

## ARTICLE XVI - GENERAL PROVISIONS

### 16-1 BUILDING PERMITS

16-1.1 Buildings or structures shall be started, reconstructed, enlarged or altered only after a building permit has been obtained from the administrator.

16-1.2 Each application for a building permit shall be accompanied by three (3) copies of a scale drawing and the required permit charges or fees. The scale drawing shall show plan and profile views of the proposed building or structure. The drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land, and the location of such building or use with respect to the property lines of said parcel of land and to the right of way of any street or highway adjoining said parcel of land. Any other information which the administrator may deem necessary for consideration of the application may be required. If the proposed building or use is in conformity with the provisions of this Ordinance, a permit shall be issued to the applicant by the administrator. One copy of the drawing shall be returned to the applicant with the permit. If such proposed structure, alteration, or use is in conflict with the provisions of this Ordinance, the Zoning Administrator shall refuse a permit for such a structure, alteration, or use, and from such decision of the Zoning Administrator an appeal shall lie to the Board of Zoning Appeals. Should the permit be granted, any aggrieved person may

also appeal to the Board of Zoning Appeals. Procedures for appeals shall be in accordance with Section 17-4.<sup>13</sup>

16-1.3 Any proposed deviation from original building permit must be submitted to the administrator for approval. Any request for deviation from the original building permit which would change the size or outside appearance of a building or structure must be made by way of reapplication. In such case, the reapplication shall be considered in the same way as the original application including publication of a notice as specified in 16-1.2. Building permits, when granted, shall be valid for a period as specified in the Town Building Code.<sup>7</sup>

#### 16-2 CERTIFICATE OF OCCUPANCY

Land and buildings may be used or occupied and building structurally altered or erected may be used or changed in use only after a certificate of occupancy has been issued by the administrator. Such a certificate shall state that the building or the proposed use, or the use of the land and buildings, complies with the provisions of this Ordinance. A similar certificate shall be issued for the purpose of maintaining, renewing, changing or extending a nonconforming use. A certificate of occupancy either for the whole or a part of a building shall be applied for simultaneously with the application for a building permit. The certificate shall be issued with ten (10) days after the erection or structural alteration of such building or part has conformed with the provisions of this Ordinance.

SPECIAL EXCEPTIONS<sup>35 48</sup>

A special exception means a special use, that is a use not permitted in a particular district except by the issuance of a special exception permit granted under the provisions contained herein. The granting of a special exception permit shall be made under suitable regulations and safeguards as may be established by the Town Council who must consider in granting a special exception permit its relation to the public health, safety, morals, and general welfare of the community. In consideration of the granting of a special exception permit, consideration must also be given as to the effectiveness of the exception in meeting the overall objectives of the Zoning Ordinance. A special exception is distinguished from a variance in that special exceptions are generally permissible under the Zoning Ordinance while variances authorize a use which would otherwise be prohibited by the Ordinance. No specific standards are set forth herein on granting a special exception permit since it would be impractical to provide standards in the Zoning Ordinance that would be applicable to all situations wherein a special exception permit is being requested and where it is necessary for the Town Council to exercise their legislative judgement or discretion. However, the Planning Commission may recommend, and the Town Council may adopt at its discretion, suitable regulations, safeguards, requirements, or physical conditions or improvements which must be completed within a set time frame of the granting of the special exception permit; and, if the regulations, safeguards, requirements, or physical conditions or improvements are not met within the set time period, the special exception permit will be considered

to be revoked and the use in violation of the Zoning Ordinance. The Planning Commission and Town Council may consider the following standards in consideration of the issuance of the special exception permit: (a) length of time for the special exception permit; (b) the limitation of the special exception permit to a specific ownership; (c) a periodic review of the special exception with provisions for termination of the special exception permit; (d) physical improvements required for the granting of the special exception permit; (e) specific restrictions on the special excepted use for granting of the permit. Applications for a special exception permit shall be made to the Zoning Administrator who shall forward them to the Planning Commission for review. The application for a special exception permit shall include all matters of pertinent information that may be required by the Town Council, Planning Commission, and Zoning Administrator in the course of their review. The Planning commission shall conduct a public hearing at its discretion in the manner normally prescribed by law and shall forward its recommendation to the Town Council for their review. Likewise, the Town Council shall conduct a public hearing at its discretion on the matter, in a manner prescribed by law, and shall accept, deny or modify the recommendation in any manner they deem appropriate in their sole discretion.

16-4 USES NOT PROVIDED FOR

If in any district established under this Ordinance, a use is not specifically permitted or prohibited and an application is made by a property owner to the administrator for such use, the administrator shall refer the application to the

Planning Commission which shall make its recommendation to the governing body within thirty (30) days.

16-5 WIDENING OF HIGHWAYS AND STREETS

Whenever there shall be plans in existence, approved by either the State Department of Highways or by the governing body, for the widening of any street or highway, within the Town of Wytheville, the Planning Commission may recommend additional front yard setbacks for any new construction or for any structures altered or remodeled adjacent to the future planned right of way, in order to preserve and protect the right of way for such proposed street or highway widening.

