

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO AMEND THE CODE
OF THE CITY OF HAGERSTOWN, BY REPEALING AND RE-ENACTING
CHAPTER 140, *LAND MANAGEMENT CODE*, TO INCORPORATE THE 2020
ANNUAL PACKAGE OF REVISIONS**

RECITALS

WHEREAS, by virtue of State Law and the City Charter, the City of Hagerstown regulates land use within the City; and

WHEREAS, the Mayor and Council have a responsibility to promote public health, safety and general welfare of the citizens of Hagerstown; and

WHEREAS, the Mayor and Council have a responsibility to implement the policies of the Comprehensive Plan and provide a system of land use and development regulations that provides for harmonious use and development of land; and

WHEREAS, the Planning Commission have recommended a package of amendments to the *Land Management Code* to better protect our neighborhoods and facilitate desirable use and development of land within the City of Hagerstown; and

WHEREAS, upon discussion with City staff and review during a public hearing process, the Mayor and Council find it in the best interests of the citizens to revise Chapter 140 to incorporate the 2020 package of revisions, as hereafter described;

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Council of the City of Hagerstown, Maryland, as it's duly constituted legislative body, as follows:

1. The Code of the City of Hagerstown be and is hereby amended by deleting and repealing Chapter 140, *Land Management Code*,
2. The Code of the City of Hagerstown be and is hereby amended by adding thereto a new chapter, to replace Chapter 140 hereinabove repealed, to be Chapter 140, Land Management Code, to read as follows:

(See Attached Text of Chapter 140)

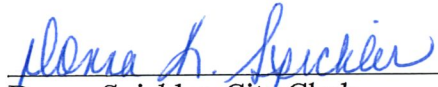
3. This ordinance shall become effective immediately upon the effective date of this Enacting Ordinance.
4. This revised and amended code in its entirety shall be known as version 3.7.

0-21-09

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Enacting Ordinance shall become effective upon the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND



Donna Spickler, City Clerk



Emily Keller, Mayor

Date of Introduction: May 11, 2021
Date of Passage: May 25, 2021
Effective Date: June 24, 2021

0-21-09

THE CITY OF
HAGERSTOWN, MARYLAND



LAND MANAGEMENT CODE

CHAPTER 140, HAGERSTOWN CITY CODE

VERSION 3.7

EFFECTIVE JUNE 24, 2021

CITY OF HAGERSTOWN

LAND MANAGEMENT CODE

CHAPTER 140 – CITY CODE

VERSION 3.7

EFFECTIVE JUNE 24, 2021

TABLE OF CONTENTS

ARTICLE 1	GENERAL PROVISIONS
ARTICLE 2	AUTHORITATIVE REVIEW BOARDS AND AGENCIES
ARTICLE 3	DEFINITIONS
ARTICLE 4	ZONING
ARTICLE 5	SUBDIVISION AND LAND DEVELOPMENT
ARTICLE 6	FLOODPLAIN MANAGEMENT
ARTICLE 7	FOREST CONSERVATION
ARTICLE 8	APPEALS, VIOLATIONS AND PENALTIES

ARTICLE 1
General Provisions

- A. Title.** This Chapter is known and may be cited as the “Land Management Code.” Individual Articles of this Chapter may be cited as the “Ordinance” it is crafted to govern, as described in each Article. This Chapter includes both the text of the regulations and the Zoning Map of the City of Hagerstown, as maintained by the Planning and Code Administration Department.
- B. Purpose.** This Chapter is adopted as the revision and reorganization of several former land use and development regulatory ordinances in a single document.

This Chapter is adopted with the intent that its provisions will:

1. Promote public health, safety, and general welfare of the citizens of Hagerstown;
2. Implement the policies of the Comprehensive Plan;
3. Provide a system of land use and development regulations that provides for harmonious use and development of land;
4. Regulate and control the division and development of land that enables the City to effectively grow;
5. Provide adequate light and air;
6. Promote the conservation of natural and cultural resources;
7. Facilitate the adequate provisions of transportation, water, sewerage, schools, recreation, soil conservation, landscaping, parks and other public facilities and services.

This Chapter is made with reasonable consideration of, among other things, the character of the City, the suitability of its various areas for particular uses; the desire to protect the value of buildings and encourage orderly development; and the most appropriate use of land throughout the jurisdiction.

- C. Mayor and City Council.** The Mayor and City Council have the following powers and duties pursuant to the Annotated Code of Maryland and the Charter of the City of Hagerstown:
 1. Render final decisions pertaining to amendments to the Zoning Map of the City of Hagerstown and this Land Management Code.
 2. Adopt the Comprehensive Plan and any amendment thereto.
 3. Appoint members of the Planning Commission, Board of Zoning Appeals, and Historic District Commission.
 4. Accept and/or appropriate funds for the expenses of the Planning Commission, Board of Zoning Appeals, Historic District Commission, and the Planning and Code Administration Department.

5. Adopt a schedule of fees for plan reviews, permits, fee-in-lieu contributions, inspections, and other activities set forth in this Chapter.

6. Exercise all additional authority, power and duties granted by the City Charter and Maryland Law.

D. Authority. This Chapter and its subsequent components are established in accordance with:

1. The applicable provisions of the Charter of the City of Hagerstown.

2. The applicable provisions of the Land Use Article of the Annotated Code of Maryland.

3. The applicable provisions of Section 5-1601 through 5-1612, Natural Resources Article, Annotated Code of Maryland, as pertaining to Forest Conservation Programs.

4. Federal Emergency Management Agency, 44 Code of Federal Regulations.

E. Applicability. This Chapter applies to all properties within the Corporate Limits of the City of Hagerstown, Maryland. Except as hereafter specified, no land, building, structure or premises shall be used, subdivided or altered, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted, or altered except in conformity with the provisions of this Code.

F. Consistency with the Comprehensive Plan. This Chapter and its component parts have been prepared in accordance with, and is generally consistent with goals and policies of the Comprehensive Plan.

G. Coordination with Other Chapters. The use of buildings and land within the City is subject to all other regulations, whether or not such other regulations are specifically referenced in this Chapter. References to other regulations or provisions of this Chapter and Code are for the convenience of the reader. Lack of a cross reference does not mean that other regulations do not apply.

Where the provisions of this Chapter impose greater restrictions than those of any statute, other regulations, or ordinance, the provisions of this Code shall prevail. Where the provisions of any federal, state, or City statute, ordinance, or regulation impose greater restrictions than these Regulations, the provisions of such federal, state, or City statute, regulation, or ordinance shall prevail.

H. Interpretation. Interpretation and application of the provisions of this Chapter shall be regarded as the basic and minimum requirements for the protection of public health, safety, comfort, convenience, and general welfare. The meaning of any and all words, terms or phrases in this Chapter shall be construed in accordance with Article 3 of this Chapter.

This Chapter contains numerous graphics, illustrations, and drawings in order to assist the reader in understanding and applying the law. However, to the extent that there is any inconsistency between the text of this Chapter and any such graphic, illustration or drawing, the text shall control unless otherwise provided in the specific section.

-
- I. Severability.** Should any Article, Section, Subsection, or provision of this Chapter be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this Chapter as a whole, or any part thereof other than the part so declared to be invalid or unconstitutional.
- J. Permits and Certificates.** No development shall occur on any property within the City until the applicable permits, approvals, and certificates for such activity or development have been issued and approved by the officials with the authority to approve the same. The Zoning Administrator shall have the authority to revoke an issued zoning certificate or zoning approval of a building permit in accordance with Article 4, Section S.1.g.
- K. Violations and Enforcement.** Violations and enforcement of this Chapter shall be in accordance with Article 8, and any specific provision of individual Articles of this Chapter.
- L. Uses or Developments Rendered Nonconforming by the Adoption of this Chapter.** This Chapter is the re-codification of four former chapters of the City Code (Zoning, Subdivision, Floodplain Management, and Forest Conservation) into a single, unified Chapter with minor content amendments effective on September 26, 2008. It is the intent that the original effective date of these ordinances shall continue in full force and effect. Should content changes adopted with this re-codification result in zoning, subdivision, floodplain management or forest conservation nonconformity on property, the effective date of this Chapter shall constitute dates of amendment of the affected former ordinance(s). Any zoning, subdivision, floodplain management, or forest conservation plan in process prior to the effective date of this Chapter shall be allowed to proceed under the terms of the Ordinances in effect prior to the adoption of this Chapter.
- M. Liability.** The Zoning Administrator or any other employee charged with the enforcement of this Chapter, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties or omissions thereof. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Chapter shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The Zoning Administrator or any subordinate or representative shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Chapter; and any officer of the City, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection herewith.

This page intentionally left blank.

Appendix 1 to Article 1: Amendments to the Land Management Code.

