WINDEWALD NEIGHBORHOOD ZONING ORDINANCE

Prepared by

The Berkeley County Planning Commission
in cooperation with
The Windewald Neighborhood Citizens Advisory Committee

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ARTICLE I: GENERAL PROVISIONS

Section 101. Title

These regulations shall be known and may be cited as the "Windewald Neighborhood Zoning Ordinance." The Zoning Ordinance includes both the text of the regulations and the zoning map.

Section 102. Legislative Authority

These zoning regulations are established in accordance with the provisions of Sections 39 through 71 of Article 24, Chapter 8 of the West Virginia Code, 1931, as amended.

Section 103. Statement of Legislative Intent

These zoning regulations are adopted by the County Court of Berkeley County, West Virginia, for the following purposes:

103.1 To protect the public health, safety, and general welfare of residents of the Windewald Neighborhood;

103.2 To help guide the future growth and development of Berkeley County in accordance with a comprehensive plan of land use and population density that provides for beneficial and convenient relationships among the residential, commercial, industrial, agricultural, and public areas within the county.

103.3 To provide adequate light, air, and privacy for future development; to secure safety from fire and other dangers, and to prevent overcrowding of the land and undue concentration of the population;

103.4 To maintain and protect residential, commercial, industrial, and agricultural areas from encroachment of incompatible uses;

103.5 To provide a guide for public action in the orderly and efficient provision of public facilities and services, and for private enterprise in building development, investment, and other economic activity throughout the county.

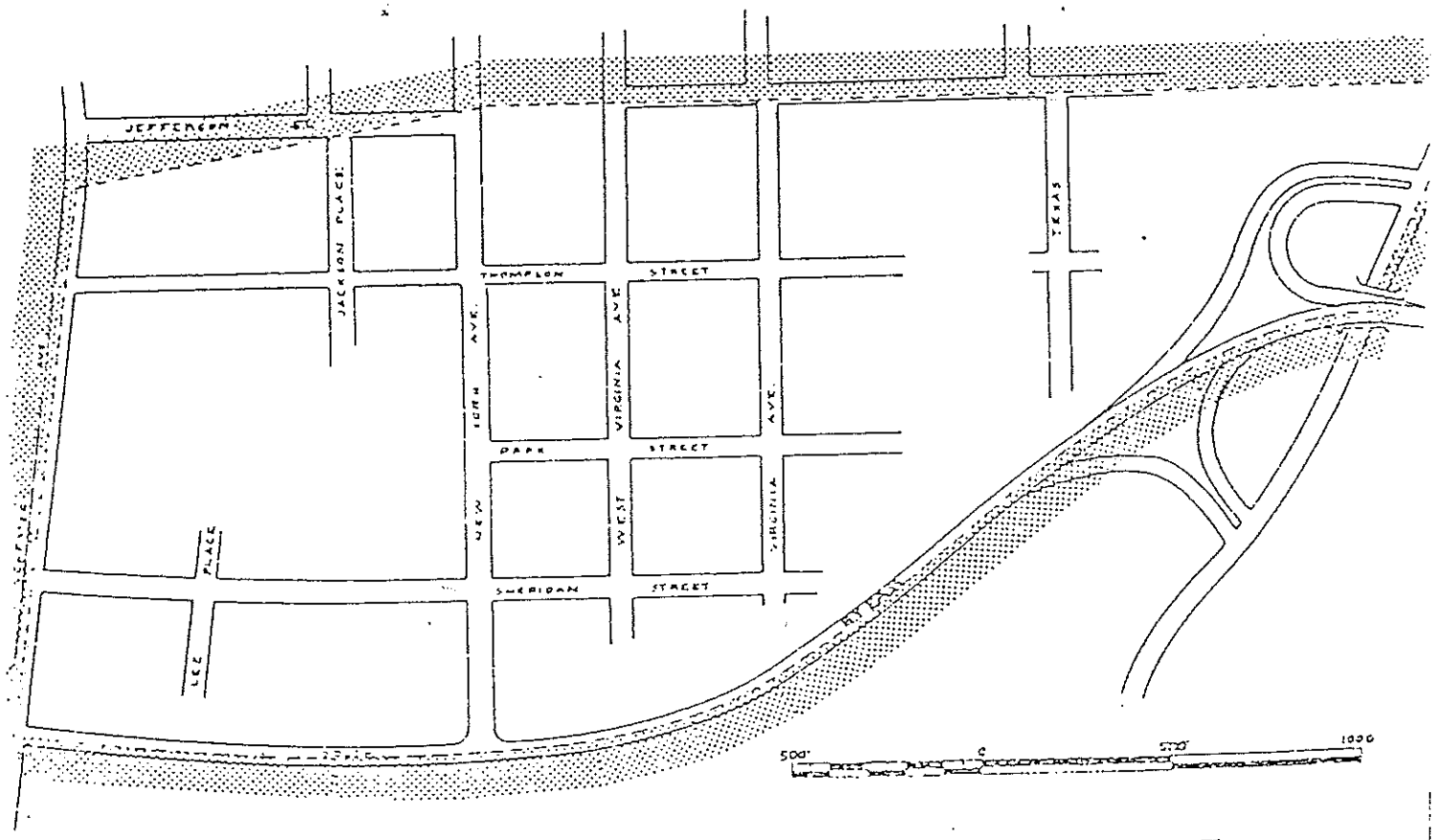
Section 104. Jurisdiction

The provisions of this ordinance shall apply to all land encompassed by the following boundary description:

Beginning at the point of intersection of the centerline of Winchester Avenue (U.S. #11) and the Corporate Limits of the City of Martinsburg; thence easterly along the Corporate

Section 104. (continued)

Limits of the City of Martinsburg to the point of intersection of the centerline of South Queen Street and said Corporate Limits; thence southerly along the centerline of South Queen Street to the point of intersection with the centerline of the Martinsburg South Bypass; thence westerly along the centerline of the Martinsburg South Bypass to the point of intersection with the centerline of Winchester Avenue (U.S. #11); thence northerly along the centerline of Winchester Avenue (U.S. #11) to point of beginning.



THE WINDEWALD NEIGHBORHOOD ZONING DISTRICT

ARTICLE II. DEFINITIONS

Section 201. General

For the purposes of this ordinance, certain terms or words used herein shall be interpreted as follows:

The word person includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. The word shall is mandatory, the word may is permissive. The words used or occupied include the words intended, designed, or arranged to be used or occupied. The word lot includes the words plot or parcel. Words or terms not specifically defined below shall have the definition provided in a standard dictionary.

Section 202. Accessory Use or Structure: A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Section 203. Agent: Any person, other than the subdivider, who, acting for the subdivider, submits to the commission plats for the purpose of obtaining approval thereof.

Section 204. Agricultural Use: Any use which involves the tilling of soil, the growing of crops or plant growth of any kind, or the raising of livestock or poultry for profit. "For profit" means in excess of what a family would normally grow or raise for its own use or consumption, and shall include the processing and retail sale, in a farm produce stand, or otherwise on the premises, of the products produced on the farm.

Section 205. Alley: A public highway which is a narrow passage or way, less in size than a street, and which is not designed for general travel; which is used primarily as a means of access to the rear of residences and business establishments and which, generally, affords only a secondary means of access to the property abutting along its length.

Section 206. Area

206.1 Area, gross: All area within a subdivision or land development plat including that intended for residential use, steep slopes, streets and alleys, commercial and industrial use, off-street parking spaces, and recreational sites. Areas reserved for county schools and/or parks, highways, wetlands, and floodplain areas not qualified as subdivision recreational sites, shall be excluded from the gross area calculation.

206.2 Area, Net: Land area exclusive of streets and other public space.

206.3 Area, Building: The horizontal projected area of a building and its accessory buildings, excluding roof overhangs and uncovered steps and porches. All horizontal measurements shall be made between exterior faces of walls.

206.4 Area, Floor: The sum of the gross area of the several floors of a building, measured from the exterior faces of walls. Floor area does not include cellar space used for storage, heating, and other miscellaneous equipment, or attic space with less than eight feet headroom.

Section 207. Apartment House: See "Dwelling, Multiple-Family."

Section 208. Automobile

208.1 Automobile Service Station: A building, lot, or both, where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where automobile servicing and minor repairs are provided. Uses permissible at a service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations. A service station is not a repair and service garage nor a body shop.

208.2 Automobile Parking Lot or Garage, Commercial: A lot or building or portion thereof, other than an automobile sales lot, held out or used for the storage or parking of six or more motor vehicles for a consideration, where service or repair facilities are not permitted. Such parking lot or garage shall not be considered an accessory use; nor shall it be used for the storage of dismantled or wrecked vehicles, parts thereof, or junk.

208.3 Automobile Repair and Service Garage: A building in which the business of general motor vehicle repair and service is conducted, but excluding junk and/or auto wrecking business. See also "Automobile Service Station."

208.4 Automobile Sales Lot: A lot arranged, designed, or used for the storage and display for sale of any motor vehicle or any type of trailer provided the trailer is unoccupied, and where no repair work is done except minor incidental repair of automobiles or trailers displayed and sold on the premises.

Section 209. Block: A piece or parcel of land entirely surrounded by streets or highways, railroad rights-of-way, parks, streams and other bodies of water, steep slopes, cemeteries and corporate boundary lines of a city, or a combination thereof.

Section 210. Board: The Berkeley County Board of Zoning Appeals.

Section 211. Boardinghouse: A residence in which, for compensation, lodging or meals, or both, are furnished to not more than nine guests. A boardinghouse shall not be deemed a home occupation.

Section 212. Buildable Area: The portion of a lot remaining after required yards have been provided.

Section 213. Building: A structure which is designated and suitable for the habitation or shelter of human beings or animals, or the shelter or storage of property, or for the use and occupation for some purpose of trade or manufacture and is bounded by either open area or the lot lines of a zoning lot.

Section 214. Building, Height of: The vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of roof surface of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof; except that, if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the street line thirty-five feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building.

Section 215. Building Line: A line drawn to a lot line at a distance therefrom equal to the depth of a required yard.

Section 216. Clear Sight Triangle: An area of unobstructed vision at street intersections defined by lines of sight between points at a given distance from the intersection of the centerlines of streets.

Section 217. Clerk of the County Court: The Clerk of the County Court of Berkeley County, West Virginia.

Section 218. Commission: The Berkeley County Planning Commission, (Berkeley County, West Virginia).

Section 219. Comprehensive Plan: The plan for the development of the area within the jurisdiction of the Berkeley County Planning Commission, adopted by the Planning Commission and the County Court, including amendments thereto.

Section 220. Community Facilities: Existing, planned and proposed parks, playgrounds, schools, and other public lands and buildings of the county.

Section 221. County: Berkeley County, West Virginia.

Section 222. County Court: The County Court of Berkeley County, West Virginia.

Section 223. Crosswalk, Path, or Walkway: An easement which cuts across a block to facilitate access to adjacent streets and properties by persons.

Section 224. Dedication: The deliberate setting aside and appropriation of land by its owner for any general or public uses, reserving to himself no other rights than such that are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

Section 225. Department of Health: The West Virginia State Department of Health.

Section 226. Developer: An individual, partnership, or corporation (or agent therefore) that undertakes the responsibility for any or all of the activities covered by these regulations, particularly the drawing up of a subdivision or land development plat showing the layout of the land and the improvements involved therein. Inasmuch as the subdivision or land development plat is merely the necessary means to the end of assuring a satisfactory development, the term "developer" includes the term "subdivider", even though the personnel involved in successive stages of the project may vary.

Section 227. District: The zoning district or use district defined in this ordinance.

Section 228. Drainage Facility: Any ditch, gutter, pipe, culvert, storm sewer or other structure designed, intended, or constructed for the purpose of diverting diffused waters from or carrying surface waters off streets, public rights-of-way, parks, recreational areas, or any part of any subdivision or land development or contiguous land areas.

Section 229. Drainage Plan: A plan showing all present and existing diffused surface and subsurface drainage conditions as described by grades, contours, and topography with proposed methods and facilities to collect and convey said drainage.

Section 230. Driveway: A minor vehicular right-of-way providing access between a street and parking area or garage within a lot or property.

Section 231. Dwelling

231.1 Dwelling: A building containing one or more dwelling units. The term "dwelling" or any combination thereof shall not be deemed to include hotel, rooming house, motel, clubhouse, hospital or other accommodations used for more or less transient occupancy.

231.2 Dwelling, Detached: A building containing only dwelling units surrounded by yards or other open area on the same zoning lot.

231.3 Dwelling, Group: A building group consisting only of dwellings occupying a parcel of land in one ownership and having any yard or service area in common.

231.4 Dwelling, Multiple-Family: A building containing three or more dwelling units (an apartment house).

231.5 Dwelling, Semi-detached: One of two buildings, arranged or designed as dwellings located on abutting lots, separated from each other by a party wall, without openings, extending from the cellar floor to the highest point of the roof along the dividing lot line, and separated from any other building or structures by space on all sides.

231.6 Dwelling, Single-Family: A building containing not more than one dwelling unit and not occupied by more than one family.

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

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

231.9 Dwelling Unit: One or more rooms in a residential building or in a mixed building, which are arranged, designed, used or intended for use by one or more persons living together and maintaining a common household, and which include lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

Section 232. Easement: A right and privilege a person has to use the lands of another for a specific purpose and is distinct and separate from the ownership of the soil itself. The definition includes both affirmative and negative type easements.

Section 233. Erosion: The wearing away of surface materials by the action of natural elements.

Section 234. Family: One or more persons occupying a single housekeeping unit and using common cooking facilities; no such family shall contain over five persons unless all members are related by blood or marriage.

Section 235. Farm: An area of land not less than five acres in size used for agricultural use as defined in this section.

Section 236. Flood Areas

236.1 "Floodplain" is that area which would be inundated by storm water run-off equivalent to that which would occur from a rainfall of one hundred (100) year frequency.

236.2 "Floodway" is the channel of a stream and those portions of the floodplain adjoining the channel that are required to carry and discharge the flood water or flood flows of any river or stream.

236.3 "Floodway Fringe Area" is that portion of the floodplain outside the floodway but within the one hundred (100) year floodplain.

Section 237. Frontage: The length of the front lot line of a zoning lot abutting a public street, road, or highway, or rural right-of-way.

Section 238. Home Association: An incorporated, nonprofit organization operating under recorded land agreements through which: (a) each lot and/or home owner in a planned unit or other described land area is automatically a member and (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the Home Association's activities, such as common property maintenance.

Section 239. Home Occupation: Any use customarily conducted entirely within a dwelling by the inhabitants, which use is clearly incidental and secondary to the residential use of the building and does not change the character thereof or have any exterior evidence other than a sign as provided for in these regulations, and, in connection with which no stock in trade or commodity sold is kept on the premises. In connection with a home occupation, it shall not be permitted to produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects.

Home occupations include:

(a) Barber and Beauty Parlors.

(b) Fine arts studio.

(c) Professional offices for doctors, dentists, lawyers, musicians, professional engineers or land surveyors, architects or city planners, clergymen, writers.

(d) Teaching of not more than four pupils simultaneously, or, in the case of musical instruction, of not more than two pupils at a time.

(e) Seamstresses, cabinetmakers.

(f) Real estate or insurance agents.

However, home occupations shall not include:

(a) Antique shops.

(b) Boarding or rooming houses or tourist homes.