16-6 MINIMUM OFF-STREET PARKING

There shall be provided at the time of erection of any main building or at the time any main building is enlarged, minimum off-street parking space with adequate provision for entrance and exit by standard sized automobiles, independent of the use of other required spaces.<sup>15</sup>

16-6.1 In all Residential districts, there shall be provided, either in a private garage and/or on the lot, space for parking two (2) automobiles for the first dwelling unit in a new building. Space for one and one-half (1 2) additional automobiles will be provided for each additional unit in a new building, or each dwelling unit added in the case of the enlargement of an existing building. Where the computation results in a fractional space being required, the next whole number shall be deemed to be the number of spaces required.

- 16-6.2 Tourist homes, tourist courts, hotels and motels shall provide on the lot, parking space for one (1) automobile for each room accommodation.
- 16-6.3 For church, high school and college auditoriums and for theaters, general auditoriums, stadiums, and other similar places of assembly, at least one (1) parking space for every three (3) persons for which seats are provided in said facility or main seating area.<sup>15</sup>
- 16-6.4 For hospitals, at least one (1) parking space for each authorized bed, including infants' cribs and children's beds.
- 16-6.5 For medical and dental clinics, at least fifteen (15) parking spaces. Three (3) additional parking spaces shall be furnished for each doctor or dentist having offices in such clinic in excess of two (2) doctors and/or dentists.
- 16-6.6 For apartments, at least one and one-half (1 2) parking spaces for each individual sleeping or living unit. For apartment motels, at least one and one-half (1 2) parking spaces for each sleeping room, up to and including the first twenty (20) sleeping rooms, and one and one-half (1 2) parking spaces for each two (2) sleeping rooms over twenty (20). Where computation results in a fractional space being required, the next whole number shall be deemed to be the number of spaces required.
- 16-6.7 For mortuaries and liquor stores, at least thirty (30) parking spaces.
- 16-6.8 For retail stores selling direct to the public, one (1) parking space for each two hundred (200) square feet of retail floor space in the building.
- 16-6.9 Parking space required for dwellings shall be on the same lot with the dwelling. In the case of buildings other than dwellings, spaces may be located as far away as five hundred (500) feet.

- 16-6.10 Where it may be impossible or impractical for parking spaces to be provided as required for retail stores, offices,<sup>10</sup> and other unusual business as appropriate to B-2 DT Business zone,<sup>11</sup> application may be submitted for deviation from the requirements. The application should state the extent to which parking can be furnished by the applicant upon the property or upon other property within five hundred (500) feet; and also, the extent to which public or private parking is available to the use in the immediate vicinity. If it can be shown to the satisfaction of the administrator that the required parking cannot be reasonably provided on the property, or within five hundred (500) feet thereof, and that parking is being provided to the maximum extent practicable, then a deviation may be granted. Such deviation may reduce the requirements to the extent that public and private parking spaces are available to the use in the immediate area.
- 16-6.11 Every parcel of land hereafter used as a public parking area shall be surfaced with crushed rock, gravel, asphalt or concrete. It shall have appropriate bumper guards where needed as determined by the administrator. Any lights used to illuminate said parking areas shall be so arranged as to reflect the light away from adjoining premises in any residential district.
- 16-6.12 Any other commercial building not listed above hereafter erected, converted or structurally altered shall provide one (1) parking space for each two hundred (200) square feet of business floor space in the building. Any establishment hereafter erected that serves meals, lunches, or drinks to patrons either in their cars or in the building shall provide one (1) parking space for each one hundred (100) square feet of business floor space in the

building; provided there shall be at least one (1) parking space for each serving unit. In restaurants a serving unit shall be two (2) stools, one (1) booth or one (1) table. For restaurants with walk-up windows or serving counters, there must be fifteen (15) spaces for each such window or counter. For dance halls and recreational areas, one (1) parking space for each one hundred (100) square feet of floor area. Two (2) or more establishments may provide necessary parking space on a single parcel of land.

16-6.13 Required parking spaces shall be maintained in connection with the buildings which they are to serve and in the manner indicated by the minimum requirements of off-street parking and space regulations. Substitution of equivalent spaces in conformity with the off-street parking regulations may be allowed by the Board of Zoning Appeals.

16-6.14 Space shall be provided for the loading and unloading of trucks and commercial vehicles serving commercial buildings.

16-6A PARKING AREA LANDSCAPING REQUIREMENTS<sup>50 53</sup>

16-6.1A Surface Parking Area Perimeter Landscaping Requirements

All commercial and multiple-family parking areas which exceed twenty (20) spaces or 5,000 square feet of parking and drive area shall be subject to the requirements of this section, except those in the B-2 DT District.

16-6.2A Where Parking Area is Adjacent to the Right of Way

Each off-street parking area which is adjacent to a public right of way shall be separated by a landscaped strip of not less than eight (8) feet in width. Such strip shall contain an earthen berm with ground cover, compact green hedge, or mulch with deciduous trees spaced at a minimum of thirty (30) foot

intervals or a fraction thereof. In spaces less than thirty (30) feet, at least one deciduous tree shall be placed in the landscaped strip. Alternative proposals may be presented for consideration, however, this standard shall be used as a guide for the landscaping practices. All deciduous trees shall conform to the standard set below. At the owner's or developer's option, twenty-five (25) percent of the deciduous tree requirement may be replaced with evergreen trees. All trees shall be maintained in accordance with the provisions of this section.

