P	
Use	IR	IG	I-MU
Professional, Scientific & Technical Services (54), except Veterinary Services	P	P	P
Recycled paper processing	P	P	

Remediation Service (562910)	SE	SE	
Research and development facilities.	P	P	P
Resin, synthetic rubber, and artificial synthetic fibers and filaments manufacturing (3252)		P	
Restaurants (722110 and 722211)			P*
Retail Trade (44-45), excluding Auto and Other Motor Vehicle Dealers and Adult Bookstores			P*
Rubber and plastic hoses and belting manufacturing (32622)		P	
Saw mills and wood preservation (3211)		P	
Schools for business, trade, dancing and music.	P	P	P
Self-Storage Mini-Warehouse Facilities (531130)	P	P	
Septic Tank and Related Service (562991)	SE	SE	
Sewage treatment facilities (22132)	P	P	
Soap, cleaning compound, and toilet preparation manufacturing (3256)		P	
Soft drinks and ice manufacturing (31211)	P	P	
Solid waste collection (562111)		SE	
Sugar and confectionery product manufacturing (3113)		P	
Telecommunications (517)			P
Textile mills (313)		P	
Textile product mills (314)	P	P	
Transitional residential facilities with in-house professional care for up to three transitional residents being treated for substance abuse issues, no closer than 300 feet from another use subject to this limitation and no closer than 1,000 feet from a school			SE
Transportation equipment manufacturing (336)		P	
Truck and Vehicle Rental Facilities (532120)	P	P	SE
Vehicle Impound Lots, provided that a six- (6-) foot opaque fence encloses the storage yard	P	P	
Veneer, plywood and engineered wood product manufacturing (3212)		P	
Warehousing and storage (493)	P	P	P
Wholesale and retail sales of products manufactured or stored on the premises in conjunction with any other principal permitted use.	P	P	P

b. Special Exception Uses.

Compliance with use and development requirements - Any special exception use granted by the Board of Zoning Appeals shall only be approved when the use is found to be in accordance with the following requirements:

- (1) The off-street parking requirements of Section O.

- (2) The specific performance criteria of individual special exception uses (if applicable) as found in Section U.8.a(7).
- (3) The site plan requirements of Section S, if applicable, following the Board's granting of the special exception.

c. **Accessory Uses.** Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception.

3. **Parking Requirements.** As applicable under Section O of this Ordinance.

4. **Height Limitation Chart.**

	IR	IG	I-MU
Height	60 feet	60 feet	9 stories or maximum of 100 feet

5. **Minimum Lot Area, Lot Width and Yard (Setback) Requirements.**

The minimum lot area, lot width and yard (setbacks) requirements for industrial districts shall be as stated in the following chart:

INDUSTRIAL DISTRICT DIMENSIONAL REQUIREMENTS				
All Buildings				
District	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
IR	50*	25*	25*	2
IG	50*	25**	25**	2
I-MU	35	25***	15***	2
* Where adjoining an "R" District: 100 feet ** Where adjoining an "R" District: 200 feet *** Where adjoining an "R" District, the setback shall be one (1) foot for each foot of building height, but not less than thirty-five (35) feet.				

Yards shall be measured and determined in accordance with the standards set forth in Section K.6 of this ordinance.

All Public Street Frontages Are Front Yards.

On corner lots and through lots, all sides of a lot adjacent to streets shall be considered front yards, but only the side of the lot opposite the frontage of the building shall be considered the rear yard.

6. Industrial Performance Standards.

The following industrial performance standards shall be met in the industrial districts for any industrial use prior to the issuance of a zoning permit:

- a. **Control of Smoke, Dust and Dirt, Fumes, Vapors, Gases and Odors.** The Maryland air pollution control standards shall be used to control the emission of smoke, dust, dirt, fly ash, fumes, vapors, gases or odors.
- b. **Control of Heat and Glare.** No use shall carry on an operation that will produce heat or constant glare which will adversely affect the uses of an adjacent property.
- c. **Vibration Control.** Machines or operations which cause vibration shall be permitted, but in no case shall any such vibration adversely affect the uses of an adjacent property.
- d. **Radiation of Electrical Emissions, Radioactivity or Electrical Disturbance.** Activities which may emit dangerous radioactivity beyond closed areas shall comply with state and federal codes. No electrical disturbances (except from domestic household appliances) shall be permitted to affect adversely at any point any equipment other than that of the creator of such disturbance.
- e. **Electric, Diesel, Gas or Other Power.** Every use requiring power shall be so operated that any service line, substation, etc., shall conform to the highest applicable safety requirements. They shall be constructed, installed, etc. so that they will be an integral part of the architectural features of the building or, if visible from abutting residential properties, shall be concealed by evergreen planting.
- f. **Sewage and Waste Treatment.** All methods of sewage and industrial waste treatment and disposal shall be approved by the Water Pollution Control Department and shall be in accordance with all applicable regulations.
- g. **Storage of Materials.**
 - (1) No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces, nor shall any substance which can contaminate a stream or watercourse or otherwise render such stream or watercourse undesirable as a source of water supply or recreation or which will destroy aquatic life be allowed to enter any stream or watercourse. If materials or wastes are stored on site, they must either be enclosed or covered.
 - (2) All materials or wastes which may cause fumes or dust or which may be edible or otherwise attractive to rodents or insects shall be stored only if enclosed in containers which are adequate to eliminate such hazards.

7. I-MU District Use Limitation, Development and Design Standards.

a. Limitations on Retail and Service Uses.

Uses identified in the I-MU District in the Use Chart cited in this Section as a permitted use, but marked with an asterisk shall:

- (1) Not exceed twenty five (25%) percent of the gross floor area of the building, or
- (2) Not exceed in the aggregate twenty (20%) percent of the gross floor area of a group of buildings designed and approved as a unified development, as designated on the approved Site Plan.
- (3) Gasoline service stations (4471) are not permitted in the I-MU District, including incidental sales associated with a convenience store.

b. No Sole Use Retail Buildings.

Retail shall not be the sole occupant of a structure.

c. Development and Design Standards.

- (1) Structures should be located at the front of the site, oriented along the public street frontage.
- (2) It is preferred that off-street parking spaces be located towards the rear of the lot, behind any buildings and structures. In cases where parking is provided beneath an elevated structure, either underground or in parking decks, the street side portion of the building shall be available for usable office/commercial space excluding driveway and lobby areas.
- (3) Projects containing groups of buildings to be devoted primarily to office and/or retail activities shall incorporate amenity areas into the site design. Amenity areas include, but are not limited to, public plazas, courtyards, squares or small parks on the site. Design elements to be included in the amenity areas are seating walls, benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas. Since the purpose of these amenity areas is to serve as pocket recreational areas and to help foster a sense of community, additional elements shall be considered, if the applicant shows the design meets the intent of this section.
- (4) The facade of a building shall present a public view to the street or pedestrian corridor. It should be architecturally compatible with the existing structures. The exterior wall surfaces of each individual building shall be similar in architectural treatment and materials. For large buildings, modulation shall be incorporated in building designs to reduce overall bulk and mass, with planes of exterior walls not running in one continuous direction more than

one-hundred (100) feet without an offset or setback. All rooftop equipment shall be shielded so that it is full screened from public view.

- (5) Lights illuminating off-street parking or loading areas shall be arranged and installed so that no material glare or direct light shall spill over into adjacent parcels. Light standards shall not exceed twenty (20) feet in height (including base) and shall be of a directional type capable of shielding the light source from direct view.
- (6) There shall be no outside storage of any equipment, materials or supplies. Trash receptacle enclosures shall be architecturally compatible with the building(s) on site and constructed of the same building material.
- (7) Street Graphics. Applicants are required to present a Program for Graphics that integrates the design of street graphics with the design of the building (and/or development) on which they will be displayed and with the surrounding area. An office park may display no more than one (1) freestanding street graphic at each exit and entrance.
 - (a) Freestanding street graphics for entrances and single-use buildings:
 - [i] Shall be of a ground mounted type.
 - [ii] Maximum Height: 10 feet
 - [iii] Maximum Width: 10 feet
 - [iv] Construction: The style, color and materials consistent with the main structure.
 - (b) Freestanding Street Graphic for multi-use building:
 - [i] A multi-use building shall have no more than one (1) freestanding street graphic facing each street or highway on which the building has frontage.
 - [ii] Maximum Height: 15 feet
 - [iii] Maximum Width: 10 feet
 - (c) Wall Graphic:
 - [i] A multi-use building shall have no more than one (1) wall graphic facing each street or highway on which the building has frontage.
 - [ii] Maximum Height: 36 inches
 - [iii] Maximum Width: 60% of the wall on which it is mounted.
 - [iv.] The Planning Commission may consider exceptions for an established logo that will not fit within these dimensions on a case by case basis.
 - (d) Projecting Graphics:
 - [i] Maximum Height: 2 feet
 - [ii] Maximum Width: 4 feet

- [iii] Maximum Projection: 52 inches from building wall or within 2 feet of the curb line.
- [iv] Minimum Vertical Clearance: 8 feet
- [v] Maximum Vertical Clearance: 12 feet

(e) Additional Requirements:

- [i] Graphics shall not be animated, have changeable copy, bare-bulb, or flashing illumination, but shall be lit with steady, stationary, and/or shielded light sources directed solely onto the message.
- [ii] Roof mounted graphics and temporary portable street graphics are prohibited.

I. Reserved.

J. Overlay Zones.

1. Planned Unit Developments (PUD).

a. Purpose.

The purpose of the PUD District is to provide for planned development incorporating a variety of uses and density levels at appropriate locations within the City of Hagerstown. The PUD District provides for a total development concept, including a variety of housing types, adequate open space, required public facilities and compatible commercial uses as a part of a detailed development plan. In return for added flexibility from the requirements of the underlying zoning district, PUD developments need to provide improvements to the overall quality of life for the city.

b. Location.