(c) Commercial repair or storage of motor-powered vehicles.

(d) Commercial stables, kennels, and nurseries.

(e) Dance studios.

(f) Mortuary establishments.

(g) Restaurants or tea rooms.

Section 240. Illegal Use: Any use, whether of a building or other structure or of a tract of land, in which a violation of any provision of this ordinance has been committed or shall exist.

Section 241. Improvements: Any additions to the natural state of the land which increases its value or utility, including pavements, curbs, gutters, sidewalks, crosswalks, water mains, sanitary and storm sewers, landscaping and other appropriate facilities or plantings.

Section 242. Institution: Any building or open area used only by an educational, religious, medical, charitable, philanthropic, or other essentially nonprofit organization, either public or private.

Section 243. Lot

243.1 Lot: For zoning purposes, as covered by this ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required, and may consist of:

(a) A single lot of record,

(b) A portion of a lot of record,

(c) A combination of complete lots of record, or of complete lots of record and portions of lots of record, or of portions of lots of record.

(d) A parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

The term "lot of record" means the land designated as a separate and distinct parcel of land on a legally recorded subdivision or in a legally recorded deed filed in the Land Records of Berkeley County. A lot shall have its principal frontage on a public street or way, except where permanently established access easements, approved by the Planning Commission, are provided, as in a town house development or planned community development. The frontage requirement shall not apply to farm dwellings or vacation dwellings in isolated areas.

243.2 Lot Area: The area of a horizontal plane bounded by the front, side, and rear lot lines, excluding any within a street right-of-way, future street right-of-way, and floodplains, but including the area of any easement.

243.3 Lot Area Per Dwelling Unit: That portion of the lot area required for each dwelling unit located on a zoning lot.

243.4 Lot Coverage: That portion of a zoning lot which, when viewed directly from above, would be covered by a building or any part of a building. However, any portion of such building covered by a roof which qualifies as open space shall not be included in lot coverage.

243.5 Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements of corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under Yards in this section.

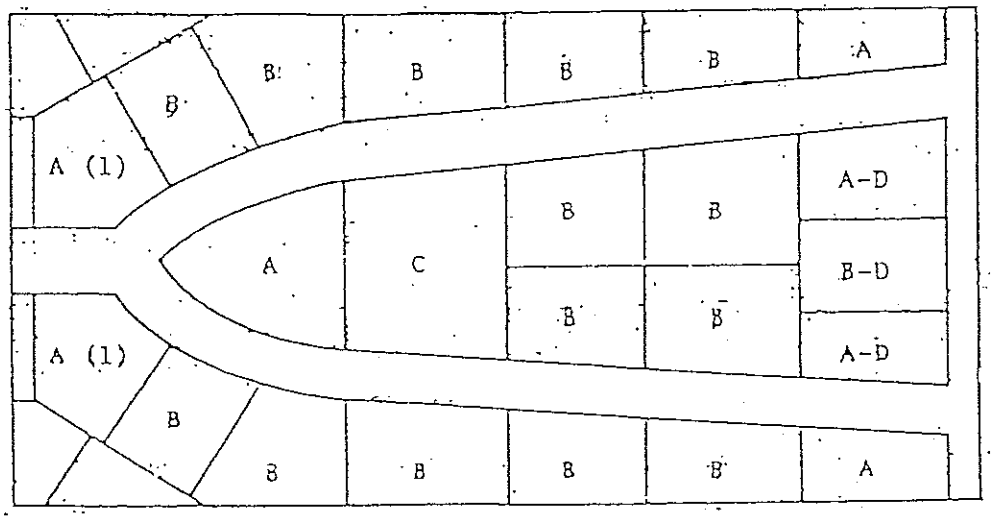
243.6 Lot Line: A line dividing one lot from another or from a street or other public place.

243.7 Lot Measurements:

(a) Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

(b) Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided however that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80 per cent of the required lot width except in the case of lots on the turning circle of culs-de-sac, where the 80 per cent requirement shall not apply.

243.8 Lot Types: The diagram which follows illustrates terminology used in this ordinance with reference to corner lots, interior lots, reversed frontage lots and through lots



In the diagram above, A=corner lot, defined as a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees. See lots marked A(1) in diagram.

B=interior lot, defined as a lot other than a corner lot with only one frontage on a street other than an alley.

C=through lot, defined as a lot other than a corner lot with frontage on more than one street other than an alley. Through lots with frontage on two streets may be referred to as double frontage lots.

D=reversed frontage lot defined as a lot to which the frontage is at right angles or approximately right angles to the general pattern in the area involved. A reversed frontage lot may also be a corner lot or an interior lot (see A-D and B-D in the diagram). A reversed frontage lot is also a lot extending between and having frontage on a freeway, arterial, or collector street and a local street, and with vehicular access solely from the latter.

Section 244. Mobile Home

244.1 A portable dwelling unit designed and built to be towed on its own chasis, comprised of frame and wheels, connected to utilities, and designed without permanent foundation for year-round living. A unit may contain parts that may be combined, folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity. Any such vehicle or structure shall be deemed to be a mobile home whether or not the wheels have been removed therefrom and whether or not resting upon a temporary or permanent foundation. This is not to include a sectional or modular home.

A travel trailer is not a mobile home. See "Travel Trailer."

244.2 Mobile Home Development: A contiguous parcel of land subdivided into individual lots, each lot individually owned and intended or utilized as the site for placement of a mobile home and its facilities.

244.3 Mobile Home Lot: A parcel of land within a mobile home park or mobile home development designated for the placement of a single mobile home and for the exclusive use of its occupants and guests.

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

244.5 Mobile Home Stand: That part of a mobile home lot which has been reserved for the placement of the mobile home, appurtenant structures or additions.

Section 245: Modification: A change in form, power, duties, purposes or objects without changing the identity or mode of creation of the Ordinance.

Section 246. Nonconforming: Any lawful use, whether of a building or other structure or of a tract of land, which does not conform to the applicable use regulations of the district in which it is located, either on the effective date of this Ordinance or as a result of any subsequent amendment thereto.

A nonconforming use shall result from failure to conform to the applicable district regulations on either permitted uses or performance standards. However, no existing use shall be deemed nonconforming solely because of any of the following:

(a) The existence of less than the required accessory off-street parking spaces or loading berths, or

(b) The existence of nonconforming accessory signs.

Section 247. Owner: Any individual, firm, association, syndicate, co-partnership, corporation, trust, or other legal entity having sufficient proprietary interest in the land sought to be subdivided or developed to commence and maintain proceedings to subdivide or develop the same under these regulations.

Section 248. Parking

248.1 Parking Area: An off-street area containing one or more parking spaces, with passageways and driveways appurtenant thereto. In general, there shall be an average of at least three hundred and fifty square feet of parking area per parking space to assure adequate aisle widths.

248.2 Parking Lot: See "Automobile Parking Lot, Commercial."

248.3 Parking Space: An off-street space available for the parking of one motor vehicle on a transient basis and having a minimum width of ten feet, and an area of not less than 200 square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct usable access to the street.

Section 249. Person: Any individual, firm, association, syndicate, co-partnership, corporation, trust, or other legal entity recognized by law as subject to rights and duties.

Section 250. Philanthropic Institution: A private nonprofit organization which is not organized or operated for the purpose of carrying on a trade or business, no part of the net earnings of which inures to the benefit of any member of said organization or individual.

Section 251. Planning Commission: The Berkeley County, West Virginia, Planning Commission, and referred to herein as the Berkeley County Planning Commission.

Section 252. Private Club, Social: A private social club includes lodges and similar private groups with bona fide limited membership. Such clubs may be permitted in residential areas as a special exception.

Section 253. Private Club, Commercial: A private club established to conform with the West Virginia Alcoholic Beverage Law, operating primarily for the sale of alcoholic beverages, with membership open to the public for a nominal fee. Such clubs have the characteristics of bars and cocktail lounges and should be located in commercial districts.

Section 254. Private, Non-profit Recreation Area: A recreation area constructed, maintained and operated by a private, non-profit corporation or other legally constituted body created for the sole purpose of constructing, maintaining, and operating a recreation area in the community where corporate members reside.

Section 255. Private Recreational Facilities: A facility such as a swimming pool, tennis court, beach, boat dock or basketball court which is an accessory use located on a single-family or two-family residential zoning lot, the use of which is restricted to the occupants of the principal use and guests for whom no admission or membership fees are charged.

Section 256. Salvage: Old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machines or motor vehicles, or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other ferrous or nonferrous materials.

Section 257. Salvage Yard: Any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard. Any collection of three or more automobile hulks, or combination of ferrous or nonferrous materials together with one or more automobile hulks, or a collection of any salvage contained in an area more than one-quarter acre in size, shall be considered a salvage yard.

Section 258. Sanatorium or Sanitarium: An institution for the treatment and care of the chronically ill or for patients requiring long-term therapy, rest and recuperation, including institutions primarily for the treatment and care of feeble-minded and mental patients, epileptics, alcoholics or drug addicts.

Section 259. Sign: Any structure, part thereof, or device attached thereto or painted or represented thereon or any material or thing, illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, insignia, device, trademark, or other representation used as, or in the nature of, an announcement, advertisement, direction, or designation of any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise or industry, which is located upon any land, on any building excluding the windows thereof in such manner as to attract attention from outside the building. The flag, emblem, insignia, poster, or other display of a nation, political unit, educational, charitable, religious, or similar group, campaign, drive, or event shall not be included in this definition.

259.1 Sign, Business: An accessory sign directing attention to a business, commodity, service, or other activity conducted on the premises upon which the sign is located.

259.2 Sign, Outdoor Advertising: Sign, including billboard, which directs attention to a business, commodity, service, entertainment, or other activity, conducted, sold, or offered elsewhere than on the premises upon which the sign is located.

Section 260. Special Exception: A use that would not be appropriate generally or without restriction throughout the district, but which, if controlled as to number, area, location, or relation to the neighborhood, would be compatible with the public welfare. Such uses may be permitted in such district as special exceptions, if specific provision for such special exceptions is made in this zoning ordinance. See Article VI and VII.

Section 261. Street Line: A line defining the edge of a street right-of-way and separating the street from abutting property or lots. If, on the master plan of streets and highways duly adopted by the County, a street is scheduled for future widening, the proposed right-of-way line shown on the master plan shall be the street line.

Section 262. Structure: Any man-made or man-placed object which extends six inches or more above the ground.

Section 263. Subdivision: The division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development, or if a new street is involved, any division of a parcel of land, provided that a division of land for agricultural or natural resource purposes into lots or parcels of more than five acres and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Section 264. Subdivision, Cluster: A subdivision in which the minimum lot size required by this Ordinance is reduced, subject to site plan review by the Planning Commission. The gross density of the entire development remains approximately the same as for a conventional subdivision in the same zoning district. The additional land gained by reduction of individual lots is consolidated into common open space areas.

Section 265. Swimming Pool, Commercial: A swimming pool and/or wading pool, including buildings necessary and incidental thereto, operated for profit or as an accessory to a commercial use.

Section 266. Swimming Pool, Community: A swimming pool and/or wading pool, including buildings necessary and incidental thereto, owned and operated by the members of a club, cooperative or association, whether incorporated or unincorporated, providing that it is not organized for profit and the right

Section 266. (continued)

to use said pool is restricted to the families of members and their guests. A pool as an accessory use in connection with any multiple dwelling(s) established in compliance with the requirements of this Ordinance and maintained for the sole use of tenants and their guests, shall be deemed to be a community pool under these regulations.

Section 267. Tourist Home: A building (except a hotel or motel) containing not over nine (9) guest rooms, where, for compensation, lodging, meals or both are provided for transient guests. A tourist home is not considered an accessory use or a home occupation.

Section 268. Travel Trailer: A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified Travel Trailer by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight feet, and a body length not exceeding 32 feet.

For the purpose of this Ordinance, the term Travel Trailer shall include the following similar types of vehicles:

(a) Pick-Up Coach A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

(b) Motor-Home. A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

(c) Camping Trailer: A canvas, folding structure, mounted on wheels and designed for travel, recreation and vacation use.

268.1 Travel Trailer Park: A plot of ground designed for and having the required facilities for servicing travel trailers and similar vehicles, and campers.

Section 269. Use. Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

269.1 Use, Accessory - See "Accessory Use.

Section 270. Vacation Lodge: A building or buildings containing guest rooms where, for compensation, lodging and meals are provided, located on a lot at least seventy-five per cent of the land area of which shall be used to provide recreational facilities for the use of its guests. Such recreational facilities may include an 18-hole golf course, swimming pool, tennis courts, and may include bridle paths, hiking trails, and other similar or related facilities, but no outdoor amusement devices other than normal playground equipment.

Section 271. Variance: A relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance is authorized only for height, area and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the district or adjoining district.

Section 272. Yard: A required open space unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided however that fences and walls may be permitted in any yard subject to height limitations as indicated herein.

272.1 Yard Measurements:

(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 point of the side lot line, 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.

272.2 Yard Types

(a) Front Yard: A yard extending between side lot lines across the front of a lot.

(b) Rear Yard: A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and reversed frontage corner lots, there will be no rear yard. In the case of corner lots with normal frontage, the rear yard shall extend from the inner side yard line of the side yard adjacent to the interior lot to the rear line of the half-depth front yard.

(c) Side Yard. A yard extending from the rear line of the required front yard to the rear lot line.

Section 273. Zoning Permit A written statement issued by the Zoning Administrator authorizing buildings, structures or uses in accordance with the provisions of this Ordinance.

ARTICLE III. ESTABLISHMENT OF ZONING DISTRICTS

Section 301. Establishment of Zoning Districts

For the purpose of this ordinance, the area of Berkeley County outside the incorporated areas, generally referred to as Windewald and as specifically defined in Section 104, Jurisdiction, of this ordinance, is hereby established as "The Windewald Neighborhood Zoning District."

Section 302. Official Zoning Map

The Windewald Neighborhood Zoning District as outlined 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. The Official Zoning Map shall be identified by the signatures of the Members of the County Court of Berkeley County, attested by the County Clerk, and bearing the seal of the County under the following words: "This is the Official Zoning Map of Berkeley County referred to in Section 302 of the Windewald Neighborhood Zoning Ordinance," together with the date of adoption of the ordinance.

302.1 Changes in the Official Zoning Map: If, in accordance with the provisions of this ordinance and Article Twenty-four, Section 47, Chapter Eight of the Code of West Virginia, 1931, as amended, changes are made in zone boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made by the Members of the County Court. The changed zoning district on the map shall be keyed, by appropriate number or symbol, to an entry in an Official Zoning Record Book. The entry shall read as follows: "On (date), by official action of the County Court, the following (change) changes were made in the Official Zoning Map: (brief description of nature of change)," which entry shall be signed by the Members of the County Court and attested by the County Clerk. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the Official Zoning Map. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change has been made on said map.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this ordinance and punishable as provided in this ordinance.

Regardless of the existence of purported copies of the Official Zoning Map which may from time-to-time be made or published, the Official Zoning Map which shall be located in the office of the Zoning Administrator shall be the final authority as the current zoning status of land and water areas, buildings, and other structures in the Windewald Neighborhood Zoning District.

302.2 Replacement of Official Zoning Map. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Members of the County Court may by resolution adopt a new official Zoning Map which shall supersede the prior Official Zoning Map.