Each off-street parking area not adjacent to a public right of way shall be separated from the property line by a landscaped strip of not less than eight (8) feet. Such landscaped strip shall be planted with at least one (1) deciduous tree for every thirty (30) lineal feet of strip. Where two parking lots are adjacent, the strip may be eight (8) feet total or four (4) feet from the property line for each lot.

16-6.3A Tree Standards and Maintenance Requirements

Each tree shall be a minimum of two and one-half (2-1/2) inches in caliper measured six (6) inches from the ground. All trees shall be maintained and guaranteed by the installer for a period of one year and shall be appropriately watered, pruned, and protected during the one-year period. All trees shall also be appropriately protected from traffic and vehicle bumper overhangs by curbing, stop blocks, or other acceptable means. Trees and landscape strips shall be appropriately maintained by mowing, weeding, mulching, trimming, pruning, etc. for the life of the property.

16-6.4A Surface Parking Area Interior Landscaping Requirements

At least one planting island with minimum nominal dimensions of nine (9) feet by eighteen (18) feet shall be provided for every twelve (12) parking or loading spaces proposed. Where the calculation of the planting island requirements result in a fraction of an island, the number of islands required shall be rounded to the lowest number of islands unless the number is zero (0), in which case the number shall become one (1). Each island up to 350 square feet or fraction thereof shall be planted with at least one (1) healthy, deciduous tree meeting the requirements of 16-7A.1(a) above.

The owner shall have the option of providing lineal planting islands perpendicular to the parking spaces with a minimum width of five (5) feet in lieu of the nine (9) foot by eighteen (18) foot planting islands. In the lineal islands, there shall be planted at least one (1) deciduous tree for every thirty (30) feet or fraction thereof. The applicant may aggregate some or all of the landscaping islands to preserve existing trees located within such a parking area or area to become parking.

Twenty-five (25) percent of the required trees in the planting islands may be substituted with an evergreen tree of at least six (6) feet in height. All shall comply with the provisions of Article 16-7 Paragraph 1(b) above.

Shrubs and ground cover shall be installed in each planting island to provide full coverage of the area and placed to complement the tree landscaping.

Landscaping material shall be located within planting islands in a manner which will protect the plants from automobile bumpers and allow for the mature size of the species.

16-6.5A Deviations from the Required Parking Plans

Minor deviations from the provisions of this section may be permitted by the Zoning Administrator if the proposed landscaping provides island and strip planting area equal to or greater than that required herein. Any development or redevelopment of any site shall incorporate the applicable landscaping improvements identified in the original plan and shall incorporate the requirements of this section in the new or revised plan.

Redevelopment shall be defined as any construction work which removes and replaces the paving and curb and gutter for an area greater than 5,000 square feet. It shall not be constructed to mean patching, overlay parking, sealing or marking the pavement for parking lots.

16-6.6A Special Exceptions

The Town Council may upon the application of the property owner grant special exceptions modifying the requirements of this section in accordance with the procedures and limitations established for special exception permits in Section XVI. Special exceptions shall be granted only if the applicant has clearly demonstrated a situation of extreme topography, unusual lot shape, or extraordinary circumstance. In addition, the required special exception shall only be granted if the Town Council finds its proposed

development will not be inconsistent with the Comprehensive Plan and other sections of this ordinance and otherwise will not result in inadequate on-site amenity or any condition which will adversely affect nearby property. Requests for special exceptions shall be granted in the whole, or in modified form with conditions, or denied by the Town Council after consideration of the requisites presented above.

16-7           QUALITY AND CHARACTER OF CONSTRUCTION

The provisions of this section apply to buildings hereafter erected, reconstructed or altered.

16-7.1       The quality and character of construction, particularly in respect to safety from fire and other hazards of buildings and equipment therein, shall be in conformity with the provisions of the Ordinance covering "The Building Code" for the Town of Wytheville. Any restrictions of the Building Code shall not be deemed to be modified by any provisions of this Ordinance; and such restrictions shall be controlling except insofar as this Ordinance imposes greater restrictions by reason of the use or location of the building, in which case the provisions of this Ordinance shall control.

16-7.2       In order that values of existing property may not be liable to depreciation because of possible inferior quality of future adjacent building construction in the same class or district in any block, it is the intent of the Ordinance that the quality and character of construction of any building shall be equal to or better than the average of such quality of existing buildings of the same character in the same class district of the block, or the existing buildings in

the adjoining block of the same class district if there are no existing buildings in the same block.

16-8 SPECIAL FLOOD PROTECTION PROVISIONS TO MEET REQUIREMENTS OF NATIONAL FLOOD INSURANCE PROGRAM<sup>31 60</sup>

16-8.1 PURPOSE

The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the 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 districts subject to flooding.
- C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood proofed against flooding and flood damage.
- D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

16-8.2 APPLICABILITY

These provisions shall apply to all lands within the jurisdiction of the Town of Wytheville and identified as being in the one hundred (100) year floodplain by the Federal Insurance Administration.

#### 16-8.3 COMPLIANCE AND LIABILITY

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this Ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this Ordinance.
- B. The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damages.
- C. This Ordinance shall not create liability on the part of the Town of Wytheville or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

#### 16-8.4 ABROGATION AND GREATER RESTRICTIONS

This Ordinance supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this Ordinance.

16-8.5 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this Ordinance are hereby declared to be severable.