The PUD District may be established in the AT, R1, R2, R3, C1, or C2 Districts.

c. Principal Permitted Uses, In Accordance With Section S (Site Plan Requirements). The following types of uses are permitted in a PUD District:

- (1) Residential uses of all types, including single-family, two-family, semidetached, townhouse and multiple-family dwellings; except that multiple-family dwellings shall not be permitted in the R1 district.
- (2) Where the PUD District is established in any "R" District, commercial uses shall be limited to the types permitted in the C1 District and shall primarily be oriented to serving the residents of the development. Where the PUD District is established in any "C" District, commercial uses shall be limited to the types permitted in that district.
- (3) Public uses such as schools, cultural facilities, community centers and public utility uses.
- (4) Semi-private uses, such as churches, private clubs, private schools, nursery schools and other private educational and recreational facilities.

d. Special Exception Uses.

There are no special exceptions authorized in this district.

e. Accessory Uses. Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception use.

f. General Requirements For A Planned Unit Development.

Applications for planned development shall meet the following requirements:

- (1) The area proposed for a planned unit development shall be in one (1) ownership, or, if in several ownerships, the proposal shall be filed jointly by all the owners of the property included in the development plan.
- (2) The site shall be of a size and shape suitable for the development proposed.
- (3) The site is or can be served with public water and sewerage facilities.
- (4) The site shall be located adjacent to adequate highway facilities capable of serving existing traffic and that expected to be generated by the proposed development.
- (5) The owners or developers must indicate that they plan to begin construction of the development within one (1) year after final approval. If construction does not begin within one (1) year, the zoning of the site shall revert to its previous classification unless a time extension is requested by the developer and agreed to by the Planning Commission.

g. Application Procedures.

The following procedures shall be followed with respect to all applications for PUD District zoning:

- (1) **Step I. Preliminary Consultation and Sketch Plan.** A preliminary consultation shall be held between the Planning Commission and the applicant or developer of the proposed planned unit development. The application for PUD District zoning shall be accompanied by a sketch plan prepared by a registered professional engineer, registered architect or landscape architect or registered land surveyor. The sketch plan shall be to scale and contain sufficient information to establish the identity of proposed uses, grades and approximate dimensions and locations of proposed structures, streets, parking areas, walkways, easements and property lines. It shall include the following information:
 - (a) Proposed development layout.
 - (b) Proposed reservations for parks, parkways, playgrounds, school sites and other open spaces.
 - (c) Proposed location of neighborhood business within the PUD areas, including all associated off-street parking.
 - (d) Types of dwellings and portions of the area proposed therefor.
 - (e) Proposed location of dwelling and parking areas.
 - (f) A tabulation of the total number of acres in the proposed project and the percentage thereof designated for each of the proposed dwelling

types, neighborhood retail business, other nonresidential uses, off-street parking, streets, parks, schools and other reservations.

- (g) A tabulation of overall density per gross acreage.
- (h) Preliminary plans and elevations of the several dwelling types.
- (i) The Planning Commission may require that a traffic impact study be prepared and submitted as part of the review materials for the Planning Commission's public review meeting.

(2) **Step II. Planning Commission Review and Action.** The Planning Commission shall hold a review and make its recommendations to the Mayor and City Council in accordance with the Zoning Map amendment provisions enumerated in Section A.9 of this ordinance.

(3) **Step III. Mayor and City Council Action.** Again, in accordance with said Section A.9, the Mayor and City Council shall consider the recommendations of the Planning Commission and take formal action to approve or disapprove the PUD District Zoning Map amendment.

(4) **Step IV. Site Plan Review and Action.** Upon Mayor and City Council approval of a PUD District Zoning Map Amendment, the applicant shall prepare a detailed development plan in accordance with the site plan requirements delineated in Section S of this Ordinance.

h. Height Regulations.

- (1) Maximum Height - Principal permitted structure: 60 feet
- (2) Maximum Height - Accessory structure: 50 feet

i. Off-street Parking.

There shall be two (2) spaces per dwelling unit for residential uses. Other uses shall be as delineated in Section O.

j. Special Design Requirements.

- (1) **Size.** The area proposed to be zoned as a PUD District shall have an area of at least five (5) acres.
- (2) **Density of Development.** The overall residential density of a PUD District shall not exceed fifteen (15) units per gross residential acre, except that the Planning Commission may allow a higher gross residential density, not to exceed two thousand (2,000) square feet per family, where the planned unit

development is to be located in or abutting on a C3, R2 or R3 District. For the purposes of this section, the gross residential area shall include all land within the area intended to be used for residences, residential parking space, reservation for community recreation and education facilities and to the center line of bounding streets. An area used or reserved for interior streets, land subject to recurring flood, swamp or marshland and nonresidential uses shall be excluded in computing the gross area. The Planning Commission may require a lower gross density if review of the proposed development indicates that the maximum allowable density is excessive for the surrounding area.

- (3) **Open Space.** Common open space shall comprise not less than twenty (20%) percent of the total gross area. Such space shall include land area to be developed as recreational areas or which is designated for the common use of all occupants of the planned unit development but shall not include streets, off-street parking areas or utility easements. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land which provide for the preservation of significant natural features on the land and/or provide recreational amenities for the use of the residents of the development. The Planning Commission must be furnished satisfactory evidence as a condition for approval that such open space area will be continued and that perpetual maintenance is provided for.
- (4) **Commercial Uses.** Commercial uses in a PUD District shall not occupy more than ten (10%) percent of the tract area. However, where in the opinion of the Planning Commission the size of the tract severely limits the feasibility of commercial development, the Commission may increase the percentage of commercial development permitted in a PUD District.
- (5) **Compatibility with Neighboring Developments.** The perimeter of infill developments shall consider neighboring developments and established building patterns with regards to use, density, street orientation, and landscaping.
- (6) **Setback Requirements.** Setbacks for residential uses should generally follow the underlying residential zoning district. If the underlying zoning district is not residential, the setbacks for residential uses should generally follow the requirements in the R2 district. Setbacks for commercial uses should generally follow the requirements in the C1 district. Alternative setbacks may be approved by the Planning Commission.

2. Conversion District.

a. Purpose.

The purposes of this district are to stimulate the adaptive reuse of existing, nonresidential, multi-story structures, to maintain and increase the city's assessable base, to expand business and employment opportunities, and to protect residential neighborhoods from excessive traffic odors, fumes, noise, and light. The Conversion District provides an alternative development concept for underutilized structures while protecting the general health, safety, welfare, and aesthetics through the commitment to an approved development concept plan. Such structures must be in existence prior to 1950.

b. Location.

The Conversion District may be located in the following districts: R1, R2, R3, R4, C1, C2, C3, IR and IG.

c. Permitted Uses.

In addition to the principal permitted uses in the underlying zoning district, the following uses are also permitted:

- (1) Dwelling, multiple-family, where a structure in existence prior to 1950 is substantially rehabilitated and involves no increase in the gross floor area of the existing structure.
- (2) Those principal permitted uses allowed in a C1 district, plus restaurants, offices and clinics, business and professional, subject to the special design requirements of Subsection "I" below.

d. Special Exception Uses.

Only those uses allowed as special exception uses in the C1 district in accordance with Section U.8 and subject to the special design requirements of Subsection "I" below.

e. General Requirements.

- (1) The area proposed for a conversion district shall be in one (1) ownership, or, if in several ownerships, the proposal shall be filed jointly by all the owners of property included in the development plan.
- (2) The development shall be for an existing, nonresidential structure containing at least two (2) floors within which all proposed uses, except parking, will be contained.
- (3) The owners or developers must indicate that they plan to begin construction

of the development within one (1) year after final approval. If construction does not begin within one (1) year, the zoning of the site shall revert to its previous classification unless a time extension is requested by the developer and agreed to by the Planning Commission.

- (4) A site plan in accordance with Section S for entire area to be utilized shall be reviewed and approved by the Planning Commission prior to the use of the property.
- (5) A concept plan, as required in Subsection f, (2), shall be submitted with the application for a conversion district.

f. Application Procedure.

- (1) **Step 1. Preliminary Consultation.** The applicant may request a preliminary consultation with the Planning Commission prior to submission of an application.
- (2) **Step 2. Concept Plan.** A concept plan shall be submitted with the application. The concept plan shall include sufficient detail to determine consistency with this article. At a minimum, the concept plan shall show the building as existing and as proposed after development, landscaping, parking, and the following information:
 - (a) Proposed development layout.
 - (b) Proposed reservations for parks, parkways, playgrounds, and other open spaces.
 - (c) A tabulation of the total number of acres in the proposed project and the percentage thereof for each structure, parking, open space, and other uses.
 - (d) A tabulation of the total square footage in the building, existing and proposed, plus the area and percentage for each residential or non-residential use within the structure.
 - (e) Plans, schematics, and elevations of the structure showing how the architectural theme of the building will be retained and the aesthetic environment of the neighborhood will be retained.
- (3) **Step 3. Planning Commission Review and Action.** The Planning Commission shall hold a review and make its recommendation to the Mayor and City Council in accordance with the zoning map amendment provisions enumerated in Section A.9 of this Article.
- (4) **Step 4. Mayor and City Council Action.** Again, in accordance with said

Section A.9, the Mayor and City Council shall consider the recommendations of the Planning Commission and take formal action to approve or disapprove the Conversion District Zoning Map amendment.

(5) **Step 5.** Site plan review and action. Upon Mayor and Council approval of a Conversion District Zoning Map amendment, the applicant shall prepare a detailed development plan in accordance with the site plan requirement delineated in Section S of this article and concept plan approved by the Mayor and City Council.

g. Height. No increase in height is permitted, except as authorized by Subsection "I" below.

h. Off-Street Parking.

Off-street parking shall be as required under Section O, except that during review of the site plan, the Planning Commission may permit variation from the number of spaces required, provided such variation relates to the shared use of the parking spaces and is consistent with the approved conversion district concept plan and the special design requirements of this district.

i. Special Design Requirements.

(1) The total floor area used by all commercial uses, whether principal permitted or by special exception, shall not exceed fifty (50%) percent of the existing structure's gross floor area, subject to the approval of the Mayor and City Council.

(2) If the project is built in phases, at no time shall the gross commercial floor area of the building exceed the ratio (50% commercial : 50% residential).

(3) Additions shall be designed consistent with the architectural theme of the structure and shall be located in the space least visible to the general public.

3. Local Conversion District.

a. Purpose.