The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The Planning Commission shall certify as to the accuracy of the new Official Zoning Map prior to its adoption by the Members of County Court. The new Official Zoning Map shall be identified by the signatures of the Members of County Court, attested by the County Clerk, and bearing the seal of the county under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of the Windewald Neighborhood Zoning District."

Section 303. Interpretation of Zoning District Boundaries

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

303.1 Boundaries indicated as approximately following the center lines of railroads, streets, highways, alleys, or streams shall be construed to follow such center lines.

303.2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

303.3 Boundaries indicated as parallel to or extensions of features indicated above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

303.4 Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered above, the Planning Commission shall interpret the district boundaries.

303.5 If, after use of the above rules and the map, the district classification of any land is in question, it shall be deemed to be in the most restrictive of the adjoining districts.

ARTICLE IV. GENERAL REGULATIONS

Section 401. Application of Regulations

The regulations set by this ordinance shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided, and particularly;

401.1 No building, structure, or land shall hereinafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, or reconstructed, unless in conformity with all the regulations herein specified for this district.

401.2 No building or other structure shall hereafter be erected or altered:

a. to exceed the height;
b. to accommodate or house a greater number of families;
c. to occupy a greater percentage of lot area;
d. to have narrower or smaller rear yards, front yards, side yards, or other open spaces;

than herein required; or in any other manner contrary to the provisions of this ordinance.

401.3 No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

401.4 No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

Section 402. Nonconforming Lots, Uses, and Structures

402.1 Statement of Legislative Intent: The zoning district established in this ordinance is designed to guide the

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than herein required; or in any other manner contrary to the provisions of this ordinance.

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401.4 No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

Section 402. Nonconforming Lots, Uses, and Structures

402.1 Statement of Legislative Intent: The zoning district established in this ordinance is designed to guide the

future use of the county's land by encouraging the development of desirable residential, commercial, and manufacturing areas with appropriate groupings of compatible and related uses and thus promote and protect public health, safety, and general welfare. Within the district established by this ordinance, or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment.

402.11 It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. Such uses are declared by the ordinance to be incompatible with permitted uses in the district. It is further the intent of this ordinance that nonconformities not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited.

402.12 A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited in the district, unless such extension or enlargement is authorized by the Board of Zoning Appeals as a special exception.

402.13 To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

402.2 Nonconforming Lots of Record: Notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements

for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district. Variance of yard requirements shall be obtained only through action of the Board of Zoning Appeals.

402.21 If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance.

402.3 Nonconforming Uses of Land: Where, at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

402.31 No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance, except through action of the Board of Zoning Appeals (see Section 605).

402.32 No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.

402.33 If any such nonconforming use of land is discontinued for any reason for a period of more than 6 months, any subsequent use of such land shall confirm to the regulations specified by this ordinance.

402.4 Nonconforming Structures: Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

402.41 No such structure may be enlarged or altered in a way which increases its nonconformity, except through action of the Board of Zoning Appeals. (See Section 605.)

402.42 Should such structure be destroyed by any means to an extent of more than 75 per cent of its replacement cost at time of destruction as determined by the Zoning Administrator, it shall not be reconstructed except in conformity with the provisions of this ordinance, or as otherwise permitted through action of the Board of Zoning Appeals.

402.43 Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of this ordinance after it is moved, except as otherwise permitted by action of the Board of Zoning Appeals.

402.44 The owner of an existing nonconforming mobile home may replace such mobile home with a newer mobile home on the same lot or mobile home stand provided the replacement does not increase its nonconformity, except through action of the Board of Zoning Appeals. (See Section 605.)

402.5 Nonconforming Uses of Structures: If a lawful use of a structure or of structure and premises in combination exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

402.51 No existing structure devoted to a use not permitted by this ordinance, except dwellings, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located, or except as permitted by action of the Board of Zoning Appeals.

402.52 Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

402.53 If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the Board of Zoning Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the zone than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals, may

require appropriate conditions and safeguards in accord with the provisions of this ordinance.

402.54 Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.

402.55 When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three-year period, the structure, or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.

402.56 Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

402.6 Repairs and Maintenance: On any structure devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of walls, fixtures, wiring or plumbing, provided that the cubic content of the building, as it existed at the time of passage or amendment of this ordinance, shall not be increased.

402.7 Uses Under Exception Provisions Not Nonconforming Uses: Any nonconforming use for which a special exception is permitted as provided in this ordinance shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use.

Section 403. General Lot Requirements

403.1 Lot for Every Building: Every building hereafter erected shall be located on a lot as herein defined. Only one main structure housing a permitted use may be erected on a single lot, unless yard and other requirements of this ordinance shall be met for each structure as though it were on an individual lot.

403.2 Subdivision of a Lot: Where a lot is formed hereafter from part of a lot already occupied by a building, such separation shall be effected in such manner as not to impair conformity with any of the requirements of this ordinance with respect to the existing building and all yards and other required spaces in connection therewith, and no permit shall be issued for the establishment of a land use or the erection of a building on the new lot thus created unless it complies with all the provisions of this ordinance.

403.3 Lot Access Requirement: Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved public street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking. In a town house cluster subdivision or a planned unit development, the lots may face on a common open space, provided that the plan of such development is approved by the Planning Commission. This requirement shall not apply to farm buildings and bona fide, isolated vacation cabins.

403.4 Lots in Two or More Districts: Where a lot in one ownership of record is divided by one or more district boundary lines, the regulations for the less restrictive district may extend not more than 50 feet into the more restricted portion.

403.5 Parts of Lot Not Counted Towards Area Requirements: For any lot created by subdivision subsequent to the adoption date of this ordinance no part of such lot less in width than one-third the minimum requirement for the district shall be counted as part of the required minimum lot area.

Where a portion of a lot is less than one-third the required width at any point, only that part between said narrow portion and the street frontage shall be counted toward the required lot area.

Section 404. General Yard Requirements

404.1 Front Yards for Corner and Through Lots:

404.11 In the case of corner lots which do not have reversed frontage, a front yard of the required depth shall be provided and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

404.12 In the case of corner lots with more than two frontages, the Zoning Administrator shall determine the front yard requirements, subject to the following limitations: 1) at least one front yard shall be provided having the full depth required generally in the district. 2) no other front yard on such lot shall have less than half the full depth required generally

404.13 In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the Zoning Administrator may waive the requirement for the normal front yard and substitute therefor a special yard requirement which shall not exceed the average of the yards provided on adjacent lots.

404.4 Front Yard Exception for Existing Building Alignment: When appropriate, the Zoning Administrator may increase or decrease the depth of the required front yard so that such front yard shall approximate the average depth of the front yards of the dwellings on adjoining lots on each side, or if there be no such adjoining dwellings, shall approximate the average depth of the front yards of the nearest dwellings on the same side of the street within 500 feet.

404.5 Measurement of Front Yard Depths: Front yard depths, and side yards for corner lots, shall be measured from the road right-of-way line. For purposes of such measurement, no local road shall be considered as having a right-of-way less than 50 feet wide and no major state road less than 60 feet wide. This provision shall not be construed as requiring the dedication of any property to the state. After adoption of an official detailed plan by the state or county for road widening or relocation, the right-of-way so established shall apply.

404.6 Projections into Yard Space: Steps, terraces, decks, carports, bay windows, fire escapes, balconies, open porches, and other architectural features, may extend into required yard areas not more than nine (9) feet, provided that no such projection shall be less than five (5) feet from a side lot line. Enclosing of such projections into yard areas is prohibited.

Section 405. Court Requirements

When a court is provided for the purpose of furnishing light and air to rooms in which persons are to work, live, or sleep, the minimum dimensions shall be as follows:

405.1 Minimum Width: For residential buildings other than a single-family dwelling, the minimum width shall be the sum of the heights of the opposite building walls, but not less than forty (40) feet. For non-residential buildings, two-thirds the sum of opposite building walls, but not less than thirty (30) feet.

405.2 Minimum Depth: One and one-half times the width.

Section 406. Height Limits

Height limits are established for different uses and types of development permitted in the district to prevent the construction of structures which would block light and air from adjacent properties, and which, because of their height, would be incompatible with surrounding development.

404.2 Fences, Walls, Hedges and Vegetations:

404.21 In any required front yard, fences or walls may be permitted to a reasonable height provided they do not unduly impede vision across such yard. (see Section 404.3)

404.22 Except in required front yards, as indicated above, fences, walls, and hedges are permitted in a yard or along the edge of the yard.

404.23 In town house and planned unit developments, requiring site plan review, the Planning Commission may permit fences, walls, or hedges to a reasonable height in the front yard when the site and buildings are designed to accommodate such enclosures.

404.3 Visibility (Sight Distances) at Intersections: Sight distances at intersections shall be provided to allow approaching drivers sufficient time to stop. Each vehicle shall be visible to the other driver when each vehicle is located on the street centerline and at specified distances, shown below, from the point of intersection of the street centerlines.

Clear sight triangles shall be provided at all intersections and no building, structure, fence, wall, grade or planting higher than two and one-half feet above the centerline of the streets shall be permitted within such sight triangles.

a. Clear sight triangles of fifty (50) feet measured along street centerlines from their points of junction shall be provided at all intersections of Lanes and Places.

b. Clear sight triangles of seventy-five (75) feet measured along street centerlines from their points of junction shall be provided at all intersections of Collectors and Subcollectors.

c. For intersections of Collector streets with Essential Arterials, Feeders, or Trunklines, a greater sight distance is required and will be determined by Site Plan Review.

d. For intersections of streets having an ADT of 200 or less, or having a 20 mile-per-hour speed limit, the clear sight triangle requirement may be modified following Site Plan Review.

e. This rule, relative to plantings, shall not apply to existing trees, provided that no branches are located closer than six feet to the ground.

This section establishes height limits for different uses and types of development and provides for construction of taller buildings, under appropriate conditions, as special exceptions.

406.1 Schedule of Height Limits

Type of Use or Development	Height Limit
Single-Family Detached Dwelling	35 Feet
Single-Family Semidetached Dwelling	35 Feet
Two-Family Dwelling	35 Feet
Multiple-Family Dwelling	40 Feet*
Town House Development	40 Feet*
Planned Unit Development (Cluster Housing)	40 Feet*
Other permitted uses	35 Feet*

*Height may be increased as a special exception, as outlined in Section 603.

406.2 Height Limits for Public and Semi-Public Buildings: Schools, churches, hospitals and similar public and semi-public buildings shall conform to the height limits for the district, except that greater heights may be allowed as a special exception, as outlined in Section 603.21.

406.3 Exemptions from Height Limits: The height limits of this ordinance do not apply to spires, belfries, cupolas, chimneys, antennas, water tanks ventilators and other structures above roof level necessary to the operation of a permitted use.

Section 407. Public Utility Use or Structure

Water, sewer, electric, gas and communications lines, and necessary incidental equipment such as repeaters, transformers, switches, pumps, and regulators (when such equipment is located on the lines) but not administration, construction, maintenance or storage use, are permitted and shall not be subject to lot, yard, height, and lot coverage requirements. All other public utility facilities are permitted only as special exceptions when approved by the Board of Zoning Appeals, which shall provide for adequate safeguards to the adjoining properties.

Section 408. Accessory Structures and Uses:

408.1 Legislative Intent: Accessory structures and uses, of a nature customarily incidental and subordinate to the principal use or structure, are permitted as regulated in this district, as long as such accessory activities are not in conflict with other uses permitted in this district.

408.2 Accessory Structures: Accessory structures include garages, tool sheds, storage buildings, barns, some signs as outlined in Section 412, and other similar structures. A garage or similar building having any part of a wall in common with a dwelling is considered part of the main building and not an accessory building. A mobile home is not considered an accessory structure.

408.21 Height and Bulk Requirements: Accessory structures shall be subject to the same height and area requirements as principal structures. The area of accessory structures shall be included in calculations of lot coverage.

408.22 Location: No accessory building shall be erected in any required yard, other than the rear yard, except that, where problems of excessive slope prevent placing a garage back of the front building line, the Board of Zoning Appeals may allow construction of a garage in the front yard space. No accessory building shall be erected less than five (5) feet from the rear lot line or less than five (5) feet from any other building on the lot.

408.3 Accessory Uses: Customary accessory uses permitted in this district include the following:

(a) Accommodations for bona fide servants and guests;

(b) Keeping of domestic animals, but not for sale or hire. A commercial stable or kennel is not an accessory use;

(c) Recreation facilities, such as swimming pools and tennis courts, located on residential use lots, provided that the use of such facilities shall be restricted to occupants of the principal use and guests for whom no admission or membership fees are charged;

(d) Domestic storage in a shed, tool shed or similar building or other structure;

(e) Home occupations and professional offices which are in the same building in which the tenant is an occupant and which employ no more than two assistants, and which do not change the residential character and appearance of such dwelling.

(f) The renting of rooms by a resident family. Table board may or may not be provided;

(g) Off-street parking space;

(h) Accessory signs;

(i) Accessory radio or television aerials.

408.4 Determination of Accessory Uses and Structures: In cases involving an accessory use or structure not listed above, the Zoning Administrator shall determine whether it is permitted.

Section 409. Off-street Parking

409.1 Legislative Intent: Permanent off-street automobile parking space shall be provided as required by the schedules in Section 409.4 for all new structures or uses and any enlargement of existing structures or uses. Structures and uses in existence or under construction on the date the zoning ordinance first becomes effective shall not be subject to parking requirements. However, any parking facilities now existing 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. When a structure or use which existed prior to the effective date of the zoning ordinance shall undergo any increase in intensity of use in the number of dwelling units, floor area, seating capacity, number of employees or other unit of measurements specified hereinafter for required parking facilities or from other causes, and when the increase would result in a requirement for additional parking facilities through application of the Schedule of Requirements of this section, additional parking facilities shall be provided on the basis of the total units of measurements of the new use, or of the alteration or expansion of the existing use.

409.2 Application Procedure: No application for a zoning permit or use and occupancy permit shall be approved unless there is included with the plan for such building, improvement, or use, a plot plan showing the required space designated for off-street parking. The plot plan shall clearly show the size and location of parking spaces, the width and arrangement of access driveways, and arrangement of walls, fences and screen planting.

409.3 Design of Parking Areas

409.31 Size of Parking Space: One automobile parking space shall consist at least of two hundred (200) square feet of area, with a minimum width of ten (10) feet. In addition, adequate interior driveways and entrance and exit driveways shall be provided to connect each parking space to the adjoining street. Parking spaces shall be clearly marked.

409.32 Setbacks and Landscaping: Parking areas shall be subject to the same front yard requirements as a building in this district, except that on the street side of a corner lot, no side yard of more than ten feet shall be required for a parking area. The required yard areas shall be set off from the parking area by a curb or bumper, and the yards shall be appropriately landscaped.

409.33 Buffer Strips: When a parking area adjoins a residential use, a screening fence or wall at least five feet high, or dense evergreen planting at least five feet high, shall be maintained along the side and/or rear lot lines of the parking area.

409.34 Lighting: When lighting of such parking area is provided, installations shall be arranged so as not to reflect or to cause glare into abutting residential lots or adjacent streets.

409.35 Surfacing and Drainage: All parking areas shall be surfaced with materials which will eliminate problems of dust and mud and shall be so drained as to prevent erosion damage to abutting properties or streets.