The following chart summarizes the effective dates, affected sections, and a description of all amendments made to the Land Management Code. It is for reference and research purposes only and shall be administratively updated by the Planning and Code Administration Department each time the Mayor and Council adopts an amendment to the Code. When provisions of this chart conflict with the adopted text of a code amendment, the adopted text shall prevail.

File Number and Effective Date	Description of Amendment(s)
ZT-2008-01 (v.1.1) October 23, 2008	Parking space requirements for shopping centers. Create definition of “gross leasable area.”
ZT-2008-03 (v.1.2) May 28, 2009	Expanded authority of the Board of Zoning Appeals to hear variances for lot area and lot area per dwelling unit requirements, but not solely for increasing unit yield.
ZT-2008-02 (v.1.3) June 26, 2009	Add definitions of “mixed-use building,” “mansion apartment house,” “stacked apartment units,” and “master planned project”; and amend definition of “courtyard apartment.” Create N-MU and D-MU Districts. Repeal the C-3 District. Create the I-MU District.
ZT-2009-01 (v.1.4) September 26, 2009	Create definition of “dormitory.” Comprehensive revision to commercial district regulations. Move site plan standards to Article 5.
ZT-2009-03 (v.1.5) January 14, 2010	Create a Local Conversion District Overlay Zoning District. Re-number Subsection 3 (historic districts) to 4 in the section on overlays.
ZT-2009-02 (v.1.6) February 25, 2010	Create definition of “home workstation.” Remove provision for special exception for home occupations, and allow them as accessory uses with performance standards.
ZT-2009-04 (v.1.7) July 22, 2010	Create three definitions for residential care facilities. Enumerate the uses found in these definitions as permitted and special exception uses in the various districts.
ZT-2010-01 (v.1.8) March 24, 2011	Add four definitions relating to wind and solar regulations. Create regulations pertaining to the installation of solar and wind energy collection systems.
ZT-2011-01 (v.1.9) April 26, 2012	Add definitions of “light manufacturing” and “artist live-work space.” Add kennels as permitted uses in the C2 and C4 districts and create performance standards. Add day boarding to kennels in the industrial districts and create performance standards. Add new permitted uses to Conversion District, make several changes to development standards, and set minimum area for district.
ZT-2012-01 and ZT-2012-02 (v.2.0) October 25, 2012	Comprehensive amendments to all articles of the Land Management Code.
ZT-2012-03 (v.2.1) April 25, 2013	Amend definition of “minor subdivision.”
ZT-2013-01 (v.2.2) October 23, 2013	Correction amendments resulting from the adoption of ZT-2012-02. Re-adoption of chapter as a two-page document, setting up the Land Management Code as a subordinate document by reference.

File Number and Effective Date	Description of Amendment(s)
	<p><i>(ZT-2013-01 Continued)</i></p> <p>Create parking regulations for drive-up restaurants. Adjust regulations for development of car sales facilities. Enumerate recycling operations and banquet facilities as a permitted use. Permit up to two dwelling units in a Local Conversion District. Add permitted uses to the Conversion District. Enact new sign regulations. Exempt two-family dwellings constructed as such from nonconforming provisions. Address inoperable motor vehicles at repair facilities. Address “cell on wheels” (COWS). Add a special exception for general retail in the IR zoning district. Adjust the Forest Conservation Ordinance for consistency with state law. Other minor structural and cross-referencing corrections resulting from the ZT-2012-02 amendments.</p>
<p>ZT-2014-01 and ZT-2015-01 (v. 2.3) October 30, 2015</p>	<p>Permit two voting members of the HDC to be non-city residents. Revise definitions of "artist live work space," "building," "graphic," "livestock," "manufacturing, light" and add definition of "bakery, retail," "brewery," "brewpub," "confectionery, retail," "contributing resource," "correctional institution," "distillery," "graphic, temporary," "graphic, window," "hookah lounge," "indoor plant cultivation and processing facility," "major economic development opportunity," "professional and workmanlike manner," "priority funding area," "storefront space," "stream restoration project," "theater marquee," and "vapor lounge." Remove definition of "graphic, street." Add provision for measuring distances between uses. Amend design provisions in mixed use districts addressing pedestrian orientation. Remove locational limitations on pawn shops and renumber subsequent subsections. Create residential development bulk regulations in the CL Zoning District. Comprehensive revision of Article 4, Section I (Street Graphics). Specify when a proposed PUD expires if not developed. Amend height limitations for fences in residential districts when adjacent to commercial or industrial districts or commercial areas of mixed-use districts. Revise subsection on use of semi-trailers and remove subsection dealing with "pods." Require work to be done in a professional and workmanlike manner. Prohibit use of tarps as a building material. Require dumpster enclosures for all new trash dumpster installations. Differentiate the expansion of a nonconforming use regarding building vs. land area. Prohibiting changing a nonconforming use to nine specific uses. Remove recreational vehicle parking requirement from apartment parking requirement in the CC-MU District. Adjust plan review process for wireless communications facilities and add maximum tower height requirements for the POM, I-MU and N-MU Districts. Expand HDC authority to include all window graphics. Permit applicant to proceed directly to "certificate of hardship" for demolition with the approval of the zoning administrator. Creates provision for approving demolition of "B level" historic resources for the purpose of accommodating important economic development projects.</p>

File Number and Effective Date	Description of Amendment(s)
	<p><i>(ZT-2014-01 and ZT-2015-01 Continued)</i></p> <p>Permit buildings to be demolished if ordered by the Chief Code Official if the building is an imminent threat to public safety, and renumber subsequent subsections.</p> <p>Multiple changes to the use chart in Section Z.</p> <p>Require the rear yard of interior townhouse units to abut an alley or open space area.</p> <p>Require a photometric plan for all site plans.</p> <p>Adjust parking lot lighting standards.</p> <p>Require site plans to include sidewalks to be installed along all public street frontages, with exceptions.</p> <p>Remove "parking lot design standards" from Article 5, Subsection I.5 (redundant to other provisions), and renumber subsequent sections.</p> <p>Correct residential district references in commercial development and multi-family design standards for open space and improvement amenities in multi-family developments.</p> <p>Require new multi-occupant buildings in the CC-MU to contain storefronts.</p> <p>Require minimum open space for multi-family developments, regardless if they are developed by subdivision or site plan.</p> <p>Correct residential district references for sketch plan standards and amenities for multi-family developments and shopping centers.</p> <p>Provide for exemptions to forest conservation article for stream restoration projects and redevelopment of previously impervious development.</p>
<p>ZT-2016-01 (v.3.0) November 24, 2016</p>	<p>Repeal obsolete provision referring to the Adequate Public Facilities Ordinance.</p> <p>Clarification of the rate a forest conservation fee-in-lieu is paid when remitted.</p> <p>Expand and clarify the process by which the zoning administrator may confirm a nonconforming use.</p> <p>Create requirement for a signature block for subdivision plats that refer to where homeowners' association documents can be found in the land records.</p> <p>Define "flea market," identify districts in which they can be located and performance standards for creating them.</p> <p>Amend residential accessory structure provision to limit them to 900 square feet total.</p> <p>Define "satellite simulcast betting facilities" and identify districts in which they may be located.</p> <p>Create standards that discourage the use of front yards of homes for large parking pads.</p> <p>Create buffer and setback requirements for outdoor storage of merchandise and business supplies.</p> <p>Create new side setback for apartment buildings in the section on residential districts.</p> <p>Create an enforcement prohibition for violations of the Chapter when the violation was created in accordance with a zoning or building permit issued in error, under certain conditions.</p> <p>Create setbacks for retaining walls over two feet in height.</p> <p>Amend the provisions for "home day care" to be more in line with State standards.</p> <p>Exempt gasoline price signage from the maximum sign area requirements, up to the minimum required to be posted by State law.</p> <p>Clarify the use of "bare bulbs" in signage regulations for artistic use.</p> <p>Permit automobile sales in the CL (Commercial Local) Zoning District, indoors only.</p> <p>Amend provision for "residential facilities with in-house professional care" to permit one such use per lot.</p>