The purposes of this district are to stimulate the adaptive reuse of existing, nonresidential and mixed-use structures embedded within densely developed residential districts and communities, to maintain and increase the city's assessable tax base, and to expand business and employment opportunities. The Local Conversion District allows for alternate forms of use and development for buildings and/or spaces that are part of or very close to residential uses in residential districts. Allowing such uses to fit into existing commercial and mixed use structures re-establishes the historically mixed use nature of the City's 19th and early 20th Century residential communities. The Local Conversion District provides an alternative development concept for

underutilized structures while protecting the general health, safety, welfare, and aesthetics in the vicinity of the site through the commitment to an approved development concept plan. It is acknowledged that such uses will be outwardly commercial in nature and operation, but are reviewed individually to ensure the proposed use or uses and improvements are not an undue burden on the surrounding area.

b. Location.

The Local Conversion District may be located in the following districts: R1, R2, R3 and R4.

c. Permitted Uses.

In addition to the principal permitted uses in the underlying zoning district, the following uses are also permitted:

- (1) Up to two dwelling units in a building that previously contained no dwelling units, provided that commercial uses from items 4 through 10 of this list are included within the building.
- (2) Dwelling, multiple-family, legally in existence as a permitted, special exception or nonconforming use, where there is no increase in the number of existing dwelling units in a building that contains commercial uses, or will contain commercial uses with the adoption of this overlay.
- (3) Dry Cleaning & Laundry Services (8123)
- (4) Hair, Nail and Skin Care Services (81211)
- (5) Banks, Savings Institutions & Credit Unions (521-522)
- (6) Offices, Business and Professional (55, 56)
- (7) Professional, Scientific and Technical Services (54)
- (8) Personal & Household Goods Repair and Maintenance (8114)
- (9) Restaurants (722110 and 722211), not to exceed 3,000 gross square feet per establishment
- (10) Retail Trade (44-45), not to exceed 5,000 gross square feet per establishment, and not to include other retail trade uses separately enumerated in the C-1 District in the use chart found in Section F.2.a) and not to include adult book, video and novelty stores.

d. Special Exception Uses.

No special exception uses are enumerated as part of the Conversion Local Overlay.

e. Accessory Uses.

Uses and structures customarily accessory and incidental to those uses permitted by an approved concept plan for the adoption of the overlay district, unless prohibited by the adopted concept plan and/or the special design standards cited in Subsection j below.

f. General Requirements.

- (1) The area proposed for a conversion district shall be in one (1) ownership, or, if in several ownerships, the proposal shall be filed jointly by all the owners of property included in the development plan.
- (2) The development shall be for an existing, nonresidential or mixed use structure, constructed before October 1, 1956, in which all proposed uses will be contained, except:
 - (a) outdoor dining areas and outdoor merchandise display, as regulated elsewhere in this provision,
 - (b) additions, as permitted in subsection i, below.
- (3) The owners or developers must indicate that they plan to begin construction of the development or commence the use within one (1) year after final approval. If construction does not begin or the use does not commence within one (1) year, the zoning of the site shall revert to its previous classification unless a time extension is requested by the developer and agreed to by the Planning Commission.
- (4) This overlay district shall only be used for buildings or parts of buildings that are oriented in appearance and access to a public street. This overlay district shall not be used for buildings and uses oriented predominantly toward an alley.

g. Application Procedure.

- (1) **Step 1. Preliminary Consultation.** The applicant may request a preliminary consultation with the Planning Commission prior to submission of an application.
- (2) **Step 2. Concept Plan.** A concept plan shall be submitted with the application. The concept plan shall include sufficient detail to determine consistency with this article. At a minimum, the concept plan shall show the building as existing and as proposed after development, landscaping, parking, signage, general nature of street furniture and the following information:
 - (a) Proposed development layout.
 - (b) A tabulation of the total square footage in the building, existing and proposed, plus the area and percentage for each residential or non-residential use within the structure.
 - (c) Plans, schematics, and elevations of the structure showing how the architectural theme of the building will be retained and not unduly impact adjacent residential properties.
- (3) **Step 3. Planning Commission Review and Action.** The Planning Commission shall hold a review and make its recommendation to the Mayor and City Council in accordance with the zoning map amendment provisions

enumerated in Section A.9 of this Article.

- (4) **Step 4.** Mayor and City Council Action. In accordance with said Section A.9, the Mayor and City Council shall consider the recommendations of the Planning Commission and take formal action to approve or disapprove the Local Conversion District Zoning Map amendment.
- (5) **Step 5.** Site plan review and action. Upon Mayor and Council approval of a Local Conversion District Zoning Map amendment, the applicant shall prepare a detailed site plan or staff approved site plan in accordance with the site plan requirement delineated in Section S of this article and the concept plan approved by the Mayor and City Council. The plan shall be subject to Planning Commission approval.

h. Height.

No increase in height is permitted, except as authorized by Subsection "I" below, or in accordance with the height limitation in the underlying zoning district.

i. Lot Area Requirements and Off-Street Parking.

- (1) The maximum lot area for a Local Conversion District shall be 20,000 square feet.
- (2) Minimum parking requirements and lot size requirements shall not apply to this overlay district, however existing on-site parking shall not be reduced unless the remaining parking meets current Ordinance requirements. The Board of Zoning Appeals shall not grant a variance to this requirement.

j. Special Design Requirements.

- (1) Additions shall be designed consistent with the architectural theme of the structure and shall be located in the space least visible to the general public.
- (2) No outdoor vending machines shall be permitted.
- (3) No outdoor storage of any kind is permitted except display of merchandise at convenience and grocery stores if historically part of a use on the subject property.
- (4) No outdoor dining or seating area for a restaurant shall be permitted in any of the rear yard area between the building and rear property line or within 10 feet of a side property line unless historically part of the on-site use.
- (5) Buildings of an industrial, warehouse or automotive service design shall be enhanced via architectural or cosmetic enhancement, site amenities, landscaping and other strategies to achieve suitability for their new use(s) within a residential district and compatibility with the neighborhood.
- (6) Storefronts previously modified or enclosed shall be rehabilitated to reintroduce a storefront window display design.

4. Historic Districts and Landmarks.

a. Location.

The Mayor and City Council may designate an historic district or landmark as an overlay zone in any area of the City. The historic district and landmark designation can concurrently occur as an overlay with any of the other various districts.

b. Criteria.

Should a site, structure, or district meet any of the following criteria, it may be eligible for designation as an historic district or landmark:

- (1) Historical significance:
 - (a) has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, county, state, or nation;
 - (b) is the site of an historic event;
 - (c) is identified with a person or a group of persons who influenced society; or
 - (d) exemplifies the cultural, economic, social, political, or historic heritage of the city.
- (2) Archaeological significance: A site that yields, or scholarly research suggests it may be likely to yield, information important in prehistory or history, as the location of a significant event, occupation or activity, or structure, whether standing, ruined, or vanished.
- (3) Architectural significance:
 - (a) embodies the distinctive characteristics or a type, period, or method of construction;
 - (b) represents the work of a master craftsman, architect or builder;
 - (c) possesses high artistic value;
 - (d) represents a significant and distinguishable entity whose components may lack individual distinction; or
 - (e) represents an established and familiar visual feature of the neighborhood, community, or city, due to its singular physical characteristics or landscape.

c. Procedure.

The Historic District Commission is authorized and empowered, after making full and proper study, to recommend any site, structure, or district meeting any of the above criteria, within the limits of the City, as a proposed historic district or landmark and to determine the boundary lines of any such district or landmark. The recommendation shall be submitted to the Planning Commission for review and action. The Planning Commission shall make its recommendation to the Mayor and City Council in accordance with the Zoning Map Amendment procedures enumerated in Section A.9 of this Ordinance. The Mayor and City Council shall hold a review and take formal action to approve or disapprove the historic district or landmark Zoning Map Amendment.

K. Supplementary Regulations.

1. Fences and Walls.

No fence or wall shall be constructed in front of the front building setback line. To obtain approval for a fence, the applicant shall submit a zoning permit application with a plan for the fence for review by the Planning Department.

Visibility at Intersections.

No fence, wall, gateway, ornamental structure, hedge, shrubbery and other fixtures, construction or planting shall exceed three (3) feet in height above the elevation of the nearest curb on a corner lot in all districts where front yards are required for a distance of twenty-five (25) feet along both the front and side lot lines, measured from the point of intersection of the intersecting lot lines.

Height and Setback.

- a. **Residential Districts.** A fence or wall may be constructed in any side yard or rear yard. The fence or wall shall not exceed six (6) feet in height. When a residential property in a residential zoning district fronts more than one public street, a frontage on a side street or street to the rear shall be treated as a side or rear setback for the purpose of fence location, provided that the fence is not located closer to the principal frontage than the rear facade of the dwelling.
- b. **Commercial Districts.** A fence or wall may be constructed in any side yard or rear yard. The fence or wall shall not exceed eight (8) feet in height. Where the property is adjacent to a residential district, landscaping shall be provided in accordance with Section S of this Article and Article 5, Section I and the appropriate buffer shall be located outside the perimeter of the fence.
- c. **Industrial Districts.** A fence or wall may be constructed along the property line. The fence or wall shall not exceed ten (10) feet in height. Where the property is adjacent to a residential or commercial district, landscaping shall be provided in accordance with Section S of this Article and Article 5, Section I, and the appropriate buffer shall be located outside the perimeter of the fence.
- d. **Roadside Buffers.** Fences or walls constructed in a commercial or industrial district adjacent to a public street shall provide a perimeter roadside buffer in accordance with Section S of this Article and Article 5, Section I, and the appropriate buffer shall be located outside the perimeter of the fence.
- e. **Entrance Features.** Fences or walls which serve as entrance features to subdivisions or developments shall be limited to four (4) feet in height.
- f. **Specialty Features.** Specialty fences of a specific and unique purpose, typically not associated with a property boundary, may exceed the height limits of a particular zoning district, subject to Planning Commission approval of the fencing plan as part of the Site Plan or Subdivision Plan approval. Fences of this type may include but are not limited to those associated with athletic fields, tennis courts, swimming pools, commercial and industrial storage areas, and noise attenuation walls.

g. Materials. Fences shall be constructed of materials specifically designed and manufactured for fencing purposes.