409.36 Entrances: On corner lots, entrances to parking areas shall be set back at least 20 feet from the point of intersection of property lines. No entrance or exit shall exceed 25 feet in width.

409.37 Location of Parking Areas: In the case of dwellings, parking spaces shall be provided on the same lot as the dwelling.

All automobile parking compounds shall be located on the site or conveniently near, and normally not more than three hundred (300) feet distant from the main building or use to which such parking facilities are appurtenant, provided that:

(a) The land so used immediately adjoins or is directly across an alley or street from the use or building for which such off-street parking space is required;

(b) No charge shall be made for the use of said parking space;

(c) Only passenger vehicles (excluding buses) shall be permitted to use said parking spaces;

(d) No service of any kind shall be extended to persons occupying vehicles in said parking spaces; nor shall such space be used for automobile service or repair;

(e) When land used for such off-street parking purposes abuts the side and/or rear line of a lot in residential use, buffer strips shall be provided as outlined in Section 409.33.

(f) Additional protective conditions may be imposed in connection with the use of such residential land for off-street parking when, in the judgment of the Planning Commission, such are deemed necessary or desirable for the protection, convenience, and quiet of surrounding properties.

409.4 Schedule of Off-Street Parking Requirements: The following are minimum requirements and may be increased where necessary as a condition of site plan approval or special exception approval, as provided in Articles VI and VII. Other uses operated in association with the uses listed must be provided for in addition.

Off-street parking requirements for uses not listed in this schedule will be determined through site plan review.

Types of Use	Number of Spaces	Unit of Measurement
Residential		
One-family detached, One-family semidetached, Two-family detached	2	Dwelling Unit
Transient Housing		
Motel or Hotel	1.1	Room or suite
Tourist Home	1	Room
Rooming and/or Boarding House	2	3 guests
Public & Semipublic		
Church	1	4 seats
Cultural Facility	1	400 sq.ft. floor area
Business & Personal Services		
Funeral Home	10	Per public room, plus one space for each two employees
Business & Professional Office	1	200 sq.ft. floor area
Uses Associated with Motel or Hotel		
Restaurants or other places serving food, beverages or refreshments	1	5 seats, plus one per each two employees, or one per each 200 sq.ft. of floor area, whichever is greater.

409.41 When the number of spaces calculated in accordance with these regulations results in a number containing a fraction, the number shall be rounded off to the nearest whole number.

409.42 The off-street parking requirements for two or more uses may be satisfied by providing a common facility containing the sum of the number of spaces required for each of the uses.

409.43 Reasonable and appropriate off-street parking requirements for structures and land uses which do not fall within the categories listed above, shall be determined in each case by the Zoning Administrator, who shall consider all factors entering into the parking needs of each such use.

409.5 Modification of Parking Requirements

409.51 Hardship: In cases of development or redevelopment of properties where application of the Schedule of Parking Requirements would create undue hardship, the applicant may appear before the Board of Zoning Appeals to present a modified plan for the provision of off-street parking space The Board is authorized to approve such plans, when appropriate, after referral to the Planning Commission.

409.52 Joint Use of Parking Areas: In cases of development of properties where several uses could effectively utilize the same parking area, because of different periods of peak demand, the applicant may appear before the Board of Zoning Appeals to present a modified parking plan. An example would be a church adjacent to a library or school where peak use hours would not coincide. The Board is authorized to approve such plans, when appropriate, after referral to the Planning Commission. The Board shall require written evidence of an agreement for joint use and may impose any necessary additional conditions.

Section 410. Regrading

The excavation of natural materials or filling of land shall be permitted without a Special Exception permit only to a degree necessary to permit construction of buildings, streets, or accessory uses for which a zoning permit or a location improvement permit under subdivision regulations has been granted. Materials used for fill shall be natural materials only, such as sand, gravel, or dirt, and shall not consist of rubbish, refuse, garbage, or decomposable animal or vegetable materials. Regrading shall be undertaken at a time which is customary to the overall construction timetable of similar-type projects. Any excavation or filling which is not clearly necessary and incidental to an approved construction project shall require a Special Exception permit.

Section 411. Provision of Water and Sewerage Systems

411.1 Approved Water and Sewerage Systems Required: All new development in Berkeley County is to be provided with approved water and sewage disposal systems, either through:

(a) connection with public utility systems;

(b) connection with approved private systems; or

(c) use of an approved individual water supply (wells) and sewage disposal system (septic tanks or similar methods) as approved by the West Virginia Department of Health and/or the Berkeley County Health Department.

No zoning permit shall be issued until the applicant indicates that sufficient provision has been or will be made for water supply and sewage disposal, and that these provisions have been approved by the West Virginia Department of Health and/or the Berkeley County Health Department. No zoning use and occupancy permit is to be issued until the appropriate Health Department certifies that approved systems for water supply and sewage disposal have been provided.

411.2 Minimum Lot Area When Water and/or Sewerage Facilities Are Lacking: Notwithstanding the minimum lot area requirements set forth in Article VI of this ordinance, the minimum lot size of any lot to be served by an individual water supply (wells) and/or individual sewage disposal system (septic tank) shall be determined for each lot for each type of use permitted by the suitability of the soils for the use of septic tank filter fields. This determination shall be made by the State of West Virginia Regulatory Agency having jurisdiction to determine minimum lot areas for the use of septic systems when public water and/or public sewage facilities are lacking.

The Zoning Administrat~~ion~~or shall not issue zoning permits until the minimum lot size has been determined and approved.

If a location improvement permit has been issued by the Planning Commission under subdivision regulations, a zoning permit is not required.

Section 412. Signs

412.1 General Provisions: No sign shall be erected, hung, placed, or painted, except as provided in this Section. No sign erected before the enactment of this ordinance shall be structurally altered or moved except in accordance with this ordinance. No permit shall be required for the repainting or repairing of a sign which conforms to the provisions of this ordinance.

412.11 Outdoor Advertising Signs: Freestanding, outdoor advertising signs (billboards) are not permitted in this district.

412.2 Zoning Permits for Signs: No sign shall be erected or displayed until the sign has been approved by the Zoning Administrator and a zoning permit issued, except as permitted in Section 412.3. Application for permits shall be submitted on forms provided at the office of the Zoning Administrator. Each application shall be accompanied by plans showing the sign area, size, character, and color of letters; designs proposed; method of illumination, if any; proposed location; and, if a projecting business sign, proposed method of fastening such sign to the building or structure. The permit number and date of issuance shall be affixed to each sign in a conspicuous manner. Signs erected without conformance to these standards may be removed on order of the Zoning Administrator.

412.3 Signs Permitted Without a Permit: The types of signs listed below are allowed without a permit, subject only to the requirements outlined for each type of sign and the construction and lighting standards of this Section:

(a) Incidental Identification Sign, indicating the name or number of the building or premises or the accessory use of a dwelling for a home occupation or for professional purposes. Such sign shall not exceed two (2) square feet in area;

(b) Construction Signs, identifying the contractors, engineers, or architects on building projects under construction, limited to a total area for all such signs of 150 square feet. The signs shall be confined to the construction site and removed when construction is completed;

(c) Temporary Real Estate Signs, not to exceed six (6) square feet for a tract over two acres;

(d) Temporary Subdivision Identification Signs, not exceeding fifty (50) square feet in area, for each subdivision of five lots or more;

(e) Temporary Subdivision Approach Signs, not to exceed twenty (20) square feet. Each subdivision limited to four such signs.

(f) Political Campaign Signs;

(g) Street Banners advertising a public event;

(h) Temporary Business Signs, not to exceed twenty (20) square feet, and not to be displayed longer than fifteen days;

(i) One Window Sign, provided that such sign shall not exceed 30 per cent of the glass area of the window it occupies;

(j) Direction and Information Signs of a public or quasi-public nature;

(k) Zoning Signs required by this ordinance;

(l) Project Identification Signs of a permanent nature identifying the name of a subdivision or other residential development, not to exceed twenty-four (24) square feet.

(m) Integral Signs, giving the name of the building, date of erection or the like, when made an integral part of the structure;

(n) Institutional Signs, giving the name or announcement of any public, charitable, fraternal, or religious institution. Such signs shall be set back at least fifteen (15) feet from the property line an shall not exceed twenty-four (24) square feet in area.

(o) Private Traffic Direction Signs, for directing traffic onto or within a property. Such signs shall not include any advertising and shall not exceed four (4) square feet in area for each sign.

(p) Tourist Home Sign, for a tourist home permitted as a special exception, shall not exceed six (6) square feet in area.

412.4 Number and Area of Signs: For the purpose of determining number of signs, a sign shall be considered to be a single display surface or display device containing elements organized related, and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements, each element shall be single sign. The surface area of a sign shall be computed as including the entire area within a regular geometric form or combinations of regular geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of surface area. Only one side of a two face sign shall be used for computing sign area.

412.5 Sign Design

412.51 Lighting: Lighted signs shall not reflect or result in a glare in adjacent residential lots or areas or on adjacent streets. Lighting or wording on a sign shall not be of a nature to be confused with public traffic and directional signs.

412.52 Placement on Building: Signs shall not be erected on the roofs of buildings and signs erected on the sides of buildings shall not extend more than twelve feet above the roof line. Signs shall not obstruct any window, door, fire escape, stairway, or other opening intended to provide light, air, ingress, or egress for any building or structure. Projecting signs shall not project more than forty-two (42) inches, but in no case shall such a sign extend closer than one foot to the vertical plane of the street curb line. The bottom of a projecting sign shall be at least ten (10) feet above the finished grade of the sidewalk.

412.53 Construction and Maintenance: Signs shall be constructed so as to be structurally sound and shall be maintained in good order. Whenever a sign becomes structurally unsafe or endangers the safety of a building or premises or the public safety, in the opinion of the Zoning Administrator, he shall order that such sign be made safe or removed. Such order shall be complied with within five (5) days of receipt thereof by the person, firm, or corporation owning or using the sign or the owner of the building or premises on which such sign is affixed or erected.

412.54 Location of Signs: No sign shall be located in a public right-of-way. No sign shall be erected closer than 50 feet to an intersection, with the exception of public safety and directional signs attached to buildings.

412.6 Signs for Nonconforming Businesses: The total area of signs on any one building shall not exceed one (1) square foot for each lineal foot of principal frontage of the building or lot, but in no case shall the total area of signs exceed 200 square feet.

Section 501. Format of Use Regulations

In this Article, the permitted uses are listed in Section 503.2, Table of Permitted Uses, and each of the principal residential uses and types of residential development is discussed and defined.

All permitted uses are subject to the General Regulations set forth in Article IV, the Design Regulations set forth in Article VI, and when applicable, the Special Provisions which are set forth for this district.

Section 502. Types of Development Review

In the zoning process, each use requires some form of development review. For purposes of establishing review procedures, uses are divided into the following three main groups:

502.1 Permitted Use: A use permitted by right in the zoning district, subject only to the General Regulations in Article IV and the Design Regulations in Article VI. In the case of an application for a permitted use, the Zoning Administrator will check the application to see that requirements have been met and, if so, will issue the zoning permit. The Zoning Administrator is also empowered to issue short-term use permits for carnivals, fairs, and similar temporary activities.

502.2 Site Plan Review Use: A use permitted by right in the zoning district, subject to the General Regulations in Article IV, the Design Regulations in Article VI, and site plan review and approval by the Planning Commission. The Planning Commission may require changes in the proposed site plan of the development before directing the Zoning Administrator to issue a zoning permit. Site plan review procedures and requirements are outlined in Article VII.

502.3 Special Exception Use: A use permitted in a zoning district only under certain conditions, after approval as a special exception by the Board of Zoning Appeals. All special exception applications are referred to the Planning Commission for site plan review and recommendation before the public hearing by the Board of Zoning Appeals. The Board is also empowered to grant temporary special exceptions for certain uses. General conditons for granting a special exception are outlined in Article VII and specific requirements for different uses are established in Article VI.

Section 503. Permitted Uses

503.1 Purpose: Existing uses in the Windewald Zoning District established by this ordinance are primarily permanent residences. Exceptions are two motels providing transient housing and two commercial establishments facing Winchester Avenue, the western boundary of this zoning district.

The permitted uses set forth in this section provide for the stabilization of this district as a residential neighborhood. The principal uses provide for permanent residences of a variety of types and density of development. Other permitted uses are related public and private facilities, such as churches, schools, public buildings, and open space uses, as well as business and personal services which are compatible with residential uses when properly planned and designed.

503.2 Table of Permitted Uses: Uses permitted in this district are listed below, along with an indication of the type of development review required.

Types of development review:

P -- Permitted subject to design regulation.
S -- Permitted subject to site plan review.
E -- Permitted as a special exception.
T -- Permitted as a temporary special exception.
X -- Permitted as a temporary use.

Type of Review Required	Permitted Uses
	RESIDENTIAL USES
P	Single-Family Detached Dwelling
P	Single-Family Semidetached Dwelling
P	Two-Family Detached Dwelling
S	Multiple-Family Dwelling
E	Town House Development
E	Planned Unit Development (Cluster Housing)
	TRANSIENT HOUSING
E	Boarding House
E	Tourist Home
E	Motel, Hotel

503.2 (continued) Table of Permitted Uses

PUBLIC AND SEMIPUBLIC USES

Open Space Uses

S . . . . . Park or Recreation Area
E . . . . . Swimming Pool, Community

Public and Institutional Uses

S . . . . . Church
S . . . . . Cultural Facility
S . . . . . Fire and Police Stations
S . . . . . Public Buildings

Schools

E . . . . . College or University
S . . . . . Elementary or High School
E . . . . . Nursery School
E . . . . . Private School

Public Utility Uses

E . . . . . Public Utility Use and Structures

BUSINESS AND PERSONAL SERVICES

S . . . . . Home Occupations

E . . . . . Barber and Beauty Shop
E . . . . . Funeral Home
E . . . . . Office, Business
E . . . . . Office, Professional
E . . . . . Bulk Storage - Petroleum Products
E . . . . . Warehousing - Packaged Products

Section 504. Single-Family Detached Dwelling

A single-family detached dwelling is a building containing not more than one dwelling unit and not occupied by more than one family which is surrounded by yards or other open area on the same zoning lot.

Section 505. Single-Family Semidetached Dwelling

A single-family semidetached dwelling is one of two buildings, arranged or designed as dwellings located on abutting lots, separated from each other by a party wall, without openings, extending from the cellar floor to the highest point of the roof along the dividing lot line, and separated from any other building or structure by yards or other open space on the other three sides. Each dwelling unit is on its own lot.

Section 506. Two-Family Detached Dwelling

A two-family detached dwelling is a building located on one zoning lot containing not more than two dwelling units, arranged one above the other or side by side, and not occupied by more than two families. When the two dwelling units are arranged side by side, they shall be separated from each other by a party wall, without openings, extending from the cellar floor to the highest point of the roof and separated from any building or structure by yards or other open space on the other three sides.

Section 507. Multiple-Family Dwelling

A multiple-family dwelling is a building containing three or more dwelling units (an apartment house).

Multiple-family dwelling units are permitted as a single building or in a multiple-family group development (apartment development).

507.1 Special Provision: Multiple-family dwellings shall be permitted only where water and sewerage systems are available and where adjacent roads are adequate. or can be improved to handle increased traffic volumes.