File Number and Effective Date	Description of Amendment(s)
	<p><i>(ZT-2016-01Continued)</i></p> <p>Implement the following non-content adjustments: Restructure the subsection on uses in the AT District to be consistent with the Residential and Commercial districts; correct errors in the Graphics section that limited the regulations to certain districts; clarify that the zoning administrator may approve adjustments to recorded plats; minor phrasing and reference corrections to Article 5, Subsections C.19, I.1.c., I.4.b, I.4.h.4, F.2.b and F.2.c, to the definitions of “accessory building or use” and “essential utility equipment” in Article 3, and to Subsections (as identified in the previously effective version of this Ordinance) K.9, M.11.c, O.1.b(2), and to the use “dwelling, multi-family, constructed for that purpose prior to October 1, 1956” found in Section Z (use chart).</p> <p>Change all references to the “Planning and Code Administration Division” to the “Planning and Code Administration Department”.</p> <p>Add a cross reference to the prohibition on signs in the subsection on “home work stations” in Article 4 to the section on “graphics.”</p> <p>Adjust the wording of Article 5, Subsection I.9.b to clarify intent.</p> <p>List gasoline and diesel fuel sale to the public as a separate line item in Article 4, Section Z, without content change.</p> <p>Correct missing reference to limitations on tanning and depilatory salons in the POM District.</p> <p>Cross reference the amortization of temporary signs and use of semi-trailers to Article 4, Section M.</p> <p>Permit the Zoning Administrator to halt review of site plans that have been submitted as a means of gaining compliance with the Land Management Code for violations on the subject property.</p> <p>Correct cross referencing disconnects when the implementation of these amendments create such disconnects.</p> <p>Repeal and replace entire Land Management Code with this version 3.0, removing the footnoting and reference table in Article 8 that was required in version 2.3 to implement the Mayor and Council’s permission given to staff with the adoption of that version to administratively correct cross referencing, punctuation and spelling errors.</p>
<p>ZT-2017-03 (v.3.1) August 15, 2017</p>	<p>Amend Article 6 (Floodplain Management Ordinance) to insert date of newly adopted FEMA floodplain maps, implement sixteen additional minor adjustments required by FEMA and Maryland Department of the Environment, including capping variances for accessory buildings in floodplains at a footprint of no more than 600 square feet, and amend Article 3 (Definitions) to make seven minor adjustments to definitions impacted by the same above process and add a definition of “mixed use structure” in Article 6.</p>
<p>ZT-2017-01 and ZT-2017-02 (v. 3.2) October 26, 2017</p>	<p>Amend Article 4 (Zoning) to permit auto repair in the I-MU Zoning District, under certain conditions, and amend Article 5 (Subdivision and Land Development), Section A.3.d to permit lands subdivided to accommodate nonconforming or noncomplying townhouse units via simplified plat, to be re-recorded to legal conditions prior to the creation of the simplified plat, under certain conditions.</p>
<p>ZT-2017-04 (v. 3.3) January 18, 2018</p>	<p>Amend Article 4 (Zoning), to institute comprehensive revisions to the cluster development provisions for clustered residential development of land in the residential zoning districts.</p>
<p>ZT-2018-01 (v.3.4) January 10, 2019</p>	<p>Add “hair, nail and skin care stores” as a permitted use in the IR District.</p>

File Number and Effective Date	Description of Amendment(s)
ZT-2018-01 (v.3.5) June 14, 2019	<p>Amend Articles 1, 2, 4 and 8 to create a process by which the Zoning Administrator may revoke a zoning certificate. Make consistent throughout the entire code the difference between a sketch plan and a concept plan. Amend Article 3 to define “campground,” “rooming house,” “group home, halfway house and alternative living unit,” “distillery pub,” “wine pub,” “assisted living facility,” “rehabilitation center,” “outpatient substance abuse center,” “continuing care retirement community,” “concept plan” and “street – private.” Delete references to “residential facilities with in-house professional care for up to three residents with mental and/or physical disabilities.” Amend definitions of “brew pub,” “earth tone,” “dwelling, triplex,” “dwelling, quadraplex,” “master planned project,” “sketch plan,” and add theaters to the definition of “adult entertainment business” Change all use of “graphic” to “sign”.</p> <p>Amend Article 4 to set standards for the use of residential front yard parking pads, to adjust the minimum standards for “mansion house apartments,” to create a new dwelling types known as “mansion house over-under flats” and “boarding house,” set minimum standards for them and list districts in which they can be located, to create a special exception provision by which a nonconforming mixed use building may have a first floor storefront converted to a dwelling unit, to delete references to “residential facilities with in-house professional care...”, to add references to the use chart setting the districts in which “campgrounds,” “group homes,” “halfway houses” and “alternative living unit” are permitted, to permit photographers and artist studios in industrial districts, to list districts in the use chart where distillery pubs and wine pubs are be permitted, to amend the method of measuring distances between similar uses, to modify the performance standards required in the POM Zoning District, to change the minimum date by which a building had to be constructed to qualify for a Conversion district or a Local Conversion District to 1977, to include the term “wedding chapel” in the use chart, to set standards by which a PUD is “vested,” to adjust the period for which a site plan is approved to three years, add “multi-purpose arenas for sporting events, entertainment, and other assembly events” to the use chart and delete, “promoters of performing arts, sports or similar events...”, to clarify “Variance Exception for Public Improvements,” to make a minor adjustment to the description of “mansion house apartment and stacked apartment” in the use chart, to clarify that a nonconforming use may not be expanded onto adjacent property, to prohibit accessory buildings in the front yards of residential properties, to set height limitations on stealth facilities, to amend the use chart descriptions of several forms of residential buildings to limit them to one per lot, to set a minimum square foot requirement for all new dwelling units in the City based on the number of bedrooms they will contain, to create a new Institutional (INST) District, setting all requirements for that district, to adjust requirements for assisted living facilities, social and medical services, rehabilitation centers, adult day care and similar uses, add “continuing care retirement community” to the use chart, to require that the zoning map shall be filed with the City Clerk, amend all pronoun references to the Zoning Administrator to read “he or she,” etc., to change all references to “graphic” to “sign.” correct minor use chart errors, to clarify the use chart to include car rental with car sales and include them with their design standards, restructure the subsection on fences to be more “reader friendly” and permit vinyl materials for use in front yard fences, and update the name of State enabling legislation.</p>

File Number and Effective Date	Description of Amendment(s)
	<p><i>(ZT-2018-01 Continued)</i></p> <p>Amend Article 5 to require a pedestrian sidewalk from front doors of buildings to public sidewalks, to add crime prevention through environmental design (CPTED) design standards to Section I (Site Design Standards), to set design standards for residential parking in new subdivisions, to create criteria by which the Planning Commission may entertain requests for waivers, to require most commercial and institutional driveways and parking areas to be paved with asphalt, concrete or a similar surface, to make a minor correction to when landscaping is required of a minor subdivision, to clarify the intent of the use of the term “earth tone,” to clarify that the zoning ordinance’s limitation of one dwelling per lot does not preclude the creation of condominiums when applicable, to change remaining references to “preliminary development plan” to “development plan,” to adopt signature block templates for sketch plan approvals, development plan approvals and site plan approvals, to require PDFs of plans be provided after approval, to correct minor references in the landscaping provisions, to cross reference requirements for improvements between subdivision and site plan standards, and to provide guidance on how to apply landscaped buffer requirements on municipal boundaries.</p> <p>Amend Article 6 to clarify the intent of the term “subdivision access road” and to increase performance standards for construction of roads, streets and driveways in floodplains. Amend Article 7 to correct references to “preliminary development plan” and “preliminary site plan,” to increase the noncompliance penalty from 30 cents per square foot to 50 cents per square foot, to correct oversight that omitted “medium density residential areas” from the threshold ration charts, to require use of land within City jurisdiction for meeting the requirements of another jurisdiction’s forest conservation ordinance requirements to be approved by the Planning Commission.</p>
<p>ZT-2019-01 (v.3.6) May 7, 2020</p>	<p>Amend Article 2 to permit the zoning administrator to consider “reasonable accommodation”, Amend Article 3 to add definitions of: “mixture of dwelling types”, “rooming unit”, “tent”, “substantially change or substantial change”, “stealth technology” and “(small) wireless communication facility”, remove the definition of “boarding or rooming house”, amend the definition of “nonconforming use” to address intent, and amend the definitions of “wireless communication facility” and “wireless communication support structure”,</p> <p>Amend Article 4 to make adjustments to materials issues on fences in residential districts, correct an error in the permitted special exception height limitation in the POM District, prohibit setback variances in cluster subdivisions, permit mixed use residential/commercial development in the CG and CR Districts (subject to performance standards), limit the use of tents for permanent and semi-permanent uses, require certain plan approval and operating standards for the use of trucks and trailers for an ongoing vending operation at a single location, increase the minimum square foot requirements for dwelling units based on bedroom count, limit the exception for prior use regarding landscaping for car sales facilities to 5 years, permit larger accessory structures on properties over 20,000 square feet in residential districts, remove language that prohibits the use of sea containers as a building material for dwellings, make zoning certificates non-transferrable and establish parking standards for barber shops and hair salons.</p>