- (1) Barbed wire is not permitted in or adjacent to residential and commercial districts. Barbed wire fences are permitted in industrial districts provided the barbed wire is installed on top of a fence that is at least six (6) feet in height.
- (2) Chain link fences shall not be permitted in required front yards (including side streets) on residential properties in residential districts for any reason, and the Board of Zoning Appeals shall not grant a variance to this requirement.
- (3) The finished side of any fence shall face outward towards surrounding properties and rights of way.

2. Special Height Regulations. The height limitations contained in the height regulations and yard requirements do not apply to belfries; steeples; spires; electric or communication poles or towers; electric transforming or switching equipment; radio, television or radar towers; chimneys or smoke stacks; flagpoles; fire towers; cupolas; domes; monuments; penthouses or roof structures for housing stairways; or to tanks, ventilating fans, air conditioning equipment or similar equipment required to operate and maintain the building provided that no penthouse or roof structure subject to this height limitation exception shall have a total area greater than twenty-five (25%) percent of the roof area, nor shall such structure be used for any purpose other than a use incidental to the main use of the building. The height limitations for wireless communications antennas, poles, and towers are specified in Section Q.

3. Structures To Have Access. Every dwelling hereafter erected or moved shall be located on a lot adjacent to a public street. For the purpose of this section, alleys do not constitute a public street.

4. Flood Plain. All uses in the flood plain as defined by the map entitled, "Flood Boundary and Floodway Map," and designated as Community Panel No. 240074-0001B, prepared by the United States Department of Housing and Urban Development, Federal Insurance Administration and delineated on the official zoning map, shall comply with Article 6 of this Chapter.

5. Storm Water Detention and Retention Structures. Design, buffering, location and other considerations for the construction of stormwater detention and retention structures are found in Article 5, Section I of this Chapter.

6. Procedure for Measurement of Yards.

a. Front Yard. Depth of required front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost points of the side lot lines, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding.

- b. **Rear Yard.** Depth of required rear yards shall be measured at right angles to a straight line joining the rearmost points of the side lot lines. The forward rear yard line of a required rear yard shall be parallel to the straight line so established.
- c. **Side Yard.** Width of required side yards shall be measured at right angles to a straight line joining the ends of front and rear lot lines on the same side of the lot. The inner side yard line of a required side yard shall be parallel to the straight line so established.

7. **Accessory Use Home Workstation.**

A home workstation is permitted as an accessory use in any legal dwelling. A home workstation does not involve any customers, clients, non-resident employees, supervisors, partners or co-workers visiting the property. However, the academic or artistic tutoring of individual students shall be permitted, provided no more than one student is under instruction at one time.

There shall be no sign, no outdoor storage of any kind. Deliveries are limited to those made by the U.S. Postal Service and similar carriers in vehicles of a size that routinely serve residential areas and in a volume and frequency consistent with those deliveries made to a dwelling. There is no external evidence of any sort (other than the commercial appearance of a vehicle used for commuting associated with the business or the arrival and departure of individual students of tutors) that the dwelling is used for any purpose other than that of a dwelling.

L. Reserved.

M. Non-Conforming Uses.

- 1. Confirmation of Nonconforming Use.** In the event that there is a nonconforming use in existence on the date of adoption of this ordinance, the owner or lessee of the premises in question may file with the Zoning Administrator a certification in writing of such form furnished by the Zoning Administrator and shall set forth fully the type of nonconforming use and all other applicable information in reference to the structure location and general use.
- 2. Restoration.** Nothing in this ordinance shall prevent the restoration of a nonconforming use, building or structure destroyed by fire, windstorm, explosion, act of public enemy, accident or for any other reason whatsoever, or prevent the continuance of said nonconforming use, provided that the owners of the property in question shall file with the Zoning Administrator a notice of intention to continue the nonconforming use within six (6) months of said destruction or damage, and provided further that said restoration or construction is commenced within one (1) year of the date of said notice of intention to continue the nonconforming use in question. In the event that said notice is not filed, then the nonconforming use in question shall be deemed to have been abandoned.
- 3. Expiration of Nonconforming Use.** Except as hereinafter provided, nonconforming uses, as defined herein, shall be allowed to continue in existence in perpetuity, provided that said use does not cease for any reason whatsoever through a period of one (1) year. If any nonconforming use of land shall cease for any reason whatsoever through a period of one (1) year, said nonconforming use shall be deemed to have been abandoned, and the then applicable zoning provisions shall apply to the area in question.
- 4. Adult Uses.** Adult book stores, adult motion picture theaters and adult mini motion picture theaters, situate in the zoning districts C-1, C-3 or C-4 at the time this ordinance becomes effective shall be removed by two (2) years from the effective date of the ordinance. [NOTE: Effective date of Ordinance amendment is October 22, 1991. Uses shall have been removed by October 22, 1993.]
- 5. Change and Expansion of Nonconforming Use.** Structural alterations of a building or structure or the use of a parcel, lot or tract of land which does not conform to the provisions of this ordinance shall be allowed only if the building or structure to be altered or the parcel, lot or tract of land to be used is in conformance with the requirements of the zoning district in which it is located; however, upon application, the Board of Zoning Appeals may approve the structural alteration of a building or structure or the use of a parcel, lot or tract of land which is not in conformance with the provisions of the ordinance. The cumulative effect of the alteration(s) or extension(s) shall not exceed thirty-five (35%) per cent of those existing buildings or structures and parcels devoted to a nonconforming use at the time of the enactment of this ordinance.
- 6. Automatic Expiration Upon Bringing Property into Conformance.** Once changed to a conforming use, no building, structure or land shall be permitted to revert to a nonconforming use.

7. **Change of Use to Another Nonconforming Use.** A nonconforming use may be changed to another nonconforming use if the applicant shows that the proposed change will have less objectionable external effects than the existing nonconforming use with respect to traffic generation and congestion, including truck, passenger car and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration; storage and waste disposal; and appearance. Such a change is termed a special exception, requiring the approval of the Board of Zoning Appeals.
8. **Expansion of Nonconforming Single-Family Dwellings.** Existing nonconforming, single-family dwellings in any district may expand without limitation with respect to area. Such dwellings shall be treated as principal-permitted uses in that district and shall conform to yard requirements and all other regulations for that district.
9. **Expansion of Nonconforming Residential Uses to Increase Number of Dwelling Units.** Nonconforming single-family, two-family and multi-family dwellings in any zoning district shall not be expanded or altered for the purpose of creating additional residential units.

N. Reserved.

O. Off-Street Parking Requirements.

1. Purpose and Applicability.

In order to decrease congestion in the streets, permanent off-street automobile parking space and truck loading space shall be provided for all new structures, except:

- a. One- (1-) or two- (2-) family dwellings on in-fill lots within subdivisions recorded prior to the effective date of this ordinance, and
- b. Existing structures or uses, increased in size by less than thirty-five (35%) percent after the adoption of this ordinance. Structures and uses in existence on the date this Zoning Ordinance becomes effective shall not be subject to parking and loading requirements, except when specified as a condition of use approval in this Ordinance. However, any parking or loading facilities now in existence to serve such structures or uses shall not, in the future, be reduced except where they exceed such requirements, in which case they shall not be reduced below such requirements, except in a Conversion District or C3 District. *(Staff note: See Section O.3.g).* Off-street parking shall be required in cluster developments.

2. Application Procedure.

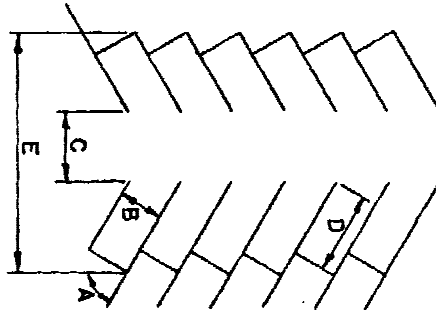
No application for a zoning permit shall be approved unless there is included with the plan for such buildings, improvement or use (See Article 5, Section I - Site Plan Requirements) a plan showing the adequate space to comply with acceptable design standards and criteria indicating and designating off-street parking and/or loading. The plan shall clearly show the size and location of parking and loading spaces, the width and arrangement of access driveways and arrangement of walls, fences and screen planting as they apply to parking areas and adjacent streets, alleys and highways.

3. Off-Street Parking and Dimensional Requirements.

a. Minimum Design Standards.

- (1) The following minimum design standards shall be observed in off-street parking facilities:

A	B	C	D	E
Parking Angle	Stall Width (feet)	Aisle Width (feet)	Stall Length (feet)	Bay Width for Double Aisle (feet)
0°	9	12	22	29
30°	9	11	18	45
45°	9	13	18	52
60°	9	18	18	59.5
75°	9	22	18	62
90°	9	24	18	60



Refer to above Design Standards Table

- (2) If the parking stall provides an overhang not encroaching on a walkway, property line, or buffer area, as required in C, (4), of this section, the length of the stall may be reduced two (2) feet.
- b. No off-street parking area shall be designed to permit direct parking space ingress and egress to a public road, except by way of a driveway.
- c. All off-street parking areas must be physically separated by a landscaped buffer as specified in Article 5, Section I, Subsection 2.
- d. In all cases, employees shall mean the regular working staff--paid, volunteer, or otherwise--at maximum strength and in full-time equivalent numbers necessary to operate, maintain or service any given facility or use under normal levels of service. The use of employee, occupant, or similar numbers to determine parking space requirements shall be used only where the use of square footage or other measurement factors are not feasible.
- e. All off street parking spaces in the C-3 District must be located in the rear of the principal building or otherwise screened with landscaping to minimize the visual impact on adjacent public streets or residential zoning districts.
- f. **Schedule.** Uses not specifically included in this schedule shall be subject to the requirements of similar enumerated uses.