Section 508. Town House Developments

508.1 Town House Dwelling: A town house dwelling is one of a series of three or more attached dwelling units separated from one another by continuous vertical party walls without openings from basement to roof.

508.2 Purpose: Town house developments are permitted in this district so that future residents may have a choice of housing types and to allow developers the maximum possible amount of freedom in the design of town houses and their groupings and layout while providing for incorporation of amenities normally associated with less dense residential developments.

508.3 Policy: It is the policy of the county that town house developments in Berkeley County be of a high standard of design, both with respect to land planning and architecture, and that monotonous "row house" developments typical of older cities not be repeated in Berkeley County. In order to realize this objective, certain minimum size and open space requirements are established, and all town house developments are subject to site plan review and approval by the Planning Commission.

508.41 Town Houses are permitted only in planned town house developments.

508.42 Minimum Size of Town House District Developments: No group of town houses shall be located on a tract of land of less than five acres, unless the Planning Commission recommends that a smaller land area can be developed with town houses in accordance with the purposes of this ordinance. This minimum area requirement is intended to provide for obtaining the design benefits and common open space required in town house development.

508.43 Application Procedure: In subdividing a tract of land for town house development, the developer shall follow the Planned Unit Development procedure outlined in the Berkeley County subdivision regulations. The developer shall also submit a site plan showing the features listed in Section 702.4. A profile or front elevation plan shall be submitted to show the design of the proposed town houses.

508.44 Review Procedure: In reviewing a town house development site plan, the Planning Commission shall be guided by the general standards for site plan approval in Section 702.7, the town house design standards in Article VI, and the stated purpose and policy regarding Town House Developments.

508.45 Recording of Common Land Agreements: Record plats for town house developments shall include a statement of the covenants, agreements or other documents concerning the ownership and maintenance of the common land, which have been approved by Legal Counsel to the Planning Commission.

Section 509. Planned Unit Developments (Cluster Housing)

509.1 General: Cluster planning is an acceptable method of providing open space in a development for the common use of residents. Where a development is comprised of predominately owner-occupied homes with privately owned common property as a major element of the development, the basic components of a Planned Unit Development are established.

Residential development has traditionally taken place on a lot-by-lot basis. Often the land is subdivided, the lots sold separately, and houses constructed one-by-one over a long period of time. This has been the method in Berkeley County.

Many developments are now built as a unit, with land subdivision and building construction occurring together. Under these conditions, rigid design and use requirements can be varied if review controls are used to insure compatibility.

Where desirable and economically feasible these developments should be planned for a variety of residential building types.

509.2 Purpose: Planned Unit Developments are permitted to provide a means for effectuating a more desirable physical development pattern than would be achieved under the conventional lot-by-lot development process.

The intent of the Planned Unit Development process is to permit greater flexibility, and consequently, more creative and imaginative design for the development of residential areas. It is further intended to promote more economical and efficient use of land while providing a harmonious variety of housing choices, a higher level of urban amenities, and preservation of natural scenic qualities of open spaces.

509.3 Special Provisions

509.31 The gross area of the tract to be developed under the planned unit development process shall comprise not less than five acres, unless approved by the Planning Commission. This minimum tract size may be reduced 50 per cent where the planned unit development project is to contain only one type of residential structure, i.e., single-family, multifamily, town houses, etc.

509.32 Ownership Requirements: An application for Special Exception may be filed by a person having an interest in the property to be included in the planned unit project. The application shall be filed in the name or names of the recorded owner or owners of property included in the development. However, the application may be filed by holder(s) of an equitable interest in such property.

Prior to approval of a planned unit development project, the applicant shall provide evidence of a full ownership interest in the land, legal title or the execution of a binding sales agreement.

509.33 Water and Sewerage: All planned unit development projects shall be served by a central water supply and central sewer system approved by the West Virginia Department of Health.

509.34 Transportation: Planned unit development projects shall be so located with respect to major streets and highways or other transportation facilities as to provide direct access to such project areas without creating traffic along minor streets in residential neighborhoods adjacent to but outside such project areas.

509.35 Utilities: All telephone, electrical and other distribution lines shall be installed in underground conduits. No overhead lines shall be permitted. All underground utilities, sanitary sewers and drainage structures installed in streets shall be constructed prior to the surfacing of such streets.

509.36 Perimeter Treatment: Protection of the privacy of residents, existing or future, of property adjacent to planned unit developments shall be assured by screening, fencing, plantings, setback variations, and building locations.

509.37 Data to Accompany Application: Together with the application for a Special Exception, there shall be submitted an overall development plan which shall show the items listed below. If the applicant has received approval for the proposed project from the Planning Commission under subdivision regulations, this section shall not apply.

(a) Topography
(b) Proposed street system
(c) Proposed lot layout
(d) Proposed reservations for parks, parkways, playgrounds, school sites, and other open spaces.
(e) Types of dwellings and portions of the area proposed therefor
(f) Proposed location of dwellings and parking areas
(g) A tabulation of the total number of acres (gross) in the proposed project and the percentage thereof designated for each of the proposed dwelling types, off-street parking, streets, parks, schools, and other reservations.
(h) A tabulation of overall design per gross acre
(i) Plans and elevations of the several dwelling types
(j) Water and sanitary sewer plan

509.38 Density of Development: The overall density of a Planned Unit Development (cluster housing) shall not exceed eight (8) dwelling units per gross acre for single-family and town house types, and shall not exceed twelve (12) dwelling units per gross acre for multiple-family dwelling unit structures.

For the purpose of this section, the gross area shall include all land within the area intended for use for residences, parking space, reservation for community recreational and educational facilities, interior streets and to the center line of bounding streets but not over fifty (50) feet from the property line abutting such streets. Area used or reserved for large regional parks or parkways, land subject to recurring flood, swamp or marsh land 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 gross densities stated above are excessive for the area.

509.4 Application and Review Procedure

509.41 Application: Planned unit developments (cluster housing) are permitted as Special Exceptions. All applications for special exceptions shall be referred to the Planning Commission for site plan review and recommendation before the public hearing is held by the Board of Zoning Appeals.

509.42 Commission Review: Upon receipt of application for Special Exception and accompanying data meeting the foregoing requirements, the same shall be taken under consideration by the Planning Commission. The Commission shall consider the location, arrangement, and size of lots, parks, school sites, and other reservations of open space; the location, width, and grade of streets; the location and arrangement of parking spaces; the location, arrangement, and height of buildings; the gross densities proposed for the entire area; and such other features as will contribute to the orderly and harmonious development of the area, with due regard to the character of the neighborhood and its peculiar suitability for any one or more of the proposed uses.

ARTICLE VI. DESIGN REGULATIONS: WINDEWALD NEIGHBORHOOD ZONING DISTRICT

ction 601. Purpose

This article establishes minimum area and yard requirements, and maximum bulk requirements for the different uses permitted in this district, and additional design regulations for certain uses. Primary emphasis is on outlining additional design requirements for uses requiring site plan review or allowed only as a special exception. If no additional requirements are listed in this article, the Planning Commission and the Board of Zoning Appeals shall be guided by the general site plan review and special exception guidelines outlined in Article VII.

Section 602. Lot Area, Yard and Building Requirements

The minimum requirements for lot area and yards, and maximum limits of height and lot coverage are outlined in the following tables for the principal uses permitted in this zoning district.

602.1 Table of Minimum Lot Requirements

Uses	Lot Area (Sq. Ft.)* Total	Lot Area (Sq. Ft.)* Per Unit	Lot Width** (feet)
Single-family Detached Dwelling	7,500	7,500	60
Single-family Semi-detached Dwelling	5,000	5,000	40
Two-family Detached Dwelling	12,000	6,000	85
Multiple-family Dwelling	20,000 or 10,000 plus 400 sq. ft. for each one bedroom unit and 600 sq. ft. for each unit with two bedrooms or more, whichever is larger	2,000	100
Town House Development	(See Section 608.)		
Multiple-family Group Development	(See Section 609.)		
Planned Unit Development (Cluster Housing)	(See Section 610.)		
Other Permitted or Special Exception Uses	20,000		100

(Notes for this table are on the following page.)

602.1 (continued)

Notes for preceeding table:

* See Section 411.2 for minimum lot requirements when Water and/or Sewerage Facilities are lacking.

** Single and two-family Dwelling: A corner lot shall have a minimum width of 100 feet and a minimum side yard of twenty (20) feet in width shall be provided on the side of the lot abutting on the street side.

602.2 Table of Minimum Yard Requirements

Uses	Front Yard Depth	Side Yard* (Width Each Side Yard)	Rear Yard Depth
Single-family Detached Dwelling	25 ft.	10 ft.	35 ft.
Single-family Semidetached Dwelling	25 ft.	10 ft.	40 ft.
Two-family Detached Dwelling	25 ft.	10 ft.	40 ft.
Multiple-family Dwelling	25 ft.	10 ft.	20 ft.
Town House Development	(See Section 608.)		
Multiple-family Group Development	(See Section 609.)		
Planned Unit Development (Cluster Housing)	(See Section 610.)		
Other Permitted or Special Exception Uses	25 ft.	20 ft.	40 ft.

*Single and two-family Dwellings: A corner lot shall have a minimum width of 100 feet and a minimum side yard of twenty (20) feet shall be provided on the side of the lot abutting on the street side.

602.3 Table of Maximum Building Requirements

Uses	Building Height (feet)	Lot Coverage (per cent)
Single-family Detached Dwelling	35	30
Single-family Semidetached Dwelling	35	30
Two-family Detached Dwelling	35	30
Multiple-family Dwelling	40*	30
Town House Development	40*	**
Multiple-family Group Development	40*	**
Planned Unit Development (Cluster Housing)	40*	**

* Maximum height may be increased as a special exception; see Section 603. See Section 406.3 for exemptions to height limits.

** For Town House Developments, see Section 608; for Multiple-Family Group Developments, see Section 609; and, for Planned Unit Developments (Cluster Housing), see Section 610.

Section 603. Modification of Height Limitations

603.1 General Requirements: The Board of Zoning Appeals is authorized to permit greater building heights than provided by these regulations as a special exception. The Board shall not permit a building to exceed the height limit unless it determines that a higher building is compatible with surrounding development, that the higher building will not adversely affect the surrounding area by blocking light or air or reducing privacy, and that yards and distances between buildings are increased where necessary. The Board shall consider fire protection requirements when considering increased heights.

603.2 Specific Requirements:

603.21 Public and Semi-Public Buildings: Where permitted the Board may allow a school, church, hospital, or other similar public or semi-public building to exceed the established height limit, provided that the front, side, and rear yards shall be increased by one foot for each foot by which the building exceeds the height limit for the district in which it is located.

603.22 Multiple-Family Dwellings: Multiple-family dwellings may be increased above the height limit provided that the overall density of the development is not increased above the permitted density and that any additional setbacks and distances between buildings established by the Planning Commission are met.

Section 604. Temporary Buildings and Uses

604.1 Temporary Use Permits: Before issuing a temporary permit, the Zoning Administrator shall determine that the site is adequate for the proposed activity, and that the proposed use, including related traffic and parking, will not be detrimental to the surrounding area. Temporary dinners, sales, and similar activities by school, church, or civic groups shall not require a permit.

604.2 Contractors Temporary Structures: Temporary structures in connection with a construction project are allowed as a temporary special exception. Such buildings shall be equipped with sanitary facilities, unless otherwise available on or near the premises.

Section 605. Enlargement of Nonconforming Use: A nonconforming use or building may be enlarged only by special exception. A use or building so enlarged shall lose its nonconforming status.

Section 606. Residential Use

Most new development in Berkeley County will be for residential use. All new residential development in this district shall meet the lot, yard, and bulk requirements outlined in Section 602 and any additional design requirements outlined in the following sections.

Section 607. One- and Two-Family Dwellings

607.1 Lot sizes in a planned unit development (cluster housing) may be reduced in accordance with Section 610.

607.2 Conversion of an existing single-family structure into two dwelling units is permitted only if the lot and yard area requirements are met.

Section 608. Town House Development

Town houses in this district are to be allowed only in planned town house developments.

608.1 Net Land and Lot Area: No town house development is to have an area of less than five acres, except under conditions cited in Section 508.42. There shall be at least 3,500 square feet of net land area per town house, and no more than 10 town houses per acre. Each town house lot shall have a minimum of 1,600 square feet. The difference in lot size and net land area per town house shall be allocated to open space common areas.

608.2 Tract Frontage: Each interior parcel or tract used for a group of town houses shall have a width of at least 100 feet and each corner parcel or tract shall have a width of at least 120 feet.

608.3 Town House Lot Width: The minimum width of a town house lot shall be 16 feet. Each lot on the end of a row of town houses shall have an additional width necessary for the required side yard.

608.4 Length of Town House Row: There shall be no more than eight nor less than three town houses in a row.

608.5 Yards:

608.51 Yard, Front: Each town house shall have a front yard of 25 feet. The Planning Commission may allow enclosing of front yard space when the town house development is designed for this feature. Town houses may be arranged to face onto a common open space. Such a space shall not be less than 50 feet in width and shall be arranged to permit access for emergency vehicles. With such an arrangement, the front yard requirement may be reduced to 10 feet.

608.52 Yard, Side: A side yard at least ten feet in width shall be provided at each end of every row of town houses. When the lot adjoining the corner lot along the rear lot fronts on the side street of the corner lot, the width of the corner lot shall be increased to provide a side yard equal to the adjoining front yards.

608.53 Yard, Rear: Each town house shall have a rear yard at least 20 feet in depth. An accessory building shall be located only in a rear yard and shall occupy not over 25 per cent of the rear yard area and shall be located not less than two feet from a rear or side lot line, nor less than five feet from any alley or rear service street line.

608.54 Access to Rear Yards: Access shall be provided to rear yards through a rear service street not less than 20 feet in width, or by providing a rear open space common area, arranged to permit access for emergency vehicles.

608.6 Access Drives and Off-street Parking: Interior access drives not dedicated for public use shall be improved to a standard approved by the Planning Commission. Off-street parking space shall be provided at the rate of one-and-one-half spaces per town house. In a subdivision of town house lots, it will not be necessary that off-street parking be provided on a specific lot so long as the requisite number of parking spaces are provided in the subdivision for the number of lots to be served. No parking area shall be more than 200 feet from the town house lot it is to serve. Provisions for maintenance charges shall be made for such off-street parking spaces through recorded land covenants and conveyance to a Home Association with automatic and compulsory membership

608.7 Maintenance of Common Land and Facilities: If the town house development provides for common area, property, and/or facilities, they shall be conveyed to an incorporated, non-profit Home Association created under recorded land agreements, approved by Legal Counsel to the Planning Commission, through which each lot owner in a described land area is automatically a member and through which each lot is automatically subject to a charge for a proportionate share of common property maintenance. The recorded covenants shall bind each lot to insure payment of all assessments, including taxes, which may be necessary to maintain the common areas, property and/or facilities and shall also provide for a personal money judgment procedure against each lot owner to meet assessment charges, including taxes, which may be necessary to maintain such common property and/or facilities.

608.8 Intensity of Development: The land use intensity rating of a Town House Development shall range between LUI 3.5 and LUI 5.3. A higher land use intensity rating may be permitted after a public hearing has been held on the planning feasibility of the project.

The minimum correlated standards for land area, floor area, open space, livability space, recreation space, and car storage capacity will be the land use intensity criteria published in the U. S. Department of Housing and Urban Development's Manual of Acceptable Practices, 1973 Edition, Volume 4 of the HUD Minimum Property Standards.

