

THE HARDY COUNTY ZONING ORDINANCE

ARTICLE I: GENERAL PROVISIONS

SECTION 1. TITLE

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

SECTION 2. AUTHORITY

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

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

SECTION 3. ENACTMENT

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

SECTION 4. PURPOSE

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

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

SECTION 5. JURISDICTION

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

SECTION 6. NON-EXCLUSIONARY INTENT

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

SECTION 7. HISTORICAL PRESERVATION

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

SECTION 8. OFFICIAL ZONING MAP

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

ARTICLE II: DEFINITIONS

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

Abandonment

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

Accessory Use

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

Accessory Dwelling Unit

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

Addition, Major

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

**Adjacent/Confronting
Affected Property Owner**

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

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

Adult Entertainment

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

Adult Uses (clubs)

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

Aggrieved Person

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

Agricultural Use

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

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

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

Building Line

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

Change of Use

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

Clear-Cutting

Removal of an entire stand of trees and shrubs.

Clustering

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

Commercial

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

Commission

The Hardy County Planning and Zoning Commission.

Community Uses

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

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

5. Health Services

Comprehensive Plan

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

Conditional Use

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

Conditional Use Permit

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

Condominium

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

Contiguous

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

Conventional Subdivision

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

Curb level

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

Day Care

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

Day Care Center, Family

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

Day Care Center, Group

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

Development

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

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| | any structure, installation of a sign; and any mining, landfill or land disturbance, such as grading, paving and excavation. |
| Dwelling, Attached | One of a series of three or more attached dwelling units and not occupied by more than one family. |
| Dwelling Unit | One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and containing independent cooking and sleeping facilities. |
| Dwelling, Detached | A building containing only dwelling units surrounded by yards or other open area on the same zoning lot. |
| Dwelling, Multi-Family | A building containing three or more dwelling units. |
| Dwelling, Single | A building containing not more than one dwelling unit and not occupied by more than one family. |
| Dwelling, Townhouse | One of a series of three or more attached dwelling units separated from one another by continuous vertical party walls without openings from basement floor to roof. |
| Dwelling, Two-Family | A building located on one zoning lot containing not more than two dwelling units, arranged one above the other or side by side, and not occupied by more than two families. |
| Easement | A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel. |
| Engineer | A person registered by the State of West Virginia through the Board of Registration of Professional Engineers. |

Essential Utilities and Equipment

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

Existing Use

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

Expanded Use

The further development of a developed site.

Exterior Architectural Features

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

Factory Built Homes

Are modular and manufactured homes.

Family

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

Farming

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

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

Flood-prone Area

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

Flood-prone Soils

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

Forest

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

Forest Management

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

Forestry

Generally, a profession embarking the

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

Frontage, Street

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

Garden

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

Gardening

Cultivate or work in a garden.

Glare

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

Governing Body

The body that governs a county.

Grandfather Clause

See Nonconforming Use.

Group Residential Facility

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

Historic District

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

Historic Landmark

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

Historic Site

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

Home Occupation

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

Home Occupation, Level 1

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

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

to the use of the dwelling unit as a residence.

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

Home Occupation, Level 2

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

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

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

Impervious Surface

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

Improvement Location

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

Improvements

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

Infilled Development

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

Institutional Uses

Institutional Uses should be focused on activities that directly or indirectly

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

Kennel Operation & Care

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

Land Development

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

Land Surveyor

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

Light Industrial

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

Livestock

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

Lot

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

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

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| Lot Area | The total horizontal area included within the rear, side and front lot lines or proposed street lines of the lot. |
| Lot Line | Any boundary line of a lot defined herein. When applicable, a lot line shall coincide with a STREET LINE. Where a lot line is curved, all dimensions related to said lot line shall be based on the chord of the arc. |
| Lot Line, Front | The side or sides of an interior or through lot which abut a street; in a corner lot both sides abutting the streets forming the corner shall be considered front lot lines. Front lot lines shall be measured from the Road Improvement Easement where one exists. |
| Lot Line, Rear | On a corner lot, the rear lot line shall be defined as the line at the rear of the house that separates other lots. On lots with one side abutting a street or right-of-way, the line at the opposite end of the property shall be defined as the rear lot line. |
| Lot Line, Side | Any lot line other than a front lot line or a rear lot line. In a corner lot there must be at least one rear lot line. |
| Lot of Record | A written or graphic description of a lot that is on record in the office of the Clerk of the County Commission of Hardy County at the adoption of this Ordinance. |
| Manufactured Homes | Homes built entirely in the factory under a federal building code administered by the U.S. Department of Housing and Urban Development (HUD). They may be single |

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

Massage Parlor

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

Mobile Home

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

Mobile Home Court

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

Modular Unit

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

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

Multi-Residential Use

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

Natural, Undisturbed Condition

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

Natural Vegetation

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

Nonconforming Use

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

Non-traditional Zoning Ordinance

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

Notification

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

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

Nursing or Retirement Home

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

Office Building, Class A

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

Office Building, Class B

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

Open Space

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

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

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

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

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

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

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

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

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

Open Space, Active

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

Open Space, Amenities

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

Open Space, Passive:

Land area not suited for “active open space.”

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

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

Open Space, Usable

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

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

Permitted Use

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

Plan

A written description for the development of land.

Planning Commission

A county planning commission.

Plat

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

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

Preferred Development Area

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

Preliminary Plat

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

Primary Highway

State designated and U.S. routes.

Principal Permitted Use

The primary or predominant use of any site.

Prohibited Use

A use that is not permitted.

Public Highway

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

Public Place

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

Public Uses

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

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

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

Sign, Animated

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

Sign, Business

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

Sign, Freestanding

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

**Sign,
Outdoor Advertising**

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

Site Plan

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

Soil Value

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

Species, Rare or

Any species listed with the West Virginia

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

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

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

ARTICLE III: LAND USE

SECTION 1. FLOODPLAIN DEVELOPMENT

Purpose:

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

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

Applicability:

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

Compliance:

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

Establishment of floodplain districts base:

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

Description of District:

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

Official Floodplain Maps:

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

SECTION 2. AGRICULTURAL "A" DISTRICT

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

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

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

14. Essential utilities and equipment

15. Historical sites

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

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

Salvage Yard Ordinance.

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

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

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

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