Use	Required Spaces
Ambulance facility	2 per ambulance
Assisted-living facility	1 per every 3 beds plus 1 per employee on largest shift
Auto sales and service	1 per employee plus 1 per 2,000 square feet of lot area
Auto service station	2 per service bay, plus 1 per employee
Banks, financial institutions	1 per 200 square feet of net floor area

Use	Required Spaces
Bed and Breakfasts	1 per guest room
Bowling lanes	3 per bowling lane
Cluster development	2 per dwelling unit (may include garage, carport or driveway)
Commercial retail sale (less than 2,000 square feet floor area)	1 per 350 square feet net floor area
Commercial retail sale (freestanding and 2,000 square feet or greater of floor area)	5.5 per 1,000 square feet of net floor area
Community center, library, museum	1 per 400 square feet net floor area
Educational (schools)	1 per employee; ample student and visitor parking as determined by the Planning Commission
Elderly housing	1 per every 3 units
Fire Stations	10 minimum
Hospitals	1 per 1,000 gross square feet plus visitor parking as determined by the Planning Commission
Hotel, resort, motels, (see restaurant and meeting/banquet hall, if applicable; additional space is required)	1 per guest room
Manufacturing plant	The greater of 1 per employee on maximum working shift or 1 per each 1,000 square feet and 1 for each 350 square feet office or sales floor space
Medical or dental offices/clinics	The greater of 4 per practitioner or 1 per 200 square feet net floor area
Mortuary or funeral home	1 per 150 square feet of visitor floor space
Multi-family dwellings	2 per unit. If over 25 dwelling units, 1 space for each 25 units must be set aside for recreational vehicles
New residential units in new construction in the C-3 Zoning District	0.5 spaces per dwelling unit plus 0.5 spaces per bedroom, rounded up to the nearest whole number
Nursing home	1 per 400 square feet floor space
Office building	1 per 200 square feet net floor area
Places of worship	1 for each 5 persons for which seating is provided in sanctuary, except where mass transit is provided by the church

Use	Required Spaces
Private club, lodge	1 for each 2 persons for which seating or lodging is provided
Recreational establishment (other than theaters, swimming pools and bowling lanes)	1 per 80 square feet floor space and/or as determined by the extent of outdoor use by the Planning Commission
Restaurants, taverns, lounges, nightclubs, meeting room/banquet hall	1 per 50 square feet customer floor space
Shopping center: 25,000 to 400,000 square feet 400,000 to 600,000 square feet More than 600,000 square feet	Per 1000 sq. ft. of gross leasable area (GLA): 4 spaces 4.25 spaces 4.5 spaces
Single-family, detached dwelling	2 per unit
Swimming pool	1 for every 7 persons lawfully permitted at any one time
Theaters, auditoriums, stadiums	1 per every 3 seats
Townhouses or single-family attached dwellings	2 per unit
Transportation terminals (trucking, etc.)	1 per main shift employee
Two-family dwelling	2 per unit
Warehouses or wholesale establishments	1 per 1,500 square feet gross floor space and 1 space for each 350 square feet office or sales floor space

g. Off-Site Parking.

In calculating total parking space requirements, spaces located on a lot other than that lot on which the principal use is located may be included, provided that such parking is within five hundred (500) feet of the nearest boundary of the lot on which the use is located and that the permanent availability of such spaces for the use in question is documented by the applicant. In the District, if parking available to the public is located within five hundred (500) feet of the use and the applicant can demonstrate the availability of sufficient quantity to serve the required parking for the use, the creation of additional off street parking shall not be required.

h. Handicapped Parking.

- (1) Handicapped parking shall be in conformance with the “Maryland Accessibility Code”, COMAR 05.02.02.
- (2) Such spaces shall be provided according to the following schedule:

Total Parking in Lot	Up to 25	26 - 50	51- 75	76- 100	101- 150	151- 200	201- 300	301- 400	401- 500	501- 1,000	Over 1,000
Required Minimum Number of Accessible Spaces	1	2	3	4	5	6	7	8	9	2% of total	20 + 1 for each 100 over 1,000

- (3) Handicapped spaces shall be a minimum of eight (8) feet wide with an additional five- (5-) foot wide access aisle. Handicapped spaces and access aisles shall have slopes not exceeding two (2%) percent in all directions.
- (4) Such spaces shall be identified by signs seven (7) feet above grade for handicapped parking (MUTCD 2000, Sign R7-8). Where signs are mounted on buildings or structures, a six- (6-) foot height is permitted.
- (5) Spaces shall be located as close as possible to elevators, ramps, walkways and entrances and shall be located so that physically handicapped persons are not compelled to wheel or walk behind parked cars to reach entrances, ramps, walkways, and elevators.
- (6) Storm drainage grates and similar devices shall not be located within the required means of access for the physically handicapped.
- (7) One (1) in every four (4) handicapped accessible spaces shall be served by an access aisle eight (8) feet wide minimum and shall be designated as "van accessible" by a sign mounted below the symbol of accessibility. At least one (1) van accessible space shall be provided. "No parking in access aisle" sign is also required.

i. Modifications.

The Board of Zoning Appeals may reduce the number of required off-street parking spaces upon a finding that sufficient spaces open to the public are available within five hundred (500) feet to meet the intent of this section.

P. Reserved.

Q. Wireless Communications Facilities.

1. Purpose.

It is the purpose of this article to facilitate the provision of wireless personal communications services in our community, while at the same time protecting the City's residential neighborhoods and historic districts from unsightly and incompatible intrusions. To achieve this purpose, this article identifies sites, structures, and zoning districts where the location of wireless communication antenna arrays and structures are preferred, delineates standards for the positioning and/or construction of wireless communications antenna arrays and structures, and specifies the review process required for various facility types and siting locations.

2. Removal of Abandoned or Obsolete WCF.

Any WCF that is not operated for a continuous period of twelve months shall be considered abandoned, and the owner of such WCF shall remove the WCF within ninety days of receipt of notice from the City notifying the owner of such abandonment. If such WCF is not removed within said ninety days, the City may remove the WCF at the owner's expense. If there are two or more users of a single WCF, then this provision shall not become effective until all users cease using the WCF.

3. Temporary WCF in any Zoning District.

- a. Application Procedures.** The application must be approved by the Planning Commission in the Site Plan Review Process. Following approval by the Planning Commission, a building permit is required.
- b. Height.** The height restriction shall be determined by the Building Inspector, based on intended positioning and/or construction method.
- c. Setback.** The setback requirement is the same as for the underlying zoning district.
- d. Screening.** The WCF shall be positioned to minimize the visual impact to the surrounding uses. Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.

4. Development Standards.

The goal of this section is to encourage the siting of attached WCFs and WCFs with support structures in a manner which is consistent with community character and which minimizes potential visual impacts in areas of local concern. Areas of particular concern are the City's residential neighborhoods and preservation design districts.

- a. Micro Wireless Communication Antenna Array in Any Zoning District.**

- (1) **Application Procedures.** If equipment facilities and/or sheds are located on the ground, a staff-approved site plan is required. A building permit must be obtained for all WCFs and attached WCFs.
 - (2) **Height and Setback.** There are no height and setback restrictions.
 - (3) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view. When located in a historic district, it is recommended that the micro antenna and any necessary support devices be painted and/or positioned to minimize its visual impact and to protect the historic character of the affected building and neighboring buildings.
- b. WCF, Attached or With Support Structure, of Stealth Design in Any Zoning District.**
- (1) **Application Procedures.** If equipment facilities and/or sheds are located on the ground, a staff-approved site plan is required. A building permit must be obtained for all WCFs and attached WCFs.
 - (2) **Height.** There are no height restrictions.
 - (3) **Setback.** The setback requirement is the same as for the underlying zoning district.
 - (4) **Screening.** The antenna array and any necessary support devices must be hidden from view through some form of stealth design. This may include location inside a steeple, tower, chimney, etc., or disguise as a flagpole, utility pole, or other object which might reasonably be expected to be found in the underlying zoning district. Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.
- c. Co-location of Antenna Arrays on Existing Wireless Communications Support Structures in Any Zoning District.**
- (1) **Application Procedures.** If equipment facilities and/or sheds are located on the ground, a staff-approved site plan is required. A building permit must be obtained for all WCFs and attached WCFs.
 - (2) **Height and Setback.** There are no height and setback restrictions.
 - (3) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.
- d. Attached WCF in All Districts With The Exception of Historic Districts.**
- (1) **Application Procedures.** If equipment facilities and/or sheds are located on

the ground, a staff-approved site plan is required. A building permit must be obtained for all WCFs and attached WCFs.

- (2) **Height.** There are no height restrictions for antenna arrays attached to publicly-used or -owned structures. Antenna arrays attached to any other existing building or structure shall not project more than 15 feet above the highest point of the building or structure.
- (3) **Setback.** The setback requirement is the same as for the underlying zoning district.
- (4) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view. In the C1, C3, R1, R2, R3 (residential uses), R4 and AT District, the antenna array and any necessary support devices shall be painted and/or positioned to minimize the visual impact to the surrounding uses.

e. Attached WCF in Historic Districts.

- (1) **Application Procedures.** This is a two-step application process. First, the application must be approved by the Historic District Commission in the Certificate of Appropriateness process. Following approval, a building permit is required. If equipment facilities and/or sheds are located on the ground a staff-approved site plan is also required.
- (2) **Height.** There are no height restrictions for antenna arrays attached to publicly-used or -owned structures. Antenna arrays attached to any other existing building or structure shall not project more than 15 feet above the highest point of the building or structure.
- (3) **Setback.** The setback requirement is the same as for the underlying zoning district.
- (4) **Screening.** The antenna array and any necessary support devices shall be painted and/or positioned to minimize its visual impact and to protect the historic character of the affected building and neighboring buildings. Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.

f. WCF in Any Zoning District.

- (1) **Application Procedures.**

This is a two or three-step application process depending on the zoning district in which the property is located. First, if the property is located in the C1, C3, R1, R2, R3, R4 or AT Districts, the application must be approved by the

Board of Zoning Appeals in the Special Exception Process. Next, (or first in the case of the remaining districts) the application must be approved by the Planning Commission in the Site Plan Review process. Following approval, a building permit is required. If equipment facilities and/or sheds are located on the ground a staff-approved site plan is also required.

(2) **Submittal Requirements.**

- (a) A Co-location Study to demonstrate that co-location of the antenna array is not possible on any existing WCF support structures or other structures, including letters from WCF tower owners refusing co-location stating reason for refusal;
- (b) For the districts in which a special exception is required, a feasibility study to demonstrate that locations in the IR, IG, C2 and C4 zoning districts were explored as preferred siting alternatives;
 - [i] A Visual Simulation to demonstrate the impact of the WCF on surrounding neighborhoods and preservation design districts; and
 - [ii] Any other support materials deemed necessary by the Planning Commission (and by the Board of Zoning Appeals, when applicable).