The Planning Commission shall, in determining the actual land use intensity rating applicable to a proposed town house development project, follow the procedures in the Federal Housing Administration's Land Planning Bulletin, No. 7, entitled "Land Use Intensity", dated September, 1963, as amended, and the above cited publication. Both publications may be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C.

Section 609. Multiple-Family Dwellings

609.1 Multiple-Family Dwelling: A single building containing three or more dwelling units (an apartment building) is permitted in this district, subject to the lot, yard and bulk requirements in Section 601. Design of courts shall be governed by the provisions of Section 609.22.

609.2 Multiple-Family Group Developments: A multiple-family group development (an apartment development) is permitted in this district.

609.21 Net Lot Area: The parcel of land used for a Multiple-Family Group Development shall be under one ownership and shall have an area of at least 20,000 square feet and a lot frontage of at least 100 feet. When so used, such a parcel of land shall be considered to be one lot for the purpose of these regulations. Multiple-Family Group Developments shall be governed by the lot, yard and bulk requirements in Section 601. The yard requirements shall apply to distance from private interior streets within the project as well as distance from surrounding public streets.

609.22 Width and Depth of Courts: In the case of a building not over 40 feet in height, the minimum width of an outer court, bounded by walls on three sides, shall be 40 feet. When the building height exceeds 40 feet, the minimum court width shall be increased by one foot for each additional foot of building height. The depth of an outer court, bounded by walls on three sides, shall be not over one-and-one-half times the width and shall not exceed 100 feet. When an outer court is partially enclosed by projections, the sum of the projections shall not exceed 25 per cent of the greatest required court width. Inner courts are forbidden.

609.23 Distance Between Multiple-Family Group Dwellings: In the case of multiple-family group buildings not over 40 feet high, the distance between opposing buildings shall be a minimum of 40 feet. When building height exceeds 40 feet, the minimum distance shall be increased by a distance equal to one-half the sum of the additional heights. In the case of opposing buildings on the same lot with opposing partially overlapping walls, the portion of which do not exceed 15 feet in length, the distance between buildings may be reduced to two-thirds of the required distance. In other cases, except as provided above, the minimum distance between buildings shall be 20 feet.

609.24 Site Plan Review of Multiple-Family Group Development: In reviewing the site plan of a proposed Multiple-Family Group Development, the Planning Commission shall be concerned with the overall arrangement of buildings, parking areas, and open space on the site and relation of the project with surrounding development.

609.3 Intensity of Development: The land use intensity rating of a Multiple-Family Dwelling Group Development shall range between LUI 3.7 and LUI 5.5. A higher land use intensity rating may be permitted after a public hearing has been held on the planning feasibility of the project.

The minimum correlated standards for land area, floor area, open space, livability space, recreation space, and car storage capacity will be the land use intensity criteria published in the U.S. Department of Housing and Urban Development's Manual of Acceptable Practices, 1973 Edition, Volume 4 of the HUD Minimum Property Standards.

The Planning Commission shall, in determining the actual land use intensity rating applicable to a proposed Multiple-Family Dwelling Group Development project, follow the procedures in the Federal Housing Administration's Land Planning Bulletin No. 7, entitled "Land Use Intensity", dated September, 1963, as amended, and the above cited publication. Both publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

Section 610. Planned Unit Development (Cluster Housing)

610.1 Purpose: The purposes of Cluster Housing are to provide a method of development for land that permits variation in lot sizes without an increase in the density of population or development, that allows subdivisions with varying lot sizes so as to allow home buyers a choice of lot sizes according to their needs, that preserves open space, tree cover, scenic vistas, natural drainageways, and outstanding natural topography, that prevents soil erosion by permitting lot sizes according to the nature of the terrain within the development, that provides larger open areas with greater utility for rest and recreation, and that encourages the development of more attractive and economic and less monotonous building forms, by providing freedom of architectural and site design.

610.2 Maintenance of Common Land and Facilities: Provisions for the maintenance of common land and facilities shall be the same as for Town House Developments; see Section 608.7.

610.3 Intensity of Development: The land use intensity rating for single-family dwellings in a planned unit development shall range between LUI 3.2 and LUI 4.9. (For town houses, see Section 608.8, and for multiple-family dwellings, see Section 609.3.) A higher land use intensity rating may be permitted after a public hearing has been held on the planning feasibility of the project.

The minimum correlated standards for land area, floor area, open space, livability space, recreation space, and car storage capacity will be the land use intensity criteria published in the U. S. Department of Housing and Urban Development's Manual of Acceptable Practices, 1973 Edition, Volume 4 of the HUD Minimum Property Standards.

The Planning Commission shall, in determining the actual land use intensity rating applicable to a proposed single-family planned unit development project, follow the procedures in the Federal Housing Administration's Land Planning Bulletin No. 7, entitled "Land Use Intensity", dated September, 1963, as amended, and the above cited publication. Both publications may be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C.

Section 611. Transient Housing

611.1 Boarding House: Permitted as a special exception when determined to be compatible with surrounding development. A rooming or boarding house will almost always be developed through conversion of an existing dwelling. The Board shall determine if the house and lot size is suitable for such use, including additional off-street parking.

611.2 Motel, Hotel: Permitted as a special exception when the Board determines that such use is compatible with other development and the surrounding area.

611.3 Tourist Home: Permitted as a special exception, subject to same requirements as a boarding house.

Section 612. Public and Semipublic Uses

Public and semipublic uses are generally allowed in this district but characteristics of some such uses require that they be subject to site plan review or require a special exception.

612.1 Open Space Uses

612.11 Park or Recreation Area: The Planning Commission shall review the site plan. Intensive recreation activities shall not be located immediately adjacent to residences.

612.12 Swimming Pool, Community: Permitted as a special exception, subject to the following conditions:

a. The swimming pool, including the apron, filtering and pumping equipment and any buildings, shall be at least 75 feet from any existing dwelling on an adjoining property.

b. When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in residential use, a substantial sightly wall, fence or shrubbery shall be erected or planted so as to effectively screen said pool from the nearest property of the land in residential use.

c. The Board may require such additional conditions as it deems necessary, including, but not limited to, provision for additional fencing and/or planting or other landscaping; additional setback from property lines; parking space, location and arrangement of lighting, and other reasonable requirements.

612.2 Public and Institutional Uses

612.21 Church: Subject to site plan review. A church lot shall have a minimum area of 20,000 square feet, a minimum frontage of 100 feet and minimum building setbacks from all property lines of 25 feet.

612.22 Schools: Except as noted in Section 612.23, a school or educational institution shall have a minimum area of five acres, with a frontage of 300 feet. School buildings shall be set back 50 feet from all property lines.

612.23 Nursery School: A nursery school shall be located on a lot with a minimum area of 20,000 square feet. Fencing and screen planting may be required.

612.3 Public Utility Use or Structure: A public utility use or structure may be permitted as a special exception when the Board of Zoning Appeals determines that:

a. The proposed use at the location selected is necessary for public convenience and service and cannot be supplied with equal public convenience, if located elsewhere.

612.3 (continued)

b. The proposed use at the location selected will not endanger the health and safety of workers and/or residents in the community and will not impair or prove detrimental to neighboring properties or the development of same.

Public utility buildings shall, whenever practicable, have an exterior appearance harmonious with the general character of the neighborhood and shall have landscaping screen planting, and/or fencing, whenever these are deemed necessary by the Board. Utility business offices, power plants, storage yards, and similar commercial and industrial uses shall be excluded from this district.

Section 613. Business and Personal Services

613.1 Funeral Home: Permitted as a special exception. The Board shall determine that the lot and existing building, if any, is adequate for the use proposed and will not be detrimental to the surrounding area.

613.2 Professional and Business Offices: The Board may permit limited professional and business offices as special exceptions. subject to the following requirements:

a. Such uses shall be confined to the offices of doctors, dentitst, insurance agencies, real estate agencies, lawyers, accountants, and similar professional or business persons, who need not have living quarters in the building.

b. Such uses shall be so located, constructed and sound-controlled as to protect tenants of the building from noise, odor, and office traffic. The exterior of the premises shall not be changed or altered, nor shall any name plate or other sign exceeding two (2) square feet in area be displayed on the premises.

c. There shall be provided sufficient "reserved" parking spaces during hours of operation to accommodate patients, clients, and visitors.

ARTICLE VII. DEVELOPMENT REVIEW

Section 701. Purpose

This Article outlines procedures and requirements for Site Plan Review and for Special Exceptions.

Section 702. Site Plan Review

702.1 Legislative Intent: Routine administration of the Zoning Ordinance is the responsibility of the Zoning Administrator. However, sound future development of the county requires that certain high intensity development, and development in certain critical areas, receive special site plan review by the Planning Commission. Site plan review and approval are required for uses which are not intrinsically objectionable but which have inherent characteristics that, if not properly handled, have the potential for yielding unsatisfactory results of one type or another. They are uses which depend upon sound site planning and design to prevent them from becoming detrimental to the health, safety, or general welfare of the public, or to neighboring land uses. Site plan review enables the Planning Commission and other agencies of the County government to evaluate the merits of each proposal for such use, enables the applicant to receive expert criticism of his proposal from the Planning Commission, and thereby improve its quality, and provides a mechanism whereby the County government can ensure well-designed development in the county.

702.2 General: For uses and areas which require site plan review, no zoning permit shall be issued, and no building or use shall be established or continued except in conformity with a site development plan approved by the Planning Commission, and no zoning use and occupancy permit shall be issued until all of the requirements of this section have been met. Continued conformance with such a plan and such requirements shall be a condition of any use and occupancy permit. The Zoning Administrator shall be responsible for certifying that requirements of this section have been met.

If a location improvement permit for new structures has been issued by the Planning Commission under the subdivision regulations, a zoning permit is not required.

702.3 Site Plan Review Limitations: Uses requiring site plan review are indicated in Article V. Site plan review is required for all development and all uses requiring special exceptions, and for certain other uses which are listed in Article V. Site plan review is intended only for construction of buildings or other improvements on the land. After a

site plan has been approved and construction of the development has been completed in accordance with the site plan, a permitted change in use which does not materially affect the design of the development and which requires no new construction, other than minor remodeling and changing of permitted signs, shall not require an additional site plan review by the Planning Commission. Such a use change may be processed by the Zoning Administrator.

The dministrator shall refer uncertain cases to the Planning Commission. Any major expansion or modification of a use with an approved site plan shall be subject to a new site plan review by the Planning Commission.

702.4 Required Information: An application for a zoning permit involving site plan approval by the Planning Commission shall be made to the Zoning Administrator and shall be accompanied by the following information:

(a) Map of aplicant's entire holding at a convenient scale.

(b) Vicinity map at a scale of 600 feet or more to the inch indicating the location of the property with respect to surrounding property and streets. The map shall show all streets, easements, subdivisions, and properties within 1,000 feet of the applicant's property. All property held by the applicant in the area shall be identified.

(c) Topographic map of the property, at two (2) foot contour intervals, unless otherwise specified by the Planning Commission, showing the existing and proposed regraded surface of the land and the location of natural features, such as streams, swamps, rock outcrops, and major trees.

(d) A site plan showing location, proposed use and height of all buildings; location of all parking and truck loading areas with access and egress drives thereto; location of outdoor storage, if any; location and type of recreation facilities, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; the proposed grading, landscaping, and screening plans; description of method of water supply and sewage disposal and location of such facilities; location and proposed development of buffer areas and landscaping where required; location and design of lighting facilities; and the location, size and type of all signs.

702.4 (continued)

(e) A computation of total lot area, of building floor area for each type of proposed use, building coverage, roads, and parking.

702.5 Procedure for Preparation

702.51 Subdivision Regulations: It is recommended that applicants acquaint themselves with the Berkeley County Subdivision Regulations so that documentation for site plan review by the Planning Commission and for subdivision plat approval by the Planning Commission, when required, may be prepared simultaneously.

702.52 Plans to be Prepared by Authorized Persons: Site plans or any portion thereof, involving engineering, architecture or land surveying, shall be prepared and certified by an engineer, architect, landscape arthitect, or land surveyor duly authorized by the State to practice as such.

702.53 Scale and Sheet Size: Site plans shall be prepared to a scale of not smaller than one inch equals one hundred feet; the sheet or sheets shall be twenty-four inches by thirty-six inches, including a 1½ inch margin for binding along left edge. A site plan may be prepared in one or more sheets, in which case match lines and an index sheet shall be provided.

702.54 Number of Copies: Six cleraly legible, blue or black line copies of a site plan shall be submitted to the Planning Commission, accompanied by payment of all site plan fees as established.

702.6 Procedure for Processing: Each application involving site plan approval, together with the required information described in Section 702.4 above, shall be submitted to the Zoning Administration for review. Action shall be taken by the Planning Commission and a decision rendered thereon within sixty days of the date the application is received by the Zoning Administrator. The Zoning Administrator shall route copies of the application to reviewing agencies and officials during the reviewing period.

702.61 Agreement: Prior to approval of any site plan, there shall be executed by the owner or developer and submitted with the site plan an agreement to construct such required physical improvements as are made conditional to site plan approval in form and substance as approved by the Planning Commission.

702.62 Expiration and Extension: Approval of a site plan submitted under the provisions of this article shall expire two years after the date of such approval unless construction has begun at that time.

702.63 Revisions and Modification: Any site plan may be revised in the same manner as originally approved, and any requirements of this article may be modified by the Planning Commission in specific cases where such requirement is found to be unreasonable and such modification will not be adverse to the purpose of this section.

702.64 As-Built Site Plan: Upon satisfactory completion of the installation of required improvements as shown on the approved site plan or a section thereof, the developer shall submit to the Zoning Administrator six copies of "as-built" site plan, certified by the engineer or surveyor, at least one week prior to anticipated occupancy of any building, for the review and approval for conformity with the approved site plan. The Zoning Administrator shall not process the zoning use and occupancy permit until the appropriate "as-built" site plan has been reviewed and approved.

702.7 General Standards for Site Plan Approval: In acting upon any site development plan, the Planning Commission shall determine that the proposed use, site layout and overall appearance of all buildings in the proposed development are such that they will have a harmonious relationship with existing or permitted development of contiguous land and of adjacent neighborhoods, and that the proposed development is in harmony with the development policies outlined in the Berkeley County comprehensive plan and in this zoning ordinance. The Planning Commission shall seek to provide for the conservation of woodland and the protection of water courses from erosion and siltation, and a maximum of safety, convenience, and amenity for the residents or users of the proposed development. To these ends, the Planning Commission shall consider the location of buildings, parking areas, and other features with respect to the topography of the lot and existing features such as streams and large trees, the efficiency, adequacy and safety of the proposed layout of internal streets and driveways; the adequacy and location of open space; the adequacy, location, and screening of the parking lots; and such other matters as the Commission may find to have a material bearing upon the stated intent of the site plan review procedure.

The Planning Commission shall encourage modern development by promoting common frontage roads, development of shared parking areas, and coordinated building arrangements, landscaping, and signing. The Planning Commission may undertake site plan studies of such areas to provide guidelines in the site plan review process involving individual developments.

702.8 Specific Standards and Conditions for Site Plan Approval: The following specific standards shall be met in site development plans, in addition to the standards in other sections of this ordinance:

702.81 Setbacks: No parking space shall be located within any required setback areas.

702.82 Lighting: All lighting shall be so shielded that there will be no objectionable glare observable from surrounding properties or streets.