File Number and Effective Date	Description of Amendment(s)
	<p><i>(ZT-2019-01 Continued)</i></p> <p>Amend Article 4 to implement comprehensive updates to the section on wireless communications facilities, add several new permitted uses to the I-MU and CG zoning districts, expand permitted uses in the Local Conversion Overlay District, adopt comprehensive revisions to the requirements for a PUD, adopt comprehensive revisions to the regulation of signs, permit wineries where breweries and distilleries are permitted, permit electric vehicle charging stations as a principal permitted use in six districts and a special exception use in one district, and permit civic and social organizations and community centers in the IR Zoning District.</p> <p>Move the Mixed Use District Design Standards from Article 4 to Article 5. Amend Article 5 to require a note on plans regarding the State Roadside Tree Permit requirement, require a note on plans regarding prohibition of setback variances in cluster subdivisions, establish design standards for permitted mixed use developments in the CG and CR District and for PUD Overlay Districts.</p> <p>Amend Article 7 to reflect recent changes in the State Forest Conservation Law.</p>
<p>ZT-2020-01 and ZT-2021-01 (v3.7) June 24, 2021</p>	<p>Amend Article 3 to define small scale breweries, distilleries and wineries.</p> <p>Amend Article 4 to correct outline format for use chart and table of contents, re-insert parking requirements for drive-up restaurants, make consistent all references to adult entertainment businesses, address small scale breweries, etc. as a principal use and establish parking requirements for them, add certain permitted uses to the CG, CC-MU, CR and IR Districts, relax current parking requirements for warehousing and manufacturing plants, eliminate front yard fence standards for through lots backing to a municipal boundary or a minor collector road and redefine “open fence”, refine standards for use and development of lots in residential districts that have no public street frontage, refine standards for construction of larger accessory buildings on large lots in the residential districts, provide the zoning administrator flexibility is applying minimum requirements for new dwelling units in buildings being retrofitted for new dwelling units (apartments), move all remaining regulation of buffers to Article 5 and clarify administrative history of dates of nonconformity.</p> <p>Amend Article 5 to refine language required on the approval of final plats and set paving depth standards for parking and driveway areas, and amend Article 7 to rephrase language about off-site forest conservation easements to make it easier to understand.</p>
<p>ZT-2021-02</p>	<p>Reserved.</p>

ARTICLE 2

Authoritative Boards and Review Agencies**A. General.**

1. **Compensation.** All appointed members of the Planning Commission, Historic District Commission, and Board of Zoning Appeals shall serve without compensation, unless the Council shall by resolution determine that appropriate compensation should be made to the members. Such determination shall be made separately and severally for each board or commission, and shall include all members of that board or commission.
2. **Appointment.** All appointed members of the Planning Commission, Historic District Commission, and the Board of Zoning Appeals shall be appointed by the Mayor and confirmed by the City Council.
3. **Vacancy and Removal.** All appointed members of the Planning Commission, Historic District Commission, and Board of Zoning Appeals may, after a public hearing, be removed by the Council for neglect of duty, misconduct or malfeasance in office. The Council shall file a written statement among its records of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the Mayor with the confirmation of the City Council as herein set forth. In the case of expiration of terms, members may continue to serve until their successors are appointed and confirmed.
4. **Officers and Rules.** The Commissions and Boards shall appoint a Chairperson and a Vice Chairperson annually, to be selected from among the voting members at a meeting in accordance with that body's rules. The terms of the Chairperson and Vice Chairperson shall be for one year, with eligibility for reelection. In the absence of both the Chairperson and Vice Chairperson, the members shall select an acting chairperson to manage the meeting before addressing business. The bodies shall adopt rules for the conduct of its business and activities and the execution of its responsibilities, in accordance with this Chapter and all relevant City Policies and Ordinances.

B. Planning Commission. Pursuant to the powers and authority vested in the City of Hagerstown, a Municipal Corporation, by and pursuant to the Land Use Article (known until October 1, 2012, as Article 66B), Section 2-101 of the Annotated Code of the Public General Laws of Maryland, as subsequently amended, there is hereby created a Planning Commission, to be known as the "Hagerstown Planning Commission."

1. **Powers and Duties.** The powers and duties of the Hagerstown Planning Commission shall be those powers, duties, and responsibilities defined in:
 - a. The Land Use Article of the Annotated Code of the Public General Laws of Maryland, insofar as the same are applicable and pertain to Municipal Planning for the City of Hagerstown and as now set forth in the Land Use Article and as may be substantially amended.
 - b. The Natural Resources Article, Sections 5-1601 through 5-1613 of the Annotated Code of the Public General Laws of Maryland entitled "Forest Conservation Act," as may be amended; and
 - c. The Environment Article, Title 5, Subtitle 8 ("Flood Control and Watershed Management") of the Annotated Code of Maryland, as may be amended.

This Chapter shall not in any way affect the powers and duties vested in the Mayor and Council of the City of Hagerstown, as its legislative body, by any laws of the State of Maryland, nor shall it affect the powers and duties vested in the Board of Zoning Appeals by any laws of the State of Maryland or by an ordinance passed pursuant thereto.

2. Composition and Term.

- a. **Composition.** The Commission shall consist of seven members, one of whom may be a member of the Council to serve in an ex officio capacity concurrent with his or her official term of office.
- b. **Terms.** The term of office of each appointed member shall be for five years from the date of the expiration of his or her predecessor's appointment. In cases where the appointment of a successor is delayed beyond the expiration of a member's term, that member shall continue to serve until his or her successor is appointed.

C. Historic District Commission.

1. **Authority.** The preservation of sites, structures, and districts of historical, archaeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in Hagerstown. The Mayor and City Council derives authority for this ordinance by virtue of its conformance with provisions of the State of Maryland Enabling Act for Historic Area Zoning as authorized in the Land Management Article, Sections 8-101 to 8-401 of the Annotated Code of Maryland, as amended (formerly Article 66B, Zoning and Planning, Section 8.01-8.17).
2. **Creation of Commission.** There is hereby created a "Historic District Commission," as the historic preservation commission of Hagerstown, Maryland, hereinafter to be known as the HDC.
3. **Purpose.**
 - a. It is the purpose of this Commission to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures, and districts which reflect elements of archaeological, political, cultural, social, economic or architectural history.
 - b. It is the further purpose of this Commission to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of Hagerstown; to strengthen the local economy; to stabilize and improve property values of such sites, structures, or districts; to foster civic beauty; and to preserve and promote the preservation and appreciation of the sites, structures, and districts for the education and welfare of the citizens of the City of Hagerstown, the County of Washington, the state of Maryland, and the United States of America.
4. **Powers and Duties.** For the purposes of this Article, the powers and duties of the Historic District Commission shall include:
 - a. **Studies.** To direct studies, reports, and surveys to identify sites, structures, or districts which are deemed to be of historical, archaeological, or architectural significance;
 - b. **Inventories.** To inventory and recommend to the Planning Commission and to the Mayor and City Council the adoption of ordinances and amendments designating sites, structures, or districts

deemed to be of historical, archaeological, or architectural significance, as “landmarks” or “historic districts”;

- c. **Staff.** Staff to the HDC shall be provided by the Planning and Code Administration Department or other agency as set forth by the City Administrator. The HDC may contract the Maryland Historical Trust, other agencies and organizations and also contract with engineers and architects and other consultants for such services as it may require, consistent with the City’s policies and procedures. The expenditures of the Historic District Commission, exclusive of gifts, shall be under such conditions and within the amounts appropriated for the purpose by the Mayor and City Council which shall provide the funds, equipment, and accommodations consistent with the intent of this article;
- d. **Permit and Plan Review.** To review building permit applications and zoning permit applications for work in historic districts and at designated landmarks in accordance with the provisions of Article 4, Section T, proposed zoning amendments, applications for special exception permits, interpretations, subdivisions and applications for zoning variances that affect landmarks and historic districts. The Zoning Administrator shall send such applications for permits, interpretations, subdivisions, special exceptions and ordinances to the Historic District Commission for comment at least 15 days prior to the date of the hearing by the Planning Commission or Board of Zoning Appeals;
- e. **Public Testimony.** To testify before all boards and commissions, including the Planning Commission and the Board of Zoning Appeals, on any matter affecting historically, archaeologically, and architecturally significant sites, structures, and districts;
- f. **Acceptance of Funds.** To accept on behalf of the City of Hagerstown such gifts, grants, and money as may be appropriate for the purposes of this Subsection and Article 4, Section T. Such money may be expended for publishing maps and brochures or for hiring consultants or performing other appropriate functions for the purpose of carrying out the duties and powers of the Historic District Commission and the purposes of this Subsection and Article 4, Section T, consistent with the City’s policies and procedures;
- g. **Interest in Real Property.** To administer on behalf of the City of Hagerstown, in accordance with guidelines set forth by the legislative body of the City, historic preservation easements, that the City of Hagerstown may have or accept as a gift or otherwise, upon authorization and approval by the legislative body of the City. Such easements may grant to the Commission, the residents of the district, and the general public the right to ensure that any site or structure and surrounding property upon which it is applied is protected, in perpetuity, from changes which would affect its historical, archaeological, or architectural significance.
- h. **Design Guidelines.** To create new and amend existing architectural and design guidelines and recommend same to the Mayor and Council for adoption which shall specify such characteristics as materials, signage, landscaping, and other design-related considerations that will be permitted, encouraged, limited, or excluded from landmarks and locally designated historic districts. The Secretary of the Interior’s *Standards for Rehabilitation* will stand as the basis for review.
- i. **Other Powers and Duties.** To undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or to the implementation of the purpose of this Subsection and Article 4, Section T.