(3) **Height.**

Maximum height shall be as shown in the following chart:

Zoning District	Maximum Height (feet)
R1, R2, R3 (residential uses) R4 and C1	50
AT, R3, C3	100
C2, C4	140
IR and IG	199

(4) **Setback.**

The setback requirement is the same as for the underlying zoning district, with the following addition: WCFs must be setback a minimum distance from any property line equal to 125% of the proposed tower height.

(5) **Screening.**

Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.

(6) **Lighting and Fencing.**

The top of the WCF shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Commission shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Security fencing shall be erected around the WCF support structure and equipment facility as a means of preventing non-authorized access to the WCF.

R. Reserved.

S. **Zoning Permit and Site Plan Requirements.**

1. **Zoning Permits.**

a. **Zoning Permits Required.**

No building or structure shall be erected, moved, added to or structurally altered or use of said building, structure or land changed to another use without a zoning permit issued by the Zoning Administrator wherein the Zoning Administrator certifies that the proposed building or alteration described in the permit conforms with the provisions of this ordinance.

b. **Pending Applications for Building Permits.**

Nothing herein contained shall require any change in the overall layout, plans, construction, size or designated use of any development, building, structure or part thereof for which official approvals and required building permits have been granted before the enactment of this ordinance, the construction of which shall have been started within six (6) months after the effective date of this ordinance and the completion thereof carried on in a normal manner and not discontinued for reasons other than those beyond the builders' control.

c. **Information Required.**

To obtain adequate information for the issuance of zoning permits, all applications for permits shall be accompanied by plans in duplicate, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this ordinance. One (1) copy of the plans shall be returned to the applicant by the Zoning Administrator after he shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. The second copy of the plans, similarly marked, shall be retained by the Zoning Administrator.

d. **Effect of Approval.**

The granting of approval of a site development plan or the issuance of a zoning permit for any structure or use located within or adjoining a floodplain shall not constitute a representation, guarantee or warranty of any kind or nature by the Zoning Administrator or by any other public body or official as to the practicality or safety of any structure or use proposed or erected and shall create no liability upon or cause action against such public body or official for any flood, chronic wetness or pollution

damage that may result pursuant thereto.

e. Filing Fees.

- (1) Permits for a main or principal use shall also cover any accessory use established at the time on the same lot or tract of land.
- (2) Commencing with the effective date of this ordinance, all applications for zoning permits, petitions to rezone property, interpretations, special exceptions and variances shall be according to the fee schedule adopted by the Mayor and Council and amended from time to time.
- (3) There shall be no refund of any fee paid hereunder.
- (4) Notwithstanding any other provisions of this ordinance, the following uses are exempt from fees:
 - (a) Government bodies
 - (b) Government owned and/or operated utilities

f. Expiration of Zoning Permit.

If the work described in any zoning permit has not begun within six (6) months from the date of issuance thereof, said permit shall automatically expire; it shall be canceled by the Zoning Administrator, and written notice by certified mail thereof shall be given to the persons affected. However, failure to send such notice shall not be a prerequisite to the automatic expiration of said permit. If the work described in any zoning permit has not been completed within two (2) years of the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected together with notice that further work as described in the canceled permit shall not proceed unless and until a new zoning permit has been obtained.

2. Site Plan Requirements.

a. Requirements.

- (1) Prerequisite to the issuance of a zoning permit, a site plan shall be submitted to the Zoning Administrator for approval by the Planning Commission for all new construction greater than two thousand five hundred (2,500) square feet, including disturbed area, involving multiple-family dwellings, townhouses, churches and other places of worship, schools and other educational facilities, hospitals and health care facilities, parking lots and all commercial and industrial structures.

- (2) All new construction involving multiple-family dwellings, townhouses, churches and other places of worship, schools and other educational facilities, hospitals and health care facilities, parking lots and all commercial and industrial structures, less than two thousand five hundred (2,500) square feet including disturbed area shall be subject to approval by the Planning Director or the Director's designee during the Building Permit review process. The Planning Commission, Planning Director, Director's designee, or the applicant may require Planning Commission site plan review as provided for in Section S.
- (3) Where the submission of a site plan is required under this section, approval of the site plan shall be based upon design principles and standards and required improvements set forth in the City of Hagerstown Subdivision and Land Development Ordinance (Article 5, Sections E and I of this Chapter), and other ordinances, regulations and policies established by the City.

b. Submission Procedure.

- (1) Site plans shall be prepared by a registered professional engineer, registered architect, registered landscape architect, registered land surveyor or professional planner (A.I.C.P.).
- (2) A preliminary consultation may be held with the Planning Commission to discuss the general concept, use and design of the proposal. If consultation is desired, a generalized sketch or plat of the proposed site plan shall be submitted with five (5) copies at least one (1) week prior to the scheduled consultation and shall consist of location map, boundary, topography, and general proposed land uses drawn to scale.
- (3) The site plan administrative review procedures shall be the same as those required for development plan review and approval pursuant to the Subdivision and Land Development Ordinance, (Article 5).
- (4) A minimum of ten (10) copies of the site plan shall be submitted to the Planning Department for its review. Additional copies shall be submitted as determined by the Planning Department. The Planning Commission shall notify the Zoning Administrator of its approval or disapproval of the site plan within thirty (30) days from the date of formal submission to the Commission. However, failure to approve or disapprove a site plan within thirty (30) days shall not constitute approval.
- (5) Site plan submission is not required for single-family or two-family dwelling units unless planned as part of a Planned Unit Development, or specifically required elsewhere in this chapter.
- (6) Site plans must be filed with the Planning Commission no less than thirty (30) days prior to the Regular Planning Commission meeting.

T. Historic District Review.

1. Application.

Before the construction, alteration, reconstruction, relocation, or demolition of any landmark or site or structure within an historic district, if any exterior work is involved which would change the exterior appearance of the site or structure, the person, individual, firm, or corporation proposing to make the construction or change shall file an application with the City for a certificate of appropriateness or a certificate of hardship. (The application of paint or the changing of paint colors is exempt from this review process.)

Every such application shall be referred to and considered by the Historic District Commission and accepted or rejected by the Historic District Commission, and no building permit, demolition permit, or zoning certificate for any change may be granted until the Historic District Commission has acted thereon as hereinafter provided. The application shall be accompanied by plans of any proposed construction, alteration or repair.

Prohibition of Identical Application. An application which is identical to a rejected application shall not be submitted within a period of one year after rejection.

2. Application Review.

In reviewing the plans for any such construction or change, the Historic District Commission shall give consideration to the historical, archaeological, or architectural significance of the site or structure and its relationship to the historical, archaeological, or architectural significance of the surrounding sites, structures, or districts; the relationship of the exterior architectural features of the structure to the remainder of the structure and to the surrounding sites, structures, or districts; the general compatibility of exterior design, scale, proportion, arrangement, texture and materials proposed to be used; and to any other factors including aesthetic factors which the Historic District Commission deems to be pertinent.

a. Exterior Features Only, Visibility and In-Kind Repair and Replacement. The Historic District Commission shall consider only exterior features of a structure and shall not consider any interior arrangements.

The Historic District Commission shall consider only proposed changes to structures visible or intended to be visible from a public way.

In-kind repair and in-kind replacement of exterior features is considered ordinary maintenance and therefore not subject to review by the Historic District Commission. Also, the Commission shall not disapprove an application except with respect to the several factors specified above.

b. Evaluation and Level of Significance. The Historic District Commission shall be strict in its judgment of plans for sites or structures determined by research to be of historical, archaeological, or architectural significance. The Historic District Commission shall be lenient in its judgment of plans for sites or structures of little his-

torical, archaeological, or architectural significance, or for plans involving new construction, unless such plans would seriously impair the historical, archaeological, or architectural significance of the surrounding sites, structures, or districts. The Historic District Commission is not required to limit construction, reconstruction, or alteration to the architectural style of any one (1) period.

3. Certificate of Appropriateness.

- a. Approval.** If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure, or for the relocation or demolition of a structure, and the Historic District Commission in reviewing the application finds that the proposal will not materially impair the historical, archaeological, or architectural significance of the site or structure, then the Historic District Commission shall file a Certificate of Appropriateness with the City and a permit can be issued.
- b. Denial.** If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure, or for the relocation or demolition of a structure, and the Historic District Commission in reviewing the application finds that the proposal is detrimental to the historical, archaeological, or architectural significance of the site or structure or that the proposal will materially impair the historical, archaeological, or architectural significance of the surrounding sites, structures, or districts, then the Historic District Commission may not approve the application. The Historic District Commission shall file a copy of its objections, including the reasons therefor, with the City and the permit shall not be issued.
- c. Modification.** In the case where a proposal was not accepted and the Historic District Commission suggested an alternate plan or made recommendations, the applicant may later resubmit the modified proposal. The Historic District Commission may approve the modification and file a Certificate of Appropriateness with the City and then a permit may be issued.

4. Certificate of Hardship.

- a. Application.** If, after having first attempted to obtain a Certificate of Appropriateness, the property owner can show that:

 - (1) a modification or denial of their proposal will cause undue financial hardship to the owner,
 - (2) will be a deterrent to a major improvement program which will be of substantial benefit to the city, or
 - (3) will not be in the best interests of a majority of the persons in the community,

then the property owner may apply for a Certificate of Hardship.
- b. Burden of Proof on Applicant.** The burden of proof is on the property owner to prove

to the Historic District Commission that its failure to approve a Certificate of Appropriateness will cause undue financial hardship to the owner, will be a deterrent to a major improvement program which will be of substantial benefit to the city, or will not be in the best interests of a majority of the persons in the community.

c. Submittal Requirements. The Historic District Commission shall prescribe uniform submittal requirements, necessary for determining whether the following hardship standards have been met.

(1) Standard for determining that preservation of a site or structure would cause undue financial hardship:

- (a) the site or structure is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- (b) the site or structure cannot be adapted for any other use, whether by the current owner or by a purchaser, which will meet reasonable investment-backed expectations; and
- (c) documented efforts to find a purchaser interested in acquiring the site or structure and preserving it have failed.