16-8.6 PENALTIES

- A. Any person who fails to comply with any of the requirements or provisions of this Ordinance or directions of the Zoning Administrator or any other authorized employee of the Town of Wytheville shall be guilty of a misdemeanor of the first class and subject to the penalties therefore.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this Ordinance shall not excuse the violation or noncompliance to permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this Ordinance

may be declared by the Wytheville Town Council to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this Ordinance.

16-9

#### DEFINITIONS<sup>60</sup>

- A. Base Flood/One Hundred Year Flood – Means the flood having a one (1) percent chance of being equaled or exceeded in any given year. [Often referred to as the 100-year flood].
- B. Base Flood Elevation (BFE) – The Federal Emergency Management Agency designated 100-year water surface elevation plus one (1) foot.
- C. Basement – Any area of the building having its floor sub-grade (below ground level) on all sides.
- D. Board of Zoning Appeals – The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.
- E. Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- F. Floodplain or flood-prone area – Any land area susceptible to being inundated by water from any source.
- G. Floodway – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

- H. Freeboard – A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.
- I. Lowest Floor – The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistance enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; *provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.
- J. New Construction – For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- K. Recreational Vehicle – A vehicle which is:
- (a) built on a single chassis;

- (b) 400 square feet or less when measured at the largest horizontal projection;
  - (c) designed to be self-propelled or permanently towable by a light duty truck; and
  - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
- L. Substantial Damage – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- M. Substantial Improvement – Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the *start of construction* of the improvement. This term includes structures which have incurred *substantial damage* regardless of the actual repair work performed. The term does not, however, include either:
- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

- (2) any alteration of a *historic structure*, provided that the alteration will not preclude the structures continued designation as a *historic structure*.

16-10 ESTABLISHMENT OF ZONING DISTRICTS<sup>60</sup>

16-10.1 DESCRIPTION OF DISTRICTS

A. Basis of Districts

The various floodplain districts shall include areas subject to inundation by waters of the one hundred (100) year flood. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) for the Town of Wytheville prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated May 2, 2008, as amended.<sup>71</sup>

1. The Floodway District is delineated, for purposes of this Ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100) year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this district are specifically defined in Table 3 of the above referenced Flood Insurance Study and shown on the accompanying Flood Boundary and Floodway Map or Flood Insurance Rate Map.
2. The Flood-Fringe District shall be that area of the one hundred (100) year floodplain not included in the Floodway District. The basis for the outermost boundary of the District shall be the

one hundred (100) year flood elevations contained in the flood profiles of the above referenced Flood Insurance Study and as shown on the accompanying Flood Boundary and Floodway Map or Flood Insurance Rate Map.

3. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100) year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the one hundred (100) year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100) year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in

sufficient detail to allow a thorough review by the Town of Wytheville.

The Community shall require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data. [Code of Federal Regulations 44CFR 60.3(b) section (3).]

B. Overlay Concept

1. The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
2. Any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
3. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain inapplicable.

16-10.2 OFFICIAL ZONING MAP

The boundaries of the Floodplain Districts are established as shown on the Flood Boundary and Floodway Map and/or Flood Insurance Rate Map which is declared to be a part of this Ordinance and which shall be kept on file at the Town of Wytheville offices.

16-10.3 DISTRICT BOUNDARY CHANGES

The delineation of any of the Floodplain Districts may be revised by the Wytheville Town Council where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

16-10.4 INTERPRETATION OF DISTRICT BOUNDARIES

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Officer. Final interpretations shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

16-11 DISTRICT PROVISIONS<sup>60</sup>

GENERAL PROVISIONS

A. Permit Requirement

All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, such as the current edition of the *Virginia Uniform Statewide Building Code* and the Town of Wytheville Subdivision Regulations. Prior to the issuance of any such permit, the Zoning Officer shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.

B. Alteration or Relocation of Watercourse

Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administration.

C. Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

D. Site Plans and Permit Applications

All applications for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:

1. For structures to be elevated, the elevation of the lowest floor (including basement).
2. For structures to be flood proofed (nonresidential only), the elevation to which the structure will be flood proofed.
3. The elevation of the one hundred (100) year flood.
4. Topographic information showing existing and proposed ground elevations.

E. Recreational Vehicles

Recreational vehicles placed on sites either:

- (i) Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use, or
- (ii) Meet the permit requirements for placement and the elevation and anchoring requirements for manufactured homes as

contained in the current edition of the *Virginia Uniform Statewide Building Code*

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

#### 16-11.1 FLOODWAY DISTRICT

In the Floodway District no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the one hundred (100) year flood elevation.

#### 16-11.2 PERMITTED USES IN THE FLOODWAY DISTRICT

The following uses and activities are permitted provided that they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials and equipment:

- A. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, horseback riding and hiking trails, wildlife and nature preserves,

game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.

- C. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.
- D. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas, airport landing strips, etc.

#### 16-11.3 FLOOD FRINGE AND APPROXIMATED FLOODPLAIN DISTRICTS

In the Flood Fringe and Approximated Floodplain Districts, the development and/or use of land shall be permitted in accordance with the regulations of the underlying area provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained in the current edition of the *Virginia Uniform Statewide Building Code*.

Within the Approximated Floodplain District, all new subdivision proposals and other purposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data. The applicant shall also delineate a floodway area based on the requirement that all existing and future development not increase the one hundred (100)-year flood elevation more than one foot at any one point. The engineering principle--equal reduction of conveyance--shall be used to make the determination of increased flood heights.