5. Membership, Terms, Meetings, Standing and Interest.

a. Membership.

- (1) The HDC shall consist of seven voting members. Two additional nonvoting “ex-officio” members who need not be residents of the City may be appointed to the HDC.
- (2) At least five of the seven voting members shall be a resident of the City.
- (3) Each member shall possess a demonstrated special interest, specific knowledge or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines.
- (4) At least two voting members of the HDC shall be appointed from the professional disciplines of architecture, history, architectural history, or archaeology, in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61, to the extent available in the city.
- (5) At least three other voting members of the HDC shall have a specific knowledge or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines, such as American civilization or law.

b. Terms. The terms of the members of the HDC shall be for three-year periods with two or three positions expiring in any calendar year in order to prevent the simultaneous expiration of all terms.

c. Meetings; Standing; Minutes; Quorum; Deadline for Decisions. The HDC shall hold such regular meetings as, in its discretion, are necessary to discharge its duties. The HDC shall meet monthly and shall hold special meetings at the call of the Chairperson or of any four voting members of the HDC. Any interested person or a person’s representative is entitled to appear and be heard at any meeting conducted by the HDC. All minutes and records shall be filed with the Planning and Code Administration Department. Four voting members shall constitute a quorum. All decisions by the HDC shall be made within 15 days of the hearing and written notice thereof shall be given to the applicant. Failure by the Commission to comply with this requirement shall be deemed to constitute automatic approval of the proposed changes unless an extension of this 15-day period is agreed upon mutually by the applicant and the Commission or its staff.

d. Interest. No member of the HDC shall vote on any matter that may directly or indirectly affect the property, income, or business interest of that member.

D. Board of Zoning Appeals.

1. Establishment of Board. To provide for the competent interpretation and the full and equitable achievement of the purposes of the ordinance there is hereby established a Board of Zoning Appeals.

2. Composition of Board.

- a. **Number of Members.** The Board of Zoning Appeals shall consist of five members and they shall be appointed by the Mayor and confirmed by the City Council to serve for a term of three years. There shall be one alternate member designated by the Council who may sit on the Board when any other member of the Board is absent. When the alternate member is absent the Council may designate a temporary alternate member.
- b. **State Enabling Law.** Board composition, appointment, terms, compensation, removal of members, vacancies, rules, meetings, administering oaths, summoning witnesses, records, general powers, appeals, stays, hearings and decisions shall be pursuant to and governed by the Land Use Article, Sections 1-206 and 4-301 to 4-306 of the Annotated Code of Maryland.

3. Powers and Duties of the Board.

- a. **Administrative Appeal.** To hear and decide appeals of the decisions of the Zoning Administrator or any other City Employee empowered with the administration of the Zoning Ordinance (Article 4), in accordance with the provisions of that Article.
 - b. **Variances, Special Exceptions, Etc.** To hear and decide applications for variances, special exceptions and other zoning approvals as authorized in the Zoning Ordinance (Article 4, Section U), pursuant to the standards, guides and limitations set forth in that Ordinance.
 - c. **Floodplain Variances and Appeals.** To hear and decide appeals of the decisions of the administrator and requests for variances to the provisions of the Flood Management Ordinance (Article 6), pursuant to the standards, guides and limitations set forth in that Article.
 - d. **Nonconforming Uses.** To hear and decide cases involving the confirmation, expansion, alteration and change of nonconforming uses (Article 4, Section M).
- 4. Rules and Meetings.** The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this ordinance. Meetings and hearings of the Board shall be held at the call of the Chairperson or, in his absence, the Acting Chairperson, who may administer oaths and compel the attendance of witnesses. All hearings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep recordings of its hearings and records of other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

E. Zoning Administrator and Administration of this Chapter.

1. **Zoning Administrator.** The provisions of this Chapter shall be administered by the Zoning Administrator as designated by the Mayor and City Council.
2. **No Approval Unless in Conformance with this Chapter.** All departments, divisions, officials and public employees of the City of Hagerstown which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this Chapter. The Zoning Administrator shall have the authority

to revoke an issued zoning certificate or zoning approval of a building permit in accordance with Article 4, Section S.1.g.

3. **Powers and Duties of the Zoning Administrator.** References to the Zoning Administrator shall herein also include any agent acting on behalf of the Zoning Administrator through the delegation of duties, or in an acting capacity in the absence of the Zoning Administrator.

Duties of the Zoning Administrator are:

- a. **Permit Examination.** Receive and examine all applications for zoning permits and within 30 days of receipt either issue or deny such permit.
- b. **Permit Approval.** Issue permits only where there is compliance with the provisions of this Chapter and with other City ordinances.
- c. **Board of Zoning Appeals.** Receive applications for interpretations, special exceptions, variances, and other applications subject to review by the Board, and promptly forward these applications to the Board of Zoning Appeals.
- d. **Investigation of Noncompliance.** Cause to be investigated alleged violations of this Chapter and gather evidence in support of the enforcement of the provisions of this Chapter. By virtue of this Chapter, the Zoning Administrator shall have the authority to enter upon open land for the purpose of investigating possible noncompliance with or violation of this Chapter.
- e. **Enforcement.** Among other actions, issue stop, cease and desist orders and orders in writing by certified mail for correction of all conditions found to be in violation with the provisions of this Chapter. Such written orders shall be served personally or by certified mail upon persons, firms or corporations deemed by the Zoning Administrator to be violating the terms of this Chapter. The Zoning Administrator shall be authorized to seek and obtain administrative search warrants in the furtherance of the enforcement of this Chapter. See Article 8 of this Chapter pertaining to violations and penalties. The Zoning Administrator may adopt a policy for the assessment of reinspection fees in enforcement cases.

When a site plan is approved in error by the responsible authority and/or a building permit or zoning certificate is approved in error by the Zoning Administrator or his or her agent, and the work is constructed in accordance with the permit, there shall be no violation of this Code and the Zoning Administrator is prohibited from initiating enforcement action, provided:

- (1) No fraud or misrepresentation had been practiced in obtaining the permit;
- (2) At the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;
- (3) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit;
- (4) Failure to enforce the violated provision is not contrary to the public interest; and

-
- (5) Does not involve issues of compliance with the Floodplain Management Ordinance (Article 6 of this Code).
- f. **Right of Entry and Administrative Search Warrants.** The Zoning Administrator is authorized to enter a structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures or with consent of the owner or tenant or occupant of the structure or premises. If entry is refused or not obtained, the Zoning Administrator is authorized to obtain an administrative search warrant subject to the following conditions:
- (1) The Zoning Administrator may apply to a Judge of the District Court or Circuit Court for an administrative search warrant to enter any premises to conduct any inspection required or authorized by law to determine compliance with the provisions of this Chapter.
 - (2) The application for an administrative search warrant shall be in writing and sworn to by the applicant before the Judge issuing the warrant and shall particularly describe the place, structure, premises, etcetera, to be inspected and the nature, scope and purpose of the inspection to be performed by the applicant.
 - (3) A Judge of a court referred to in this subsection may issue the warrant on finding that:
 - (a) The applicant has sought access to the property for the purpose of making an inspection and has been unable to obtain consent for the search.
 - (b) The requirements of Subsection f.(2) of this subsection have been met.
 - (c) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of an existing violation of any provision of this Chapter or any rule or regulation adopted under this Chapter.
 - (4) An administrative search warrant issued under this subsection shall specify the place, structure, premise, vehicle, or records to be inspected. The inspection conducted may not exceed the limits specified in the warrant.
 - (5) An administrative search warrant issued under this subsection authorizes the applicant and other officials or employees of the City to enter specified property to perform the inspection or other functions authorized by law to determine compliance with the provisions of this Chapter.
 - (6) An administrative search warrant issued under this subsection shall be executed and returned to the Judge by whom it was issued, within:
 - (a) The time specified in the warrant, not to exceed ten days.
 - (b) If no time period is specified in the warrant, ten days from the date of its issuance.
- g. **Legal Proceedings.** With the approval of the Mayor and City Council, or when directed by them, institute in the name of the City any appropriate action or proceedings to prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to