702.83 Public Utilities: The Health Department shall certify that water and sewerage services are adequate to service the proposed development, or shall certify the adequacy of any on-site water supply or sewage treatment proposal.

702.84 Screening: The Planning Commission may require screening along the property lines when necessary, as a condition for site plan approval. Minimum standards for all screening shall be a strip at least four feet wide, densely planted with shrubs or trees which are at least four feet high at the time of planting, and which are of a type which may be expected to form a year-round dense screen at least six feet high within three years.

702.85 Street Capacity: The capacities of existing streets shall be adequate for the volume of traffic which the proposed development is expected to generate.

702.86 Common Areas: If the plan of development includes common areas, property, and/or facilities, the Planning Commission as a condition of approval shall establish such conditions on the ownership, use, and maintenance of such lands or property as it deems necessary to insure the preservation of such areas, property, and facilities for their intended purpose.

702.9 Appeal of Site Plan Review Decision: The applicant for a use involving site plan review shall have the right to appeal the decision of the Planning Commission to the Board of Zoning Appeals. The Board shall review the entire record of the application and may affirm, modify, or establish such other or additional conditions to the decision as may seem appropriate, consistent with the intent of this ordinance.

Section 703. Special Exceptions

703.1 Legislative Intent: In order to accomplish the general purposes of this ordinance, certain unusual uses need special consideration. They require large land areas or need special regulations to achieve compatibility with existing or planned future development. Often the effects of these uses on the surrounding environment cannot be foreseen until a specific site has been proposed. They must be given special consideration and located relative to the existing and planned future development pattern. They are not permitted automatically, but are subject to the general regulations, the design requirements of Article VI, and the conditions imposed in a special exception permit issued by the Board of Zoning Appeals under this ordinance.

703.2 Special Exception Procedure: The Board of Zoning Appeals has the authority to grant a special exception, after referral of the special exception and application to the Planning Commission for site plan review and recommendation, and the holding of a legally advertised public hearing. A special exception application shall therefore include the plans and data required for site plan review. Complete procedural requirements are outlined in Article IX. When approving a special exception, the Board of Zoning Appeals shall incorporate the site planning recommendations of the Planning Commission. The Board may add additional conditions.

703.21 Zoning Map to Indicate Special Exception: Upon receipt of a notice of grant of special exception, the Zoning Administrator shall indicate the same in the proper place on the Zoning Map by use of appropriate code number or symbol.

703.22 Enlargement of Special Exception: No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All such enlargements or extensions shall require grants of special exception, as in the case of an original petition.

703.23 Renewal of Petition After Denial: If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Zoning Appeals until one year after the date of hearing on the denied petition.

703.24 Notice of Action: Notice of action taken by the Board on each petition for a special exception shall be transmitted to the petitioner and to the Planning Commission. In cases where special exceptions have been granted, the notice shall set forth the conditions, standards, and rules to which the special exception is subject.

703.3 General Requirements for Granting a Special Exception: A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Zoning Appeals should therefore consider the relation of the proposed use to existing and future development patterns.

In general, a special exception may be granted when the Board finds that:

703.31 The proposed use is in harmony with the purpose and intent of the Berkeley County comprehensive plan and of this zoning ordinance.

703.32 The location and size of the use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.

703.33 The location, nature and height of buildings, walls, and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

703.34 Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibrations, or other characteristics, than would be the operations of any permitted use not requiring a special permit.

703.35 Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

703.36 Public utility service (electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any on-site water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use.

703.4 Specific Requirements for Granting a Special Exception: In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in Article VI.

703.5 Additional Provisions: A special exception permit may be granted in accordance with the general and specific requirements enumerated in the preceding sections. The Board may, and is hereby authorized, to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and the residents and/or workers therein. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, shall be deemed a violation of this ordinance and may be grounds for termination of the special exception permit.

ARTICLE VIII: ADMINISTRATION AND ENFORCEMENT

Section 801. Duties of Zoning Administrator

801.1 Administration of Ordinance: A Zoning Administrator designated by and responsible to the Planning Commission shall administer and enforce this ordinance. He may be provided with the assistance of such persons as the Planning Commission may direct.

801.2 Zoning Permit Records: The Zoning Administrator shall maintain a record of all zoning permits and copies shall be furnished, at cost, to any person upon request.

801.3 Complaints Regarding Violations: Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

801.4 Violation Procedure: If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings, or structures or of additional alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to insure compliance with or to prevent violation of its provisions.

Section 802. Zoning Permits

Two types of permits are required by the ordinance: 1) a zoning permit, and 2) a zoning use and occupancy permit.

802.1 Zoning Permit: No building or other structure shall be erected, nor shall any existing building or other structure be moved, added to, enlarged, or structurally altered; and no excavation for any building or other structure shall be begun without the issuance of a zoning permit therefor by the Zoning Administrator.

If a location improvement permit for new structures has been issued by the Planning Commission under the subdivision regulations, a zoning permit is not required.

802.11 No zoning permit shall be required for buildings and other structures to be used exclusively for purposes of agriculture on land used solely for agriculture.

802.12 In cases where no building or other structure is proposed a zoning use and occupancy permit shall be obtained from the Zoning Administrator before any land is used for any purpose or any building converted wholly or in part to a different use; except that the agricultural uses, accessory uses, and home occupations permitted under these regulations shall not require such permit.

802.13 No zoning permit for erection, alteration, moving or repair of any building or other structure shall be issued until an application has also been made for a zoning use and occupancy permit; the use and occupancy permit shall be issued in conformity with the provisions of this ordinance upon completion of the work.

802.14 Failure to obtain a zoning permit shall be a violation of this ordinance; however, if a location improvement permit for new structures has been issued by the Planning Commission under the subdivision regulations, a zoning permit is not required.

802.2 Zoning Use and Occupancy Permit: It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or part thereof, hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a zoning use and occupancy permit shall have been issued therefor by the Zoning Administrator, stating that the proposed use of the building or land conforms to the requirements of this ordinance.

802.21 No zoning use and occupancy permit shall be required for a one-family, detached dwelling.

802.22 The Zoning Administrator shall maintain a record of nonconforming structures and uses from the date of the adoption of this ordinance. No nonconforming structure or use shall be renewed, changed, or extended until a zoning use and occupancy permit shall have been issued by the Zoning Administrator. The zoning use and occupancy permit shall state specifically wherein the nonconforming use differs from the provisions of the ordinance.

802.23 Failure to obtain a zoning use and occupancy permit, for change, renewal, or extension, shall be a violation of this ordinance.

802.3 Applications for Zoning Permits: All applications for zoning permits shall be accompanied by site plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact size 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 use 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 this ordinance.

One 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 the same by his signature on such copy. The second copy of the plans, similarly marked, shall be retained by the Zoning Administrator.

802.4 Expiration of Zoning Permits: If the work described in any zoning permit has not begun within one year from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Administrator, and written notice thereof shall be given to the person affected.

If the work described in any zoning permit has not been substantially completed within two years of the date of issuance thereof unless work is satisfactorily proceeding, said permit shall expire and be cancelled 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 cancelled permit shall not proceed unless and until a new zoning permit has been obtained.

802.5 Construction and Use to be as Provided in Applications, Plans, and Permits: Zoning permits issued on the basis of site plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction differing with that authorized shall be deemed violation of this ordinance.

Section 803. Schedule of Fees and Charges

The County Court of Berkeley County shall establish a schedule of fees and charges, and a collection procedure, for zoning permits, amendments, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator, and may be altered or amended only by the County Court, upon recommendation of the Planning Commission.

Section 803. (continued)

No permit, special exception, or variance shall be issued until such fees or charges have been paid in full nor shall any action be taken on proceedings before the Board of Appeals unless preliminary charges and fees have been paid in full.

Section 804. Enforcement and Penalties for Violation

804.1 Liability: Any building erected, raised, or converted, or land or premises used in violation of any provisions of this ordinance shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

804.2 Injunction: The Planning Commission, the Board of Appeals, or the Zoning Administrator may institute a suit for injunction in the Circuit Court of Berkeley County to restrain an individual or a governmental unit from violating the provisions of this article or of an ordinance enacted pursuant to its terms. The Planning Commission or the Board of Appeals may also institute a suit for a mandatory injunction directing an individual or a governmental unit to remove a structure erected in violation of the provisions of this article or of an ordinance enacted pursuant to its terms. If the Planning Commission or the Board of Zoning Appeals is successful in its suit, the respondent shall bear the court costs of the action.

804.3 Penalty: A person who violates any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten (10) dollars and not more than three hundred (300) dollars for each and every offense. Each day of continuing violation after notification shall constitute a separate offense under this section.

ARTICLE IX: BOARD OF ZONING APPEALS

Section 901. General Organization

901.1 Creation and Membership: The County Court of Berkeley County shall create a Board of Zoning Appeals consisting of five members. The members of the Board of Zoning Appeals shall be freeholders and residents of the county and three-fifths of such members shall have been residents of the county for at least ten years preceding the time of their appointment. No member of the Board of Zoning Appeals shall be a member of the Planning Commission nor shall any member hold other elective or appointive office in the county government. Members of the Board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties.

901.2 Terms and Vacancies: Upon the creation of the Board of Zoning Appeals, the members shall be appointed for the following terms: one for a term of one year; two for a term of two years; two for a term of three years. The terms shall expire on the first day of January of the first, second or third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years. If a vacancy occurs, by resignation or otherwise, among the members of the Board of Zoning Appeals, the County Court shall appoint a member for the unexpired term.

901.3 Organization and Administration: At the first meeting of each year, the Board of Zoning Appeals shall elect a chairman and vice chairman from its members. The vice chairman shall have authority to act as chairman during the absence or disability of the chairman. A majority of members of a Board of Zoning Appeals shall constitute a quorum. No action of the Board is official, however, unless authorized by a majority of the Board. The Board of Zoning Appeals may appoint and fix the compensation of a secretary and such employees as are necessary for the discharge of its duties, all in conformity to and compliance with salaries and compensations therefor fixed by the County Court. The County Court shall provide the Board with suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts, and shall provide by appropriation a sum sufficient to defray the reasonable expenses of the Board.

901.4 Proceedings of the Board of Appeals: The Board of Zoning Appeals shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board shall keep minutes of its proceedings, examinations, and other official actions and shall

record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and shall be a public record.

Section 902. Powers and Duties

902.1 Administrative Review: The Board shall have the power to hear and decide appeals where it is alledged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this ordinance.

902.2 Special Exceptions: The Board shall have the power to hear and decide such special exceptions as the Board of Zoning Appeals is authorized to pass on 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 with such conditions and safeguards as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this ordinance. General and specific conditions for granting special exceptions are outlined in Article VII of this ordinance.

902.3 Variances: The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

902.4 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 as ought to be made, and to that end shall have powers of the Zoning Administrator from whom the appeal is taken.

The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

902.5 Limitation of Authority

902.51 Nothing contained in these regulations shall be deemed to authorize the Board to reverse or modify any refusal of a permit or any other order, requirement, decision or determination which conforms to the provisions of this ordinance and which, therefore, is not erroneous; nor to authorize the Board to validate, ratify, or legalize any violation of law or any of the regulations of this ordinance.

902.52 The Board shall not amend any of these regulations or the Zoning Map; nor shall such power or authority be vested in the Board.

902.53 A decision of the Board permitting the erection or alteration of a building shall be valid for a period of six (6) months, unless the erection or alteration is started within this period and proceeds to completion in accordance with the terms of the decision. No decision of the Board permitting the use of a building or land shall be valid for a period longer than six (6) months, unless such use is established within said period, except that, where such use is dependent upon the erection or alteration of a building, such order shall continue in force and effect if such erection or alteration is started within this period and proceeds to completion in accordance with the terms of the decision.

Section 903. Appeal Procedure

An appeal taken from any order, requirement, decision or determination made by the Zoning Administrator charged with the enforcement of this ordinance shall be filed with the Board of Zoning Appeals.

The appeal shall specify the grounds thereof and shall be filed within such time as may be prescribed by the Board by general rule and regulation.

The Zoning Administrator from whom the appeal is taken shall, upon the request of the Board of Zoning Appeals, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.

Appeals to the Board of Zoning Appeals may be made by any person, board, association, corporation, or official allegedly aggrieved by the grant or refusal of a building, use or occupancy permit or by any other administrative decision based or claimed to be based, in whole or in part, upon any of these regulations, or the Zoning Map.

903.1 An appeal relating to a variance shall be filed with the Board only after refusal of issuance of a zoning improvement or use or occupancy permit by the Zoning Administrator or after the issuance of a permit in cases where it is alleged that said permit has been issued erroneously.

903.2 Appeals shall be made on forms provided therefor, and all information required on such forms shall be furnished by the appellant. Forms shall be filed with the Zoning Administrator; and the appellant shall pay the Zoning Administrator all expenses incidental to the appeal, including the cost estimated by the Zoning Administrator for sending notices and advertising. No form shall be accepted by the

Zoning Administrator unless it contains all pertinent information and is accompanied by the required fee to defray expenses.

903.3 Appeals and applications filed in proper form shall be numbered serially, docketed, and placed upon the calendar of the Board. The calendar of appeals to be heard shall be posted conspicuously in the County Courthouse for the period before such hearing date.

903.4 When an appeal has been taken and filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed unless the Zoning Administrator from whom the appeal was taken shall certify to the Board of Zoning Appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. If such certificate be filed, proceedings or work on the premises shall not be stayed except by a restraining order which may be granted by the Circuit Court, upon application therefor, on notice to the Zoning Administrator from whom the appeal was taken and the owner of the premises affected and on due cause shown.

Section 904. Hearing Procedure

The Board of Zoning Appeals shall hold a public hearing before making a decision on any appeal or other matter within its powers.

904.1 Notice of Hearing: The Board of Zoning Appeals shall fix a reasonable time for the hearing of appeals, give public notice thereof as well as due notice to the parties in interest, and hold the public hearing within 40 days from the date of filing of the notice of appeal. At least 30 days prior notice of the time and place of such hearing shall be published in a paper of general circulation in the county.

904.2 Recommendation of Planning Commission: A copy of the appeal for administrative review, a variance, or a special exception shall be forwarded to the Planning Commission. The Planning Commission shall, before the date of the public hearing, send a written recommendation on the appeal to the Board of Zoning Appeals.

904.3 Hearing and Decision: At the hearing any party may appear in person or by agent or by attorney-at-law admitted to practice in this State. The Board shall then decide the appeal within 15 days from the time of the hearing.

Section 905. Conditions for Granting an Appeal

905.1 Special Exception: The Board of Zoning Appeals shall not grant a special exception unless and until:

905.11 A written application for a special exception is submitted indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested;

905.12 The Planning Commission has reviewed the application and has stated its recommendation to the Board;

905.13 A public hearing has been held; and

905.14 The Board determines that the special exception requested meets the general and specific conditions outlined in Article VII.

905.2 Variance: The Board of Zoning Appeals shall not grant a variance unless and until the following conditions are satisfied:

905.21 A written application for a variance is submitted demonstrating:

(a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.

(b) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance

(c) That the special conditions and circumstances do not result from the actions of the applicant;

(d) That granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.