Within the floodway area delineated by the applicant, the provisions of Section 16-11.1 shall apply.

#### 16-11.4 DESIGN CRITERIA FOR UTILITIES AND FACILITIES

##### A. Sanitary Sewer Facilities

All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

##### B. Water Facilities

All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.

##### C. Drainage Facilities

All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waste disposal sites. The Wytheville Town Council may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional

drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

D. Utilities

All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas, should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.

E. Streets and Sidewalks

Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

16-12 VARIANCES: FACTORS TO BE CONSIDERED<sup>60</sup>

In passing upon applications for Variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the Zoning Ordinance and consider the following additional factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the one hundred (100)-year flood elevation.

B. The danger that materials may be swept on to other lands or downstream to the injury of others.

- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- J. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

M. Such other factors which are relevant to the purposes of this ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense, and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100) year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

16-13 EXISTING STRUCTURES IN FLOODPLAIN DISTRICTS<sup>60</sup>

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- A. Existing structures in the Floodway District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the one hundred-year flood elevation.
- B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, elevation and/or flood-proofing should be considered to the greatest extent possible.
- C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of this ordinance and the current edition of the *Virginia Uniform Statewide Building Code*.

16-14 PURPOSE

It is the general policy of the Town of Wytheville in accordance with the provisions of ' 15.1-489 of the Code of Virginia to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time to recognize effects of change. It is the purpose of this article to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning application for the protection of the community that are not generally applicable to land similarly zoned. The provisions of this section and the following sections shall not be used for the purpose of discrimination in housing. The provisions of this ordinance shall not be used to allow a use not otherwise enumerated in that Zoning district.

16-14.2 SAME; CONDITIONS AS PART OF A REZONING OR AMENDMENT TO ZONING MAP

This section includes and provides for the voluntary proffering in writing by the owner, of reasonable conditions, prior to a public hearing before the Town Council, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment of a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) such conditions shall have a reasonable relation to the

rezoning; (iii) such conditions shall not include a cash contribution to the Town of Wytheville; (iv) such conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities except as provided in the Subdivision Ordinance and in Section 15.1-466 (f) of the Code of Virginia; (v) such conditions shall not include payment for or construction of off-site improvements except as provided in the Subdivision Ordinance and in Section 15.1-466 (j) of the Code of Virginia; (vi) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (vii) all such conditions shall be in conformity with the Comprehensive Plan. Once proffered and accepted as part of an amendment to the Zoning Ordinance, such conditions shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised Zoning Ordinance.

16-14.3 SAME; ENFORCEMENT AND GUARANTEES

The zoning administrator shall be vested with all necessary authority on behalf of the Town of Wytheville to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including (i) the ordering in writing of the remedy of any non-compliance with such conditions; (ii) the bringing of a legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and (iii) require a guarantee, satisfactory to the Town Council, in an amount

sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

16-14.4 SAME; RECORDS

The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.

16-14.5 SAME; PETITION FOR REVIEW OF DECISION

Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of this article may petition the Town Council for the review of the decision of the zoning administrator. All such petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within thirty (30) days from the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.

16-14.6 SAME; APPLICATION FOR REVIEW

Application for a conditional use permit shall be made on a form prescribed by the zoning administrator.

16-14.7 SAME; AMENDMENTS AND VARIATIONS OF CONDITIONS

There shall be no amendment or variation of conditions created pursuant to the provisions of Section 16-14.2 until after a public hearing before the Town Council advertised pursuant to the provisions of '15.1-541 of the Code of Virginia.

16-15 USES NOT PERMITTED IN ANY ZONING DISTRICT<sup>56</sup>

16-15.1 PURPOSE

The purpose of this section is to prevent uses in any zoning district that are incompatible with the intent of this ordinance and, therefore, are not permitted unless a special exception permit is issued.

16-15.2 DEFINITIONS

**Existing Dwelling:** A structure designed for residential use which is occupied, or has been issued a certificate of occupancy or a building permit prior to the date on which a completed application for an intensive livestock facility has been received.

**Intensive Livestock Facility:** A livestock operation with accessory uses or structures which at any one time has at least 300 animal units as referenced in the below chart and where such animals are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period, and crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the lot or facility.

Type of Facility	Equivalent of 300 Animal Units
Livestock	300 slaughter and feeder cattle
Livestock	750 swine each weighing over 55 pounds
Livestock	150 horses
Livestock	3,000 sheep or lambs
Dairy	200 mature dairy cattle (whether milked or dry cows)
Poultry	16,500 turkeys
Poultry	30,000 laying hens or broilers

**Livestock:** Includes all domestic or domesticated: bovine animals, including but not limited to cattle; equine animals, including but not limited to horses; ovine animals, including but not limited to sheep; porcine animals, including but not limited to hogs; poultry, including but not limited to turkeys, laying hens, or broilers.

**Livestock Market:** A commercial facility that is intended for regular and continual delivery, showing and sale or auction, and shipping of domestic animals. This shall include all incidental facilities and structures including parking lots, barns, show rinks, bleachers, silos, holding pens, animal waste management system, etc.