- restrain, correct or abate such violation as to prevent the occupancy of or use of any building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- h. **Records.** Record and file all applications for zoning permits with accompanying plans and documents. All applications, plans and documents shall be a public record.
 - i. **Zoning Map.** Maintain a map or maps showing the current zoning classification of all land in the city.
 - j. **Policies and Procedures.** Establish and publish application procedures for permits, appeals and actions pursuant to this Chapter and forms implementing its requirements.
 - k. **Review of Site Plans and Subdivisions.** Review all development review plans and permits to assure that the requirements of this Chapter have been satisfied.
 - l. **Interpretation of the Chapter.** Interpret the applicability of the provisions of this Chapter in matters where the text does not clearly provide guidance.
 - m. **Maintenance of Records.** Maintain all records pertaining to the provisions of this Chapter in his office and make said records open to public inspection, consistent with City-wide public information policies.
 - n. **Application Clearinghouse.** Receive appeals and other applications described in this Chapter and forward cases to the appropriate Board of Commission.
 - o. **Reasonable Accommodation.** Upon the adoption of uniform policies and procedures that are endorsed by the Mayor and City Council by Resolution, the Zoning Administrator is authorized to receive applications for, review and issue decisions regarding the provision of reasonable accommodations to the Zoning Ordinance in the furtherance of the Americans With Disabilities Act (42 U.S.C. § 12101 *et seq.*) and the Federal Fair Housing Act (42 U.S.C. § 3601 *et seq.*)

ARTICLE 3
Definitions

- A. Rules of Construction.** Unless a contrary intention clearly appears, the following words and phrases shall have, for the purposes of this Chapter, the meanings in the following clauses:
1. Words used in the present tense include the future.
 2. The singular includes the plural, the masculine includes the feminine or neuter gender.
 3. The word “person” includes a corporation, firm, institution, partnership, association or any legal entity.
 4. The word “shall” is mandatory and not directory.
 5. The word “Commission” and the words “Planning Commission” shall always mean the City of Hagerstown Planning Commission.
 6. The word “Office” and the words “Planning Office” shall always mean the Planning and Code Administration Department for the City of Hagerstown, Maryland.
 7. The words “Mayor and Council” and the words “Mayor and City Council” or “Council” shall always mean the legislative body of Hagerstown, Maryland.
 8. The word “county” shall always mean Washington County, Maryland.
 9. The word “city” shall always mean the City of Hagerstown, Maryland.
 10. Following each definition is a reference in parentheses to an article or section of an article of this Chapter. This reference is provided as a convenient reference to the place in this Chapter in which it is most frequently found and used. Regardless of the reference provided, however, all definitions as found herein apply to the entire Chapter unless specifically otherwise indicated or limited by reference to a particular article.
- B. When Terms Are Not Defined.** Any word or term not defined herein shall be used with a meaning of standard usage. When multiple definitions of a single term exist, the term shall be given the meaning for each Article hereof as indicated.

This page intentionally left blank.

C. **Definitions.** As used in this Chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING, USE OR STRUCTURE –

1. As pertains to Article 4, a use or structure on the same lot or adjacent lot under the same ownership with and of a nature customarily incidental and subordinate to the principal use or structure. Typically, an accessory use occupies not more than 25% of the space occupied by the principal use and its permitted accessory uses. (*Zoning*)
2. As pertains to Article 6, a building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure. For the purposes of these regulations, an accessory structure shall be used solely for parking of vehicles and limited storage. (*Floodplain*)

ADULT DAY CARE WITH VOCATIONAL CENTER – A facility providing day care for functionally impaired adults in a protective setting for periods of less than 24 hours per day which includes a vocational center for its clients. (*Zoning*)

ADULT ENTERTAINMENT BUSINESS –

1. An adult book store, being an establishment having a substantial or significant portion of its stock in trade devoted to the sale or rental of books, magazines, periodicals, motion pictures, films, videos, DVDs, or other similar images by any medium which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” (as defined in this Article), or products, devices or novelties designed or sold primarily for the purpose of stimulation of human genital or sexual gratification. (*Zoning*)
2. An adult motion picture theater or adult mini-motion picture theater, as defined in this Article. (*Zoning*)
3. A theater, concert hall, auditorium, or similar establishment characterized by activities which involve “specified sexual activities” and/or “specified anatomical areas” (as defined by this Article) engaged in by performers in live performances. (*Zoning*)

ADULT MOTION PICTURE THEATER – An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” for observation by patrons herein. (*Zoning*)

ADULT MINI-MOTION PICTURE THEATER – An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” for observation by patrons herein. (*Zoning*)

AFFORESTATION – (*Forest Conservation*)

1. Establishment of a forest on an area from which forest cover has been absent for a long period of time;
2. Planting of open areas which are not presently in forest cover; or

3. Establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.

AGREEMENT TO SUBMIT AN ELEVATION CERTIFICATE – A form on which the applicant for a permit to construct a building or structure, to construct certain horizontal additions, to place or replace a manufactured home, to substantially improve a building, structure, or manufactured home, agrees to have an Elevation Certificate prepared by a licensed professional engineer or licensed professional surveyor, as specified by the Floodplain Administrator, and to submit the certificate:

1. Upon placement of the lowest floor and prior to further vertical construction; and
2. Prior to the final inspection and issuance of the Certificate of Occupancy. (*Floodplain*)

AGRICULTURAL ACTIVITY – Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise. (*Forest Conservation*)

AGRICULTURAL AND RESOURCE AREAS – Undeveloped areas zoned for densities of less than or equal to one dwelling unit per acre. (*Forest Conservation*)

AGRI-TOURISM – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agri-tourism activity whether or not the participant paid to participate in the activity. (*Zoning*)

ALLEY – A public or private way which is used primarily for vehicular service access to the rear or the side of properties otherwise abutting a street. (*Subdivision and Land Development*)

ALTERATION – Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, relocation, or demolition of any structure. (*Zoning – Historic*)

ALTERATION OF A WATERCOURSE – Includes, but is not limited to widening, deepening or relocating a channel, including excavation or filling of the channel. Alteration of a watercourse does not include construction of a road, bridge, culvert, dam, or in-stream pond unless the channel is proposed to be realigned or relocated as part of such construction. (*Floodplain*)

APARTMENT BUILDING OR COMPLEX – See “dwelling, multi-family.” (*Zoning*)

APPLICANT – The party applying for permits or other approvals required by this Code. (*Subdivision and Land Development*)

APPROVED FOREST MANAGEMENT PLAN – A document: (*Forest Conservation*)

1. Approved by the Department of Natural Resources forester assigned to the City in which the property is located; and

2. Which operates as a protective agreement for forest conservation as described in the Natural Resources Article, §5-1607(e) and (f), Annotated Code of Maryland.

APPURTENANCES AND ENVIRONMENTAL SETTINGS – All that space of grounds and structures thereon which surrounds a site, structure, or district and to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), rocks, pasture, cropland and waterways. This includes historical open spaces, i.e., setbacks, parks and public squares. (*Zoning – Historic*)

AREA, GROSS – The total horizontal space within a lot or parcel of land before public streets, environmental features, or dedications are deducted from the lot or parcel. (*Zoning*)

AREA OF SHALLOW FLOODING – A designated Zone AO on the Flood Insurance Rate Map with a 1% percent annual chance or greater of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident, such flooding is characterized by ponding or sheet flow. (*Floodplain*)

ARTICULATION – Giving of emphasis to architectural elements (such as roof lines, windows, balconies, entries, etc.) that create a complementary pattern of rhythm, dividing large buildings into smaller, identifiable spaces. See illustrative example below. (*Zoning*)



Figure 1. Note the articulation of the larger store to the left and the corresponding lack of articulation on the smaller store on the right.

ARTIST LIVE-WORK SPACE – The use of all or a portion of a building for both artistic use and residential use. This use is particularly viewed as a desirable means of fostering and promoting the redevelopment of former commercial and industrial buildings for non-traditional residential/workspace. (*Zoning*)

ARTISTIC USE – Artistic use shall be defined as:

1. The creation or assemblage of visual art or other fine art objects for the purpose of sale, display, commission, consignment, or trade by artists or artisans; and
2. Performance art by dancers, musicians, singers, actors, etc., that will be practiced or rehearsed in an “artist live-work space.” (*Zoning*)

ASSISTED LIVING FACILITY – a residential care facility for 10 or more persons licensed by Maryland Department of Health that provides housing and supportive services, supervision, personalized assistance, and/or health-related services to meet the needs of residents who are unable to perform or need assistance in performing activities of daily living. (*Zoning*)

ATTACHED WIRELESS COMMUNICATION FACILITY (ATTACHED WCF) – An antenna that is attached to an existing building or structure, with any accompanying device which attaches the antenna to the existing building or structure, transmission cables, and an equipment facility which may be located either inside or outside the attachment structure. (*Zoning – Wireless*)

BAKERY, RETAIL – A business engaged in making and selling on-premise flour-based baked goods, such as bread, cookies, cakes, pastries, and pies. (*Zoning*)

BASE BUILDING – The building to which an addition is being added. This term is used in provisions relating to additions in Article 6. (*Floodplain*)

BASE FLOOD – The flood having a 1% chance of being equaled or exceeded in any given year. The base flood also is referred to as the 1% annual chance 100-year flood. (*Floodplain*)