(2) Standard for determining that preservation of a site or structure will be a deterrent to a major improvement program which will be of substantial benefit to the city or will not be in the best interests of the majority of the persons in the community:

- (a) the site or structure prevents or seriously impedes the implementation of a publicly sponsored or endorsed major capital improvement project; and
- (b) the site or structure is incompatible with the Comprehensive Development Plan's goals for the enhancement of that neighborhood and the community in general; or
- (c) the site or structure is an impending threat to the public health, safety and welfare and its immediate demolition or alteration has been mandated by the City Building Inspector.

(3) If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure, or for the relocation or demolition of a structure, the preservation of which the Historic District Commission considers to be of unusual importance to the city or unusual importance to the entire state or nation, the Historic District Commission shall attempt with the owner of the structure to formulate an economically feasible plan for the preservation of the site or structure.

d. Approval. In the event that the Historic District Commission finds that the property

owner has proven his case that denial of his application will cause undue financial hardship to the owner, will be a deterrent to a major improvement program which will be of substantial benefit to the city, or will not be in the best interests of a majority of the persons in the community, then the burden shifts to the City or other interested parties. The responsibility is then to devise a program of public incentives or a package of private investment to properly compensate the owner. If no reasonable incentive package can be assembled, then the City or other interested parties must either acquire the property or place an easement on the property by negotiated acquisition. If it does not, then a Certificate of Hardship must be filed with the City and a permit can be issued.

- e. **Documentation and Salvage of Buildings to be Demolished.** If a site or structure is to be demolished and the Historic District Commission has determined that it contains special historical, archaeological, or architectural components that can be removed before or during the demolition process, then these components or materials should be salvaged in a manner agreed to between the property owner and the Historic District Commission. The Historic District Commission shall be permitted to record the site or structure prior to demolition. This should include photographs, measured drawings, written architectural descriptions and historical data or additional on-site documentation by some other method within a time period of sixty (60) days.
- f. **Denial.** In the event that the Historic District Commission denies a Certificate of Hardship or if a property owner does not have sufficient funds to properly maintain a site or structure and the City or other interested parties feel that preservation of the site or structure is worthy of future consideration, then all means toward a Preservation Reserve status should be considered. The Historic District Commission shall have ninety (90) days from the time it concludes that no economically feasible plan can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the site or structure.

After the ninety-day (90) Preservation Reserve status has transpired and the Historic District Commission evaluates the new alternative and it meets with their approval, then depending on the applicability, either a Certificate of Hardship or a Certificate of Appropriateness shall be filed with the City and a permit may be issued. However, if no new acceptable alternative has been found, then the Historic District Commission shall reject the alternative and issue a letter of rejection. Thereafter, if rejected, the application shall not be renewed within a period of one (1) year.

5. **Approval Time.**

The Historic District Commission shall file with the City a certificate of its approval, modification, or rejection of all applications and plans submitted to it for review. Work shall not be commenced on any such project until such a Certificate of Appropriateness or a Certificate of Hardship has been filed, and the City shall not issue a building permit for such change or construction unless and until it has received such a Certificate of Appropriateness or a Certificate of Hardship. The failure of the Historic District Commission to act upon a completed application within forty-five (45) days from the date the completed application was

filed shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the Historic District Commission, or the application has been withdrawn.

6. Demolition of Potential Landmarks.

- a. Consideration by Historic District Commission.** Whenever a permit for demolition is applied for in the City for a site or structure which is listed as a potential landmark in the Comprehensive Plan, but which is not designated as a landmark by the Mayor and City Council at the time of permit application, such application shall be forwarded to the Historic District Commission. No permit for demolition may be granted until the Historic District Commission has acted thereon as hereinafter provided.
- b. Determination by the Historic District Commission.** Upon receipt of such application, the Historic District Commission shall make a finding as to the significance of the site or structure, under the criteria established in Section J.3.b, and recommend whether it should be designated a landmark.

 - (1) Where the Historic District Commission recommends that the site or structure be designated a landmark, it shall be forwarded as a Zoning Map amendment to the Planning Commission and Mayor and City Council. In the interim, the Building Inspector shall withhold issuance of the permit until the Zoning Map amendment becomes effective, at which time the application shall be governed by the procedures established in Section T.1.
 - (2) Where the Historic District Commission or the Mayor and City Council determines that the site or structure shall not be designated a landmark, it shall be removed from the Comprehensive Plan as a potential landmark and the Building Inspector may forthwith issue the permit for demolition.
 - (3) Time limits for Historic District Commission action - Within forty-five days after the filing of a permit for demolition, the Historic District Commission shall render its findings and determinations with respect to an application. Failure to adhere to this time limit shall allow the permit to issue by operation of law.

7. Demolition by Neglect.

In the event of a case of demolition by neglect of a landmark or site or structure within an historic district, and the Historic District Commission finds that demolition of the site or structure by neglect should be prevented, then the following provisions shall apply:

- a. Record of Demolition by Neglect and Notice.** The Historic District Commission shall instruct its agent, duly authorized by the Mayor and City Council to notify, in writing, the owner(s) of record of the property, any person having any right, title, or

interest therein, and the occupants or other person responsible for the maintenance of the property, of the deterioration.

Prior to the issuance of a written notice, the Historic District Commission shall instruct its agent, duly authorized by the Mayor and City Council to establish a record of demolition of the site or structure by neglect. Such a record can include dated materials such as photographs and/or written reports on the condition of the site or structure so as to record and/or measure the deterioration.

The notice shall specify the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

- b. Time for Corrective Action and Provision for Public Hearing.** The notice shall provide that corrective action shall commence within thirty (30) days of the receipt of said notice and be completed within a reasonable time thereafter. The notice shall state that the owner of record of the subject property, or any person of record with any right, title or interest therein, may, within ten (10) days after the receipt of the said notice, request a hearing on the necessity of the items and conditions contained in said notice. In the event a public hearing is requested, it shall be held by the Historic District Commission upon thirty (30) days' written notice mailed to all persons of record with any right, title or interest in the subject property and to all citizens and organizations which the Historic District Commission feels may have an interest in the proceedings.
- c. Final Notice after Public Hearing; Time Requirement.** After a public hearing on the issue of necessity of improvements to prevent demolition by neglect, if the Historic District Commission finds that such improvements are necessary, the Historic District Commission shall instruct its agent, duly authorized by the Mayor and City Council to issue a Final Notice to be mailed to the record owner and all parties of record with any right, title or interest in the subject property advising of the items of repair and maintenance necessary to correct or prevent further deterioration. The owner shall institute corrective action to comply with the Final Notice within thirty (30) days of receipt of the revised notice.
- d. Failure, Neglect or Refusal to Act; City Authority.** Upon the failure, neglect, or refusal of the property owner or other responsible person, duly notified, to take the corrective action specified in the Final Notice, within the time allotted, the agent, duly authorized by the Mayor and City Council, is hereby authorized and empowered to institute, perform, and complete the necessary remedial work to prevent further demolition by neglect, and to defray the costs thereof, as hereinafter provided.
- e. Cost of Work and Recapturing Expense to City.** When the agent, duly authorized by the Mayor and City Council, has completed the necessary remedial work to prevent further demolition by neglect, or has paid for its completion, the actual cost thereof, if not paid by the property owner(s) or other responsible person prior thereto, shall be charged to the owner(s) of record of such property on the next regular tax bill forwarded to such owner(s), and said charge shall be due and payable by said owner(s)

at the time of payment of the tax bill.

- f. **Tax Lien for Cost of Work.** When the full amount due the agent, duly authorized by the Mayor and City Council, is not paid by the property owner(s) when due, the agent, duly authorized by the Mayor and City Council, shall cause to be recorded in the Office of the Treasurer of the City of Hagerstown a sworn statement showing the cost and expense incurred for the work, the date(s) upon which the work was done, and the location of the property on which the work was done. Such notice shall result in a tax lien being placed against the affected property which shall be collected in the same manner as the City taxes on such real property.
- g. **Substantial Undue Financial Hardship.** In the event that the Historic District Commission finds that, notwithstanding the necessity for preventing demolition by neglect, the action provided for in T.4 and T.5 above would impose a substantial undue financial hardship on the owner(s) of record of the subject property, the Historic District Commission shall seek alternative methods to preserve the site or structure as provided in Section T.4. If none are confirmed within a reasonable time, the Historic District Commission shall not proceed in accordance with subsections T.4 and T.5.

8. Ordinary Maintenance, Farming, Landscaping; Completion of Work Authorized Under Prior Permit Not Affected.

Nothing in this Article shall be taken or construed to prevent ordinary maintenance, customary farming operations, or landscaping which will have no material affect on the historical, archaeological, or architectural significance of a landmark or site or structure within an historic district. Nothing in this Article affects the right to complete any work covered by a permit or authorization issued prior to March 24, 1987.

9. Appeal Process.

Appeals of decisions made by the Historic District Commission in furtherance of this Article may be appealed in accordance with the procedures set forth in Article 8, Section B of this Code.

10. Violations.

The treatment of violations of this Section of this Article shall be as described in Article 8, Section B of this Code.

U. Board of Zoning Appeals - Applications, Notice, Powers and Duties.

1. Application and Notice for Interpretations, Special Exceptions and Variances.

- a. Applications shall be filed with the Board of Zoning Appeals by the applicant at least thirty (30) days in advance of the public hearing.
- b. The Board of Zoning Appeals shall advertise in at least one (1) newspaper of general circulation in the city once each week for two (2) successive weeks, with the first such publication of notice appearing at least fourteen (14) days prior to the hearing.
- c. Notice of said advertised hearings shall be posted on the property at least ten (10) days prior to the public hearing.
- d. The owner of the property or his agent shall be notified at the time of advertisement by mail of the date, time and place of the public hearing.

2. Appeals; Transmission of Records; Time Limitations.

Appeals to the Board of Zoning Appeals may be taken by any person who may have the right to appeal or by any department, board or bureau of the City affected by any decision of the Zoning Administrator. Such appeal shall be heard within forty-five (45) days of the date of filing by the Board of Zoning Appeals. The Zoning Administrator from whom the appeal is taken shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

When the decision of the Zoning Administrator being appealed is a notice of zoning violation, such appeal shall be filed not later than thirty (30) days from the date of the action of the Zoning Administrator and shall state the reasons for the appeal. The Board of Zoning Appeals shall dismiss any appeal not filed in accordance with this section. The day after the date of the notice shall constitute the first day of this time period, and the period shall expire at the close of business on the thirtieth (30th) day of this period. When the thirtieth (30th) day falls on a weekend or legal holiday, then the period shall expire at the end of the next business day.