16-15.3 USES NOT PERMITTED

1. Livestock Market
2. Intensive Livestock Facility

16-15.4 SPECIAL EXCEPTIONS

These uses may be permitted in an A-1 Agricultural District only with a special exception permit. The special exception permit shall address the following:

**Area:** Livestock markets shall comprise a minimum of 25 contiguous acres. Intensive livestock facilities shall comprise a minimum of 100 contiguous

acres.

**Traffic:** Livestock markets shall show that appropriate access for traffic to and from the market is available and the routes are limited to arterial streets.

**State and Federal Laws and Regulations:** Applicants for or owners of livestock markets or intensive livestock facilities shall provide evidence that all State and Federal laws, statutes, or regulations for environmental quality, pollutant discharge, etc. have been met.

**Noise and Odor:** Applicants for or owners of livestock markets or intensive livestock facilities shall provide information concerning methods to control odor, insects, and fecal contamination of groundwater and adjacent properties, and shall provide information that conforms to the following minimum separation distance from the real estate upon which the operation is conducted:

- Existing dwelling or residentially zoned property: 1,200 feet
- Roads or streets: 150 feet
- Property lines: 150 feet
- Existing business zones/Existing industrial zones/Existing medical arts zones: 600 feet
- Existing residential dwelling or business owned by the operator/owner: 600 feet
- Schools, churches, recreation parks or areas, public wells or springs: 1,200 feet

16-16 BUFFER YARDS AND SCREENING<sup>68</sup>

16-16.1 BUFFER YARD--PURPOSE

The purpose of buffer yards is to limit the view and reduce the noise between abutting incompatible uses, and to ease the transition from one zoning district to another. Buffer yards are intended to provide a physical integration of uses which promote the public health, welfare and safety by:

- (1) Preventing visual pollution;
- (2) Preventing the overcrowding of land;
- (3) Preventing the undue congregation of people and vehicles; and
- (4) Promoting the peaceful enjoyment of property within the Town of Wytheville.

16-16.2      DEFINITIONS

**Density:** The number of dwelling units permitted per net acre of land.

**Development:** (1) Any human-caused change to improved or unimproved real estate that requires a permit or approval from any Town, State, or Federal agency, including but not limited to the placing, construction, repair, or renovations to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations and storage of material. (2) The subdivision and severance of land.

In A-1 Agricultural districts, the construction of fences, plowing, planting of crops, and grazing of animals shall not constitute “development” for the purposes of this section. Also, the construction of agricultural buildings greater than 20 feet from the property line shall not constitute “development” for the purposes of this section.

**Intensity:** The magnitude of activity affecting the development of densities, traffic flow, commercialism, tourism, and land use.

16-16.3      BUFFER YARDS—WHEN REQUIRED

(a) A buffer yard shall be required with the development of any lot or property in any zoning district when the lot or property in that district abuts a zoning district of lower intensity.

(1) When a public right-of-way separates the development of property of higher intensity, the following criteria shall apply, regardless of whether the zoning line is on one side or the other or the center of the public right-of-way:

(a) If the public right-of-way is an alley or local or collector street, a buffer yard with screening shall be

provided for that portion of the higher intensity use abutting the alley or street.

(b) If the public right-of-way is an arterial street or highway, no buffer yard or screening shall be required for the portion of the higher intensity use abutting the public right-of-way.

(b) When a site plan is submitted to further develop a property or accommodate a change in land use, buffer yard and screening requirements may only be applied to those portions of the property that abut properties of lesser intensity that are directly affected by the proposed improvements or change in land use, as determined by the Zoning Administrator.

16-16.4 ZONING DISTRICT INTENSITIES

For purposes of this section, intensities of the zoning districts shall be ranked according to the chart below. Category 1 shall be the least intensive, and Category 8 shall be the most intensive. When a zoning district of greater intensity is rezoned or developed adjacent to a zoning district of lesser intensity, a buffer yard and screening shall be provided.

**Table of Zoning District Intensities**

Increasing Intensity



Category	Zoning Districts
1	R-1, R-1A, R-1M
2	R-2, R-3
3	A-1
4	R-2 FH
5	R-3 MH
6	MA-1
7	B-1, B-2, B-2 DT
8	M-1, M-1M, M-2

16-16.5 BUFFER YARD SPECIFICATIONS

A buffer yard shall be a minimum of 20'-0" wide and shall be continuous except as provided above. The buffer yard shall contain vegetative screening that shall consist of at least two rows of Leland Cypress trees spaced at least 5 feet apart. Leland Cypress trees in each row shall be spaced at 20'-0" on center maximum, staggered from the opposite row such that the effect is a staggered row of trees spaced a maximum of ten (10) feet apart. Trees shall be a minimum of five (5) feet tall at the time of planting and shall be healthy nursery stock. Planting shall occur at an appropriate time of year to ensure healthy tree growth. When it is determined that the use to be separated by

the buffer yard is so intense as to render the use of the vegetative screen ineffective, an architectural screen of at least five (5) feet in height shall be utilized. Such architectural screen shall be an opaque fence of treated wood, vinyl, brick or other decorative masonry and shall be constructed to provide an attractive and durable barrier. Evergreen landscaping consisting of approved trees or shrubs shall be placed at a minimum of twenty (20) feet on center on both sides of the screen.