BASE FLOOD ELEVATION – The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. In areas of shallow flooding, the base flood elevation is the highest adjacent natural grade elevation plus the depth number specified in feet on the Flood Insurance Rate Map, or at least four feet if the depth number is not specified. (*Floodplain*)

BASEMENT – Any area of the building having its floor subgrade (below ground level) on all sides. (*Floodplain*)

BED AND BREAKFAST – A facility that serves the traveling public with sleeping rooms and at least one meal per day for overnight guests only in a setting reflecting a residential rather than a commercial character. (*Zoning*)

BENCH MARK – A monument for which an accurate elevation has been established and shown on the plat or as defined by the United States Geological Survey, NAVD 88 or NGVD 29. (*Subdivision and Land Development*)

BLACKSMITH/FARRIER – One that forges and shapes iron with anvil, hammer, and similar tools, for the purpose of creating artisan products and/or shaping and applying horseshoes to horses. (*Zoning*)

BLOCK – Grouping of lots unseparated by streets, parks, main waterways, or other natural barriers, or subdivision boundary lines. (*Subdivision and Land Development*)

BOARD OF ZONING APPEALS – The duly appointed Board of Zoning Appeals for the City of Hagerstown, Maryland. (*Zoning*)

BREWERY – Establishments primarily engaged in brewing beer, ale, malt liquors, and nonalcoholic beer. (*Zoning*)

BREWERY, DISTILLERY, WINERY – SMALL SCALE - an establishments 15,000 square feet or less in building area whose purpose is the production, storage, distillation, manufacturing, processing,

distribution and wholesale and retail sale of beer, liquor, wine, mead, and/or cider made from produce grown or produced off-site and for tours, tastings, on-premise consumption of the products, and sales for carry-out. The use may include transient food trucks to support the tasting room activity. Such establishments shall be in compliance with any and all local and state liquor laws and licensing requirements and health department regulations, and shall possess any and all license which may be required by Washington County, the City of Hagerstown, and/or the State of Maryland. *(Zoning)*

BREW PUB – A pub or restaurant that brews beer on the premises. *(Zoning)*

BUFFER YARD – A strip of land which is established to separate adjacent properties or zoning districts and which contains natural or planted vegetation, berms, walks, or fences. *(Subdivision and Land Development – Landscaping)*

BUILDING –

1. As pertains to Article 4, any structure which is permanently affixed to or located permanently or semi-permanently on the land, has one or more floors and a roof and is bounded by either open area or the lot lines of a zoning lot.

For the purposes of setback requirements, “building” shall include any feature such as a shed, garage, carport, breezeway, port cochere or similar feature that is attached to a building or located within three feet of a building, and carports regardless of whether it is attached to a building. Eaves and bay windows shall not be included as buildings or parts thereof for the purposes of setbacks. *(Zoning)*

2. As pertains to Article 5, a permanent structure having a roof which is used or intended to be used for the shelter or enclosure of persons, animals, or property. The word “building” shall include any part thereof. *(Subdivision and Land Development)*

BUILDING, HEIGHT OF – The vertical distance from the grade to the top of the highest roof beams, surface of a flat roof, or the mean level of the highest gable or slope of a hip roof. When a building faces on more than one street, the height shall be measured from the average of the grades at the center of each street front. For further explanation, refer to Article 4, Subsection K.2 and the following illustration. *(Zoning)*

For further explanation, refer to Article 4, Subsection K.2 and the following illustration. *(Zoning)*

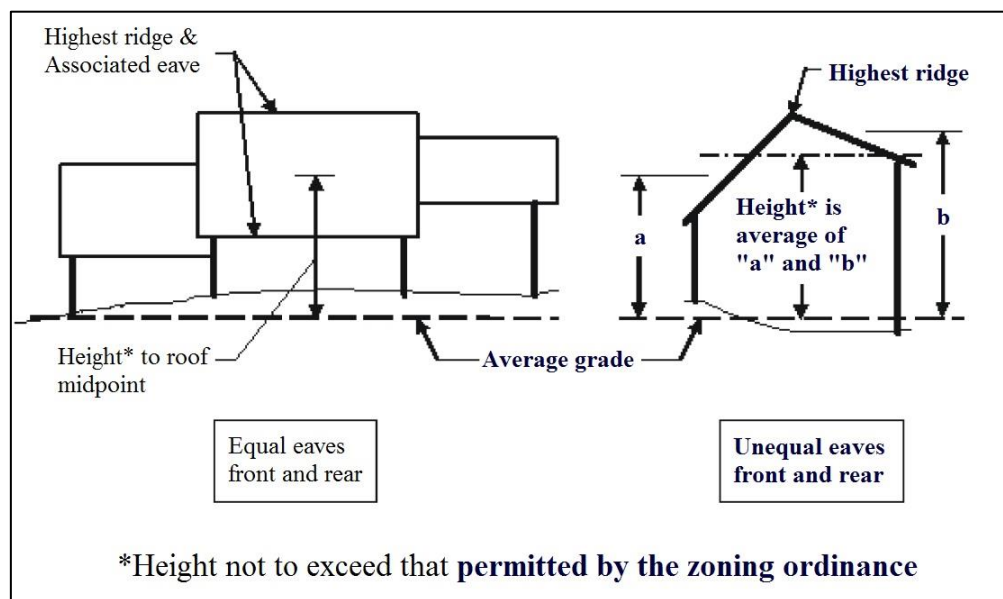


Figure 2. This illustration depicts the definition of "building height"

BUILDING CODE(S) – The effective Building Construction Code of the City of Hagerstown (Chapter 64, Article I-VI, of Hagerstown’s City Code), including the building code, property maintenance code, electrical code, plumbing code, and mechanical code. This definition shall be applied only to Article 6. (*Floodplain*)

BUILDING LINE – The line established beyond which a building shall not extend as determined by front, side, and rear yard requirements. (*Subdivision and Land Development*)

BUTCHERING – Processing of animal meats and poultry products where meat processing is limited to making cuts of meat from pre-processed carcasses. (*Zoning*)

CALIPER – The diameter measured at two inches above the transition zone between stem and root at the ground line of a tree or seedling. (*Forest Conservation*)

CALIPER INCHES – Quantity in inches of the diameter of trees measured at six inches above the ground for trees four inches or less in trunk diameter and 12 inches above the ground for trees over four inches in trunk diameter. (*Subdivision and Land Development – Landscaping*)

CAMPING/CAMPGROUND – An area used for transient occupancy by camping, usually but not always in tents, camp trailers, travel trailers, or similar movable or temporary sleeping quarters of any kind. (*Zoning*)

CELL ON WHEELS (COW) – A mobile cell site that consists of a cellular antenna tower and electronic radio transceiver equipment on a truck or trailer, designed to be part of a cellular network for the purpose of providing additional coverage or capacity during special events, civil emergency, brief testing coverage at a particular location, or similar use for brief periods of time. (*Zoning*)

CEMETERY – A tract of land managed as a business or by a not-for-profit entity for the purpose of interring human remains and ashes in the ground, in mausoleums or columbaria. (See related definition of “Human Burial Site”). (*Zoning*)

CERTIFICATE OF APPROPRIATENESS – A certificate issued by the Historic District Commission indicating its approval of plans for alteration, construction, reconstruction, relocation, or demolition of a landmark or of a site or structure within a historic district. (*Zoning – Historic*)

CERTIFICATE OF HARDSHIP – A certificate issued by the Historic District Commission authorizing an alteration, construction, removal, or demolition, even though a Certificate of Appropriateness has previously been denied. (*Zoning – Historic*)

CITY CENTER – That area within the boundaries of the CC-MU (City Center-Mixed use) Zoning District. (*Zoning*)

CITY ENGINEER – The duly designated City Engineer of the City of Hagerstown, Maryland. (*Subdivision and Land Development*)

CITY FINANCE DIRECTOR – The duly designated Finance Director of the City of Hagerstown, Maryland. (*Subdivision and Land Development*)

CITY STANDARDS – Those improvements as defined herein which are necessary for development and which are approved and accepted by the City Engineer. See Public Ways Construction Standards and Engineering Guidelines. (*Subdivision and Land Development*)

CLUSTER DEVELOPMENT – A method of developing land where the housing is built in groups. Cluster development allows a reduction in the size of the lots. The remaining undeveloped land is required to remain as common open space. (*Subdivision and Land Development*)

CO-LOCATION – Use of a common wireless communication facility (WCF) or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity. (*Zoning*)

COMMERCIAL AND INDUSTRIAL USES – Manufacturing operations, office complexes, shopping centers, retail and wholesale sales facilities, and other similar uses and their associated storage areas, yarding, and parking areas for either a profit or on a non-profit basis. (*Forest Conservation*)

COMMERCIAL FARMING – Crops and livestock grown for distribution to wholesalers and retail outlets or direct retail sale and not primarily intended for household consumption by the producer. Commercial farming also includes crops grown to be fed to the producer's own livestock in a commercial farming operation. (*Zoning*)