905.22 The Planning Commission has reviewed the application and has stated its recommendation to the Board of Zoning Appeals;

905.23 A public hearing has been held;

905.24 The Board of Zoning Appeals shall make findings that the requirements of Section 905.21 have been met by the applicant for a variance;

905.25 The Board of Zoning Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure;

905.26 The Board of Zoning Appeals shall further make a finding 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.

905.27 In granting any variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance.

905.28 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 district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

Section 906. Duties of Zoning Administrator, Board of Appeals, Members of the County Court, and Courts on Matters of Appeal

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator and through him to the Planning Commission, and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Zoning Appeals shall be to the courts as provided by law and particularly by Sections 59 through 65, Article 24, Chapter 8 of the Code of West Virginia, 1931, as amended, and included in this ordinance in Sections 907.1 through 907.7

Under this ordinance the County Court shall only have the duties (1) of considering and adopting or rejecting amendments or repeal of this ordinance, as provided by law in Sections 45 and 47, Article 24, Chapter 8 of the Code of West Virginia, 1931, as amended, and (2) of establishing a schedule of fees and charges.

Section 907. Appeals from Decisions of Board of Zoning Appeals

907.1 Petition for Writ of Certiorari from Decision or Order: Every decision or order of the Board of Zoning Appeals shall be subject to review by Certiorari.

Any person or persons jointly or severally aggrieved by any decision or order of the Board of Zoning Appeals may present to the Circuit Court of Berkeley County a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition must be presented to the Court within thirty days after the date of the decision or the order of the Board of Zoning Appeals complained of.

907.2 Notice to Adverse Parties: Upon filing a petition for a Writ of Certiorari with the Clerk of the Circuit Court of Berkeley County, the petitioner shall cause a notice to be issued and served by the Sheriff of the County upon the adverse party or parties, if any, as shown by the record of the appeal in the office of the Board of Zoning Appeals, and upon the Chairman or Secretary of the Board of Zoning Appeals.

The adverse party or parties shall be any property owner whom or which the record of the Board of Zoning Appeals shows to have appeared at the hearing before the Board in opposition to the petitioner. If the record shows a written remonstrance or other document opposing the request of petitioner containing the names of more than three property owners, the petitioner shall be required to cause notice to be issued and served upon the three property owners whose names first appear upon the remonstrance or document. Notice to the other parties named in the remonstrance or document shall not be required.

The notice shall state that a petition for a Writ of Certiorari has been filed in the Circuit Court of Berkeley County asking for a review of the decision or order of the Board of Zoning Appeals, shall designate the premises affected and shall specify the date of the decision or order complained of.

Service of the notice by the Sheriff on the Chairman or Secretary of the Board of Zoning Appeals shall constitute notice to the Board and to the County and to the Zoning Administrator the enforcement of the zoning ordinance, and no further summons or notice with reference to the filing of such petition shall be necessary.

907.3 Action of Court or Judge on Petition: Upon presentation of a petition for a Writ of Certiorari, the Circuit Court of Berkeley County, or a Judge thereof in vacation, shall direct the Board of Zoning Appeals to show cause within twenty days from the date of such citation why a Writ of Certiorari should not issue. If such Board fails to show to the satisfaction of the Court or Judge that a Writ should not issue then the Court or Judge may allow a Writ of Certiorari directed to the Board of Zoning Appeals. The Writ shall prescribe the time in which a return shall be made to it. This time shall not be less than ten days from the date of issuance of the Writ and may be extended by the Court or Judge thereof.

907.4 Stay of Work on Allowance of Writ: The allowance of the Writ of Certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review. The Court or Judge may, however, upon application and on notice to all parties to the decision or order and on due cause shown grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the Court or Judge thereof.

Such staying order may be issued by the Court or Judge without requiring the petitioner to enter into a written undertaking with the adverse pary or parties affected thereby for the payment of damages by reason of such staying order.

907.5 Return to Writ by Board of Zoning Appeals: The return to the Writ of Certiorari by the Board of Zoning Appeals must concisely set forth such facts and data as may be pertinent and present material to show the grounds of the decision or order appealed from. The return must be verified by the Secretary of the Board.

The Board shall not be required to return the original papers acted upon by it. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the Writ.

907.6 Action by Circuit Court or Judge thereof: The Court or Judge may consider and determine the sufficiency of the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the Board of Zoning Appeals on the facts set out in the petition and return to the Writ of Certiorari.

If it shall appear to the Court or Judge that testimony is necessary for the proper disposition of the matter, the Court or Judge may take evidence to supplement the evidence and facts disclosed by the petition and return to the Writ of Certiorari, but no such review shall be by trial de novo.

In passing upon the legality of the decision or order of the Board of Zoning Appeals, the Court or Judge may reverse or affirm, in whole or in part, or may modify such decision or order.

907.7 Appeal from Final Judgment of Circuit Court or Judge thereof: An appeal may be taken to the Supreme Court of Appeals of this State from the final judgment of the Court or Judge reversing, affirming or modifying the decision or order of the Board of Zoning Appeals within the same time, in the same manner, and upon the same terms, conditions and limitations as appeals in other civil cases.

ARTICLE X. AMENDMENTS

ction 1001. Zoning Ordinance Amendments

The County Court of Berkeley County may, from time to time, amend, supplement or change the rules and regulations and district established by this ordinance. Amendments, supplements or changes of the rules and regulations of this zoning ordinance shall be considered as amendments to the comprehensive plan.

Amendments, supplements or changes may be made to the text of the ordinance, to the Zoning Map, or to both the text and the Zoning Map.

Section 1002. Petition for Change

Petitions, duly signed, may be presented to the Clerk of the County Court requesting an amendment, supplement or change of the rules and regulations of the zoning ordinance by:

(1) The Planning Commission; or
(2) The owners of fifty per cent or more of the real property area to which the petition relates.

ection 1003. Referral to the Planning Commission

Any proposed ordinance for the amendment, supplement or change of the text and/or Zoning Map or repeal of the zoning ordinance not originating upon petition of the Planning Commission shall be referred to the Planning Commission for consideration and report before any final action is taken by the County Court.

Section 1004. Acceptance of Petition by Planning Commission

After acceptance, a petition for a map amendment, supplement or change shall not be modified as to the area proposed to be reclassified or the class of district requested.

The Planning Commission shall not accept a petition if it fails to conform to all applicable requirements of this article, including the payment of any fee established by the County Court, nor if the petition is for the reclassification of the whole or any part of land, the reclassification of which has been approved or denied on its merits within twelve (12) months prior to the date of submission of the petition.

Section 1005. Materials to Accompany Petition

1005.1 Text Amendment, Supplement or Change: The petitioner(s) shall set forth the new text to be added and the existing text, if any, to be deleted.

1005.2 Map Amendment, Supplement or Change: The map amendment, supplement or change may be for a more/less intensive use and shall cover a single contiguous area, all portions of which are proposed to be classified in this district.

The petition shall be accompanied by:

1005.21 A written statement, specifying the following:

(a) The location of the land proposed to be reclassified, including the street number, if any;

(b) A description of the land giving lengths of courses and bearings, or if the boundaries conform to lot boundaries within a subdivision for which a plat is recorded in the county land records, a lot, block, and subdivision designation with appropriate plat reference;

(c) The present classification and classification proposed for such land:

(d) The name and address of the owner of the land;

(e) The area of the land proposed to be reclassified, stated in square feet if less than one (1) acre and in acres if one (1) acre or more.

1005.22 An identification plat of the land proposed to be reclassified, prepared by a registered civil engineer or land surveyor and certified thereon by him to be correct and in conformity with this section, showing lengths of courses and bearings, or if the boundaries conform to lot boundaries within a subdivision for which a plat is recorded in the county land records, then a copy of such plat, the land proposed to be reclassified appearing in a color distinctive from that of other lands shown on the plat.

1005.23 A vicinity map, covering the area within at least one thousand (1,000) feet of the boundaries of the land proposed to be reclassified showing the existing zoning classification of all land appearing on the map.

Section 1006. Pre-hearing Procedure

1006.1 Establishment of Hearing Date: Upon accepting a petition for Amendment, Supplement or Change, the Planning Commission shall set a date for a public hearing and specify the place and time.

1006.2 Publication of Notice of Public Hearing: The Planning Commission shall authorize the Zoning Administrator to publish, at the expense of the petitioner(s), a notice of the public hearing. This notice shall be published in a paper of general circulation in the county not less than fifteen (15) days prior to the date set for the hearing. The notice shall include the petition number and the date, time and place of the hearing. The notice shall also include:

(a) A summary of the new text to be added if a Text Amendment, Supplement or Change.

(b) The location of the property, its area, name of owner, change of classification requested, and the petition number.

1006.3 Posting of Property: Within three (3) days after acceptance of a petition for a Map Amendment, Supplement or Change, the petitioner(s) shall erect a sign, to be furnished by the Zoning Administrator, on the land proposed to be reclassified. Such a sign shall be erected by the petitioner(s) within ten (10) feet of whatever boundary line of such land abuts the most traveled public road and if no public road abuts thereon, then facing in such manner as may be most readily seen by the public. The sign shall bear conspicuously the words: ZONING RECLASSIFICATION PETITION NO. _____, FROM _____ TO _____, PUBLIC HEARING (date). The blanks shall be filled in with the assigned petition number and the classification sought. If the land sought to be reclassified lies within more than one block as shown on a plat recorded in the county land records, then a sign shall be erected by the petitioner(s) on the land in each such block. No sign shall be furnished by the Zoning Administrator to the petitioner(s) unless the petitioner(s) has first delivered to the Administrator a receipt showing payment to the County of a deposit as prescribed by the County Court. On return of the sign to the Zoning Administrator by the petitioner(s), the Administrator shall refund such portion of the amount of the deposit as prescribed by the County Court. At the hearing, the petitioner(s) shall prove by affidavit that he has fully complied with this paragraph and has continuously maintained the sign up to the time of the hearing. Any such sign shall be maintained at all times by the petitioner(s) until a decision on the petition has been made public by the County Court and then shall be removed by the petitioner(s) and returned to the Zoning Administrator within five days thereafter. It shall be unlawful for any person to remove or tamper with such sign during the period it is required to be maintained.

1006.4 Availability of Petitions: All petition files in the custody of the Zoning Administrator shall be open to public inspection during regular office hours. They shall not be removed from Administrator's office except pursuant to court order or by a member of the County Court or Planning Commission.

Section 1007. Hearing Procedure

The Planning Commission shall hold a public hearing on the date established. Any interested person shall have the right to submit verbal or written testimony at the hearing. There shall be a complete report of the testimony at the hearing, and a typewritten transcript thereof with all exhibits admitted at the hearing, including the petition, shall promptly be incorporated by the Zoning Administrator in the petition file and shall be considered a part of the record on the petition. Evidence which is immaterial, irrelevant, or unduly repetitious may be excluded.

Within thirty days after the public hearing the Planning Commission shall, by resolution, recommend or reject the proposed Zoning Amendment, Supplement and Change and shall forward their recommendation to the County Court. The Planning Commission shall also forward the complete petition record, including the transcript of the public hearing.

Section 1008. Action of County Court

At the meeting of the County Court following receipt of the recommendation from the Planning Commission, the Court shall proceed to consideration of the proposed Zoning Amendment, Supplement or Change.

A petition for a Map or Text Amendment, Supplement or Change shall be decided on the basis of the evidence of record. Such petition shall be either approved or denied on the merits or dismissed, or allowed to be withdrawn. The County Court may dismiss any such petition if it finds that:

(a) The petition does not conform to any stated procedure requirement of this article;

(b) The petition is not acceptable for filing because filed within twelve (12) months as hereinbefore provided, or;

(c) The petition is frivolous or filed for purposes of harrassment.

If the petition is not dismissed or allowed to be withdrawn as herein provided, it shall be either approved or denied on the merits, in which case no petition for the reclassification of all or any part of the land which is the subject of the petition shall be accepted for filing for twelve (12) months following the date of such approval or denial on merits.

No petition for a Map Amendment, Supplement or Change shall be approved for a class of district other than that applied for. No petition for a Map Amendment, Supplement or Change shall be approved for a greater area than that applied for, but a petition may be approved for a smaller area than that applied for if the reclassification of such smaller area is supported by the evidence or record and if such smaller area is accurately delineated in the record.

The decision of the County Court approving, denying, or dismissing any petition for a Map or Text Amendment, Supplement or Change shall be rendered within sixty (60) days of the original hearing (unless such time is extended by resolution of the County Court) and shall be in the form of a resolution adopted by the County Court in open session by a majority of those voting on roll call by yeas and nays and appearing in the minutes of the meeting. The resolution shall be promptly mailed by the Zoning Administrator to the petitioner(s) and to all persons who appeared at the hearing as shown by the hearing transcript.

ARTICLE XI. ORDINANCE PROVISIONS

Section 1101. Provisions of Ordinance Are Minimum Requirements

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals and general welfare. Whenever the requirements of this ordinance require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of this ordinance shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by this ordinance, the provisions of such statute or local ordinance or regulation shall govern.

Section 1102. Validity

The provisions of this ordinance are supplemental to and do not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions or officials of the state government by other state statute and these powers shall remain in full force and effect. Powers of supervision and regulation by such divisions of the state government over the county and other local governmental units and persons also are not abrogated and shall continue in full effect.

Section 1103. General Repealer and Effective Date

All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect, except as provided in Section 1101.

This ordinance shall become effective September 2, 1975 at 10:56 A.M.

Section 1104. Separability Clause

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

BOARD OF ZONING APPEALS
BERKELEY COUNTY, WEST VIRGINIA

Case No. _____
Zoning District _____
Tax Map _____ Parcel No. _____
Date Filed _____
Date of Hearing _____

APPLICATION FOR SPECIAL EXCEPTION UNDER ZONING ORDINANCE

Application is hereby made for a _____ under Section 503.2 of the Zoning Ordinance, as follows:

Location of property: _____
NSEW side of (name road or street)

_____
distance from (name nearest intersecting road or street)

Subdivision _____ Lot _____ Block _____

Street & Number _____

Proposed Use Of Property _____

Owner of Property: Name _____

Address _____

Applicant's present legal interest in above property: (Check One)

_____ Owner (including joint ownership) _____ Lessee

_____ Tenant other than lessee(describe) _____

_____ Other(describe) _____

Has any previous petition or appeal involving this property been made to the Board of Zoning Appeals? _____ Yes. _____ No. If Yes, give Case Number(s) _____

_____

Additional comments (if any) _____

_____

_____

_____

I hereby affirm that all of the statements and information contained in this application are true and correct and that all accompanying documents and plans required by the Zoning Ordinance are submitted herewith.

_____
(Signature of Applicant)

_____
(Address of Applicant)

Please submit required drawing/plans with this application.

Case # _____
Zoning District _____
Tax Map # ____ Parcel # _____

APPLICATION FOR ZONING PERMIT

Applicant's Name _____

Address _____

Location of Property _____

_____

Proposed Use _____ P S E T X Sign (circle one)

Applicant's Present Legal Interest in Property: (Check one)

_____ Owner

_____ Tenant (give owner's name/address) _____

_____

_____ Other (describe) _____

Has this property been considered by the Board of Zoning Appeals in previous action? _____ Yes, Case # _____ _____ No

Additional Comments _____

_____

_____ Date

_____ Applicant's Signature