#### 16-16.6 BUFFER YARDS—GENERAL STANDARDS

- (a) Buffer yards shall contain vegetative and architectural screening that achieves appropriate screening of the different uses or densities. Trees used for screening, other than that specified, shall be suitable as determined by the Zoning Administrator.
- (b) The maximum slope of any buffer yard shall be 2H:1V. Additional width shall be added to any portion of any buffer yard which exceeds this slope such that the minimum buffer yard width is met by land less steep than 2H:1V.
- (c) The buffer yard shall be located entirely within the higher intensity zoning district and abutting the zoning district line, or adjacent right-of-way if such right-of-way separates the lot from the zoning district line. However, the buffer yard may be placed in the lower intensity zoning district or partially within both zoning districts if both sides of the zoning district line and entire buffer yard width are within common ownership and a permanent easement is provided over any portion of the buffer yard not within the higher intensity zoning district.
- (d) A driveway required to serve the principal structure on the site may exist in the buffer yard. This driveway shall run substantially perpendicular to the buffer yard.
- (e) Buffer yards shall be maintained in a natural condition free of structures, loading or storage areas, parking, roads, or driveways except as provided for in (d) above.
- (f) Buffer yards required by this section shall be applied equally to all similarly situated properties. Modifications to these standards may be granted in writing by the Zoning Administrator if the Zoning Administrator finds any of the following circumstances exist on the proposed building site, or surrounding properties:
  - (1) Natural land characteristics such as topography or existing vegetation on the proposed building site would achieve the same intent of this section.

- (2) Innovative architectural design or landscaping is employed on the building site to achieve an equivalent buffering and screening effect.
- (3) The required screening would be ineffective due to the proposed topography of the site, and/or the location of the improvements on the site.
- (4) The topography or other conditions of adjacent and surrounding sites is such as to render required screening ineffective.
- (5) Site conditions exist that would not permit the placement of screens, or in the case of vegetative screens would hinder their survival. If such conditions exist, the Zoning Administrator may require alternative screens be provided.

(g) When property lines abut an adjacent jurisdiction, the Administrator shall determine the specific screening and buffering requirements along that property line after consideration of the zoning designation and/or land use of the adjacent property. Requirements shall not exceed those that would be required for similarly situated/zoned property within the Town.

(h) When buffer yards abut a public right of way, the width of the buffer yard may be required to be increased to accommodate safe sight distances around the screening required.

(i) Buffer yards and screening shall be continuous and in place at the time of occupancy. If screening is not complete due to the season or other considerations, a bond for the full value of the screening shall be obtained and kept in effect until the screening is complete. If vehicular or pedestrian access through the screen is necessary, the screening function shall be preserved.

(j) Any features required by this section shall be maintained for the life of the use by the owner of the property on which they are required.

16-17      RETAINING WALLS<sup>69</sup>

16-17.1    PURPOSE

In order to encourage the reasonable development of property along major streets and provide for reasonable access thereto, to encourage development that relates to the scale and elevation of the adjacent streets, and assure that utilities are accessible, this article regulates the construction,

height, location, and material of retaining walls along all arterial streets in the town.

16-17.2 DEFINITION

Retaining Wall: A wall or similar structure built or designed to retain or restrain forces of soil or other materials at a grade change to hold the soil or other materials on the up-hillside from slumping, sliding or falling; a wall or terraced combination of walls used to retain more than 18 inches of materials and not used to support, provide a foundation for, or provide a wall for a building or structure.

16-17.3 No retaining wall in excess of 4'-0" in height may be constructed unless it conforms to the following:

1. The retaining wall shall be designed by a professional engineer who is licensed to practice in Virginia.
2. The plans for such retaining walls shall be submitted to the Town of Wytheville Building Official for review and approval and issuance of a building permit.
3. The retaining wall must be set back at least four (4) feet from the property line, right of way, or easement line. For a retaining wall over four (4) feet in height, the retaining wall shall be set back at least four (4) feet from the property line, public street, rights of way, utility easements, etc. and an additional two (2) feet for each one (1) foot of height of the retaining wall. In cases where the retaining walls have footings, buttresses, or other supports, the setback shall be from the nearest component of the retaining wall. [For example, an 8 foot retaining wall must be set back four (4) feet + (2 X 8) = 20 feet from the property line.]
4. No fences, rails, or other extensions of the retaining wall shall extend from the top of the retaining wall more than 4'-0". All fences, retaining walls, or barriers shall be designed to meet applicable building codes and shall be decorative in nature. No chain link fences, woven wire fences, barbed wire fences shall be permitted.

SECTION 16-18 ENTRANCE CORRIDOR OVERLAY DISTRICT<sup>75</sup>

16-18.1 PURPOSE

The entrance corridor overlay district is intended to implement the Comprehensive Plan goal of protecting the town's historic, architectural, and cultural resources by ensuring a quality of development compatible with those resources through these regulatory measures. The purpose of this article is to protect and enhance the town's entrance corridors' attractiveness; to sustain and enhance the economic benefits accruing to the town from tourism; to support and stimulate development complimentary to the

prominence afforded properties and districts having historic, architectural or cultural significance; all of the foregoing being deemed to advance and promote the health, safety and welfare of the general public.

## 16-18.2 APPLICABILITY

(a) Subject to subsection (b) below, an entrance corridor overlay district is hereby established upon and along the following streets or highways, which are deemed by the Town Council to be significant routes of tourist access or to designated historic districts, buildings, or structures within the town ("Entrance Corridor Streets"):

(1) Peppers Ferry Road from Interstate 77 to 11<sup>th</sup> Street

(b) Entrance corridor overlay districts are hereby established upon the lots and parcels of land contiguous to the streets enumerated above, from the edge of the pavement or back of curb to the depth of 200 feet. The portion of the development that falls within any portion of the 200 foot mark shall comply with these requirements.