3. Stay of Proceedings on Appeal.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Zoning Appeals, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Zoning Appeals or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

4. Hearing An Appeal.

- a. **Notice of Hearing; Time Limit For Decision.** The Board of Zoning Appeals shall give public notice thereof by advertising in at least one (1) newspaper of general circulation in the city once each week for two (2) consecutive weeks, with the first such publication of notice appearing at least fourteen (14) days prior to the hearing, as well as due notice to the parties in interest, and decide the same within thirty (30) days of the hearing. Upon the hearing, any party may appear in person or by agent or by attorney. Failure to comply with this subsection by the Board of Zoning Appeals shall be construed as approval of a requested variance, special exception, or confirmation, expansion or change of a nonconforming use, and shall vacate a notice of violation appealed to the Board.
- b. **Continuances.** Upon request of the applicant or upon its own motion, the Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session.
- c. **Postponement of Hearing.** Upon request of the applicant or upon its own motion, the Board may postpone a scheduled hearing. Requests for postponement of a scheduled hearing shall be filed in writing with the Board not less than five (5) working days prior to the date of the hearing. The granting of such requests shall be at the discretion of the Board.

5. Considerations to be Given in Board of Zoning Appeals' Decisions.

The following rules of procedure are set up to be followed by Board of Zoning Appeals before deciding any case. The Board:

- a. Shall give public notice and hearing;
- b. May make inspection of the premises involved in the application and the surrounding area;
- c. Shall give consideration to the purpose, application, interpretation, and standards of this Ordinance.
- d. Shall give consideration to present physical conditions on the premises and in the vicinity and the City's goal to provide for orderly growth and improvement of our neighborhoods and community as a whole;
- e. Shall give consideration to the Special Exception and Variance standards prescribed in Subsection 8 and to the effect of such special exception or variance upon the peaceful enjoyment of people in their homes and whether such use would deteriorate the quality of life in the neighborhood, through undue traffic congestion, neighborhood parking shortages, odors, dust, gas, smoke, fumes, vibration, glare, noise, or similar impact;

- f. Shall give consideration to the most appropriate use of land and structures in accordance with the city's adopted Comprehensive Plan;
- g. Shall open the hearing on each special exception and variance case with a staff presentation to orient the Board and the applicants to the pertinent sections of the ordinance related to the proposed use or appeal and to any issues which City staff or City Boards or Commissions may have with the proposal;
- h. Shall give all interested parties an opportunity to testify as to any material facts in connection with the proposed use;
- i. Shall act as a fact-finding body and shall approve or disapprove the issuance of a permit for the proposed use in accordance with the evidence in the record before it.

6. Review of Applications and Recommendations by Interested Boards and Commissions on Applications for Interpretations, Special Exceptions and Variances.

The Planning Commission, Historic District Commission, and Board of Traffic and Parking may submit recommendations and the Board of Zoning Appeals shall consider such recommendations at the time of public hearing on any application for special exception or variance.

7. Interpretations, Special Exceptions and Variances.

- a. **Interpretations.** The Board of Zoning Appeals is empowered to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination, including but not limited to questions concerning nonconforming uses made by the Zoning Administrator or any other agent of the City in the enforcement of this ordinance.
- b. **Special Exceptions.** The Board of Zoning Appeals is empowered to hear and decide such special exceptions as specifically authorized by the terms of this ordinance; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions if same does not violate the spirit and intent of this ordinance. A special exception shall not be granted by the Board of Zoning Appeals unless and until it finds that the general criteria found in Subsection U.8.a and, when applicable, the specific criteria for particular special exception uses in specific districts found in Subsection U.8.a.7 are met.
- c. **Variances.** The Board of Zoning Appeals is empowered to authorize upon appeal applications for a variance filed by a person or persons with a contractual or proprietary interest in the property. The Board may only authorize a variance from height, lot width, lot area, lot area per dwelling unit, setback requirements, parking space requirements, sign area, and buffer width requirements of the ordinance. A variance shall be granted only upon specific findings made by the Board that each of the criteria for variances found in Subsection U.8.b are met.

8. Criteria for Approval of Special Exceptions and Variances.

a. Special Exceptions.

No special exception shall be approved by the Board of Zoning Appeals until and unless the Board, in its written order finds that the application complies with the following criteria:

- (1) **Complete Application and Documentation.** A written application for a special exception is submitted by a person or persons with a financial, contractual, or proprietary interest in the property indicating the section of this ordinance under which the special exception is sought, stating the grounds on which it is requested, and including a concept plan of the proposed use which outlines the specific characteristics of the intended use on that site.
- (2) **Authority to Grant Special Exception and General Standards.** The Board of Zoning Appeals shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception and that the granting of the special exception will not materially or adversely affect the adjoining and surrounding properties, if:
 - (a) the characteristics of the use and its operation on the property in question as proposed in the application and concept plan will not create any greater adverse impact than the operation of such a use on any other property with the same zoning, and
 - (b) the proposed activity will comply with all conditions and requirements set forth for the specific use in that zoning district.

In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and traffic and whether any proposed activities will create adverse visual, odor, dust, smoke, gas, noise or similar impact for surrounding properties.

- (3) **Conditions of Approval.** In granting any special exception, the Board of Zoning Appeals may prescribe any special conditions in addition to those specified in the Ordinance which it feels are necessary to carry out the intent of this Ordinance and address the issues identified in (b), [2] above, so that protection of adjacent properties, the neighborhood as a whole, and the public interest is ensured. Violation of such conditions and safeguards when made a part of terms under which the special exception is granted shall be deemed a violation of this ordinance and punishable under Article 8, Section B of this Code.
- (4) **Limited to Use Proposed to the Board.** No use or activity permitted by a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception without approval of the Board.

- (5) **Change of Special Exception Use.** Changes from one special exception use to another use permitted by special exception shall require approval by the Board.
- (6) **Use Variances or Special Exceptions for Uses Not Enumerated As Such are Prohibited.** Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone.
- (7) **Specific Special Exception Criteria for Certain Uses** - The following special exception uses shall be subject to the following specific use standards. The Board of Zoning Appeals shall not approve a special exception unless the use complies with these requirements, and shall not grant a variance to the following standards.
- Fitness and Recreational Sports Centers
 - Bed and Breakfast Inns
 - Uses Permitted by Right in the C-2 District
 - Mixed Use Buildings
- (a) Fitness & Recreational Sports Centers (71394), provided that -
- (i) The nature of the use will not materially or adversely conflict with the character of the neighborhood.
 - (ii) A pool shall not be located nearer than seventy-five (75) feet from any property line nor nearer than one hundred twenty-five (125) feet from any existing dwelling.
- (b) Bed and breakfast inns in an existing structure (721191)
- (i) There shall be no exterior evidence that a building is being used for any purpose other than a residence, except for one (1) permitted sign of no more than two (2) square feet.
 - (ii) Off-street parking shall be provided; one (1) space per guest room. In no case shall parking be provided in a front yard. All parking area must be adequately screened with a minimum five (5) foot landscaped buffer.
 - (iii) No structural addition is permitted to a building envelope unless required by the appropriate public officer for the protection of life and safety.
 - (iv) A site plan shall be submitted and approved by the Planning Commission prior to the issuance of the zoning certificate.
- (c) Uses permitted by right in the C2 District, except adult book stores, adult motion picture theaters, adult mini motion picture theaters, and

of a type to serve the particular high-density residential development provided for in the R3 District, as well as nearby residents, so long as located geographically on the same tract of land as the proposed new residential development.

- (i) The commercial use shall occupy no more than ten (10%) percent of the tract area.
- (ii) There shall be a phasing requirement which ensures that:
 - (a) The residential development will precede the commercial development; and
 - (b) The commercial development will never exceed the ten (10%) percent ratio for the ultimate build-out of the residential development.
- (d) Mixed-Use Building of commercial and multi-family residential units in the R3 District.
 - (i) A Mixed-Use Building shall be a multi-story structure with a minimum of three (3) floors.
 - (ii) The first floor of the structure may be occupied by commercial uses allowed by right in the C2 district. Adult book stores, adult motion picture theaters and adult mini motion picture theaters, shall not be permitted in a Mixed-Use Building.
 - (iii) At least 15% and no more than 33% of the structure shall be occupied by commercial uses.
 - (iv) A Mixed-Use Building shall have direct access to an arterial or major collector street as classified by the City Engineering Department.
 - (v) A concept plan for the project shall be submitted for review by the Planning Commission which shall include at a minimum:
 - (a) Proposed development layout.
 - (b) Proposed architectural elevations.
 - (c) A tabulation of the square footage proposed for commercial and for residential uses.
 - (d) Proposed landscape beautification and buffering plans.

b. Variances.

No variance shall be approved by the Board of Zoning Appeals until and unless the Board, in its written order finds that the application complies with the following criteria:

- (1) **Unique Condition of Property.** Whereby due to exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property, or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property; and
- (2) **Minimum Necessary to Afford Relief.** The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property; and
- (3) **Compliance Would Preclude Common Use.** That the literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance; and
- (4) **No Special Privilege.** That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures with the same zoning; and
- (5) **Self Created Hardship.** No variance shall be granted in any case where the applicant, owner or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Ordinance; and
- (6) **Consistent With the Intent of the Ordinance.** That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Conditions of Approval. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance.

Use Variances Prohibited. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone.

Variances Solely to Increase Residential Density Yield Prohibited. Under no circumstances shall the Board of Zoning Appeals grant a variance to the minimum lot area and/or minimum lot area per dwelling unit requirements of the Ordinance for the purpose of increasing residential density or residential dwelling unit or lot yield.

9. **Decisions of the Board of Zoning Appeals.** In exercising the above-mentioned powers, the Board of Zoning Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made and issue a written opinion and orders to be enforced by the Zoning Administrator as herein set forth. Decisions of the Board of Zoning Appeals shall be by the majority.

V. Reserved.

W. Reserved.

X. Reserved.

Y. Reserved.

Z. Reserved.