(c) The entrance corridor overlay districts are hereby established over the existing zoning district classifications of the land contiguous to the street enumerated above. The regulations set forth within this article shall apply to all such land in addition to the regulations of the underlying zoning district and in addition to other generally applicable Zoning Ordinance provisions (e.g., generally applicable standards governing parking, landscaping, signs, etc.). In the event of a conflict between the regulations set forth within this article and those set forth within the regulations of the underlying zoning district classification, or elsewhere within this Zoning Ordinance, the more restrictive regulation shall govern.

## 16-18.3 SPECIFIC REQUIREMENTS FOR CORRIDOR OVERLAY DEVELOPMENT

### 1. Landscaping Buffer

Landscaping buffer areas shall be provided on all properties along the route. The buffer shall be twenty (20) feet in width measured from, and parallel to, the curb line or if there is no curb, the edge of permanent pavement. There shall be no development in the buffer yard area, except for signs and entrances as permitted in the Buffer Yard Regulations and permitted herein.

### 2. Screening of Utilitarian Areas

Utilitarian areas, such as dumpster pads, transformers, storage areas,

etc., exposed to view from the Corridor shall be screened with a fence or vegetation (according to the standards for Buffer Yard Regulations, Section 16-16 of the Zoning Ordinance).

3. Sign Requirements

Signs shall have an effective height of no more than six (6) feet with a length limit of twenty-five (25) feet with a limit of four (4) different colors. Signs shall be of stone masonry, brick, wood, or other traditional materials. A single business sign per property is permitted along the corridor in the landscaping buffer area. In the event of conflict of this provision with the Sign Ordinance, the most restrictive provision shall apply. These sign regulations shall not supersede the high pole sign provisions for those properties located within 660 feet from the interstate limited access way.

4. Underground Utilities

Underground utilities shall be required for all new development.

5. Lighting

Lighting shall consist of decorative lights and poles (no wood poles and “cobra-heads”) with “cut-off” heads that direct the light toward the ground to avoid light pollution.

16-18.4 REVIEW FOR CONFORMANCE WITH THE SPECIFIC REQUIREMENTS

1. Review of development for conformance with the requirements herein shall be administrative by the Director of Planning or his designee. Upon approval of a development plan or sign, a Certificate of Appropriateness (CoA) shall be issued.
2. Certificates of Appropriateness:
  - (a) The following shall require a Certificate of Appropriateness that confirms the compliance with the requirements of this section:
    - (1) All development requiring a site plan.
    - (2) All new signs.
    - (3) Installation or construction of fences, walls, retaining walls, landscaping, and lighting.
    - (4) R-1 Residential, R-2 Residential, and R-3 Residential districts shall be excluded from the requirements established herein.

- (b) All applications for the certificates required by the subparagraphs above shall be reviewed and approved administratively by the Director of Planning within thirty (30) days. If the application is not approved, the Director of Planning shall mail or hand-deliver notice of his decision to the applicant. In either case, the applicant shall have ten (10) working days from the date of the Director's decision to appeal the decision to the Board of Architectural Review. The Board of Architectural Review shall review the application at the next regularly scheduled meeting and have thirty (30) days from that meeting to render a decision. Review of development for conformance with the requirements herein shall be administrative by the Director of Planning or his designee. Upon approval of a site plan or sign, a Certificate of Appropriateness (CoA) shall be issued. If the development fails to meet the requirements or is disapproved and a CoA is not issued by the Director of Planning, the applicant may appeal to the Board of Architectural Review (BAR), and the BAR shall undertake a review of the proposed project, and may issue a Certificate of Appropriateness if the BAR finds that the development is in keeping with the intent of the requirements of this section or that proposed alternatives meet the intent of the requirements. The BAR may suggest changes or alternatives to the development that would bring the project into conformance so that, if changed, a CoA can be issued, or the BAR may reject the development and not issue a CoA. If the BAR fails to issue a Certificate of Appropriateness, the applicant may appeal the decision to the Board of Zoning Appeals (BZA). An Applicant aggrieved by the decision of the Board of Architectural Review may appeal the decision to the Board of Zoning Appeals (BZA) within ten (10) days, and the matter shall be heard at the next regularly scheduled meeting. The BZA shall have thirty (30) days from the date of the meeting to render a decision.
- (c) Notwithstanding the foregoing provisions of this section, no Certificate of Appropriateness shall be required for alterations to a building or structure.
- (d) Once issued, a Certificate of Appropriateness shall be binding upon the proposed development, and to any conditions of issuance specified therein.
- (e) Once issued, a Certificate of Appropriateness shall expire and become void one (1) year after issuance, unless within that time period one (1) of the following has occurred:

(1) A building permit for construction of the improvements or activities has been issued.

(2) The Director of Planning extends the validity of any such certificate for a period not to exceed one (1) year.

(f) Standards for considering Certificates of Appropriateness:

The Director of Planning, in conducting an administrative review, and the Board of Architectural Review and the BZA on review of an appeal, shall consider the entrance corridor requirements enumerated herein.

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