COMMERCIAL LOGGING OR TIMBER HARVESTING OPERATIONS – The cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact. (*Forest Conservation*)

COMMERCIAL VEHICLE – Any self-propelled or towed vehicle used or designed to be used in commerce to transport passengers (other than the driver) or cargo. (*Zoning*)

COMMUNITY GARDEN – The sole principal permitted use of land managed by a public or non-profit organization or a group of individuals, and is used to grow plants and harvest food or ornamental crops for use by those cultivating the land and their households. The crops grown are not for sale or redistribution. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members. All uses shall comply with the accessory structure use setbacks for the district in which it is located. (*Zoning*)

COMMUNITY – As pertains to Article 6, a political subdivision of the state of Maryland (county, city or town) that has authority to adopt and enforce floodplain management regulations within its jurisdictional boundaries. (*Floodplain*)

COMPREHENSIVE PLAN – The policies, statements, goals and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the City's future development, including all amendments thereto and all related general plans, master plans, and community plans adopted by the Mayor and City Council in accordance with the Land Use Article of the *Annotated Code of Maryland*. (*Subdivision and Land Development*)

CONCEPT PLAN – A preliminary concept plan of the proposed development or use showing the developer's desires in regard to the future development or use of land for consideration during review of a proposed rezoning, overlay district, or special exception. (*Zoning*)

CONDOMINIUM – A system of separate ownership of individual units in multi-unit projects on land in common ownership as defined in the *Annotated Code of Maryland*. (*Zoning*)

CONFECTIONERY, RETAIL – A business engaged in making and selling on-premise candy, chocolates, and other confections that are made primarily of sugar. (*Zoning*)

CONTINUING CARE RESIDENTIAL COMMUNITY – A retirement community with accommodations for independent living, assisted living and nursing home care, offering residents a continuum of care. All of the dwelling units and care facilities are typically owned by the provider. As a campus environment of varying levels of “step up” care or living, dwelling units for independent living within the campus shall not be required to be on individual fee-simple lots. (*Zoning*)

CONTRIBUTING RESOURCE – An historic building or open space which contributes to the significance of the historic district, but does not appear to be eligible for individual listing on the National Register of Historic Places. In the historic resource ranking system, this is generally known as those resources ranked B and C. (*Zoning – Historic*)

CONVENIENCE STORE – An establishment which sells snack foods, packaged or prepared food and beverages, and other food and convenience items for consumption off premises, and, under the terms of this Chapter, may also sell gasoline in specified zoning districts. (*Zoning*)

CORRECTIONAL INSTITUTION – Government facilities, quasi-government facilities and facilities privately run on government contract for the purpose of confinement, correction and rehabilitation of adult and/or juvenile offenders sentenced by a court. (*Zoning*)

CRITICAL AND ESSENTIAL FACILITIES – Buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes. Critical and essential facilities typically include hospitals, fire stations, police stations, storage of critical records, facilities that handle or store hazardous materials, and similar facilities. (*Floodplain*)

CRITICAL HABITAT AREA – A critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall: (*Forest Conservation*)

1. Be likely to contribute to the long-term survival of the species;
2. Be likely to be occupied by the species for the foreseeable future; and
3. Constitute habitat of the species which is considered critical under Natural Resources Article, §4-2A-04 and 10-2A-04, *Annotated Code of Maryland*.

CRITICAL HABITAT FOR ENDANGERED SPECIES – A habitat occupied by an endangered species as determined or listed under Natural Resources Article, §4-2A-04 and 10-2A-04, *Annotated Code of Maryland*. (*Forest Conservation*)

CUL-DE-SAC – A street with a single common ingress and egress and with a turnaround at the end. (*Subdivision and Land Development*)

DAY-CARE, ADULT – A facility providing care for the elderly and/or functionally impaired adults, not the relatives of the provider, in a protective setting for periods of less than 24 hours per day, in a place other than the care recipient’s own dwelling unit. (*Zoning*)

DAY-CARE, CHILD – The care of five or more children, not the children or relatives of the provider, on a regular basis for periods of less than 24 hours per day, in a place other than the child’s own dwelling unit. (*Zoning*)

DECLARATION OF INTENT – A signed and notarized statement by a landowner or the landowner’s agent certifying that the activity on the landowner’s property is exempted and complies with Article 7, Subsection A.3.c of this Chapter. (*Forest Conservation*)

DECLARATION OF LAND RESTRICTION (NONCONVERSION AGREEMENT) – A form signed by the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain enclosures below the lowest floor of elevated buildings and certain accessory structures. The form requires the owner to record it on the property deed to inform future owners of the restrictions. (*Floodplain*)

DEDICATION – The dedication of land by the developer for any general and public uses, in accordance with the provisions herein. (*Subdivision and Land Development*)

DEMOLITION BY NEGLIGENCE – The failure to provide ordinary and necessary maintenance and repair to a landmark or site or structure within an historic district, whether by negligence or willful neglect, purpose or design, by the owner or any party in possession of such a site, which results in any of the following conditions:

1. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, so as to create or permit a hazardous or unsafe condition to exist; or
2. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, windows, the lack of adequate waterproofing, or the deterioration of interior features which will or could result in permanent damage, injury, or loss of or loss to foundations, exterior walls, roofs, chimneys, doors, or windows. (*Zoning – Historic*)

DENSITY, GROSS – The number of dwelling units within the gross area of a development divided by the total gross area. (*Zoning*)

DESTINATION RETAIL USE – Any development containing one or more retail units occupying more than 75,000 square feet of gross floor area, including outdoor seasonal display areas. (*Zoning*)

DEVELOPER – Any person commencing proceedings under these Regulations to effect a subdivision or development of land as defined herein. (*Subdivision and Land Development*)

DEVELOPER AGREEMENT – A written document between the Developer and the City which may limit, condition, or further define the process for a particular development. (*Subdivision and Land Development*)

DEVELOPMENT – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. (*Floodplain*)

DEVELOPMENT PLAN – A set of plans indicating the proposed layout of the subdivision or site showing lots, roads, water, sewer, engineering data, utilities, and other requirements prepared in accordance with these Regulations, which is presented for construction approval, prior to preparation of the Final Plat. (*Subdivision and Land Development*)

DEVELOPMENT PROJECT – The grading or construction activities occurring on a specific tract that is 40,000 square feet or greater. “Development project” includes redevelopment. (*Forest Conservation*)

DEVELOPMENT PROJECT COMPLETION – For the purposes of afforestation, reforestation, or payment into a fund: (*Forest Conservation*)

1. The release of the performance bond, or surety, if required by Article 7 of this Chapter; or
2. Designation by the Planning and Code Administration Department that a:
 - a. Development project has been completed, or
 - b. Particular stage of a staged development project, including a planned unit development, has been completed.
3. The release of any bond or surety not required under Article 7 of this Chapter shall not be construed to mean the completion of afforestation, reforestation, or payment into a fund, as required by this Chapter.

DISTILLERY – Establishments primarily engaged in distilling potable liquors, distilling and blending liquors, and/or blending and mixing liquors and other ingredients. (*Zoning*)

DISTILLERY PUB – A pub or restaurant that manufactures alcoholic spirits, such as rum, vodka, gin, etc., on the premises. (*Zoning*)

DISTRICT, HISTORIC – A district designated by the Mayor and City Council for its historical, archaeological, or architectural significance to Hagerstown, the preservation of which is deemed to be for the educational, cultural, economic and general welfare of the citizens of Hagerstown. An historic district includes all property within its boundaries, whether publicly or privately owned. (*Zoning – Historic*)

DISTRICT, ZONING – A portion of territory designated on the Official Zoning Map within which certain uniform regulations and requirements of various combinations thereof apply under the provisions of this Chapter. (*Zoning*)

DORMITORY – A structure specifically designed and used for a long-term stay by students of a college, university, or other academic or trade school for the purpose of providing rooms for sleeping purposes. Eating facilities may be permitted either in-unit or in a common kitchen/dining room. A dormitory shall include common gathering rooms for social purposes, and shall not be used for year-round uninterrupted use. (*Zoning*)

DWELLING – A building containing one or more dwelling units. The term “dwelling,” or any combination thereof shall not be deemed to include hotel, rooming house, motel, clubhouse, hospital, or other accommodations used for more or less transient occupancy. A dwelling may be constructed in the traditional stick-built open-frame construction process or assembled from industrialized building components (modular homes). (*Zoning*)

DWELLING, COURTYARD APARTMENTS – A multi-family building containing three or more dwelling units arranged around an internal parking court, or an open space designed as an aesthetic benefit, each with its own outside entrance, each separated by a party wall or walls extending vertically from the ground to the roof, on land in common ownership without subdivided lot lines, with at least one side of the structure fronting on a public street. (*Zoning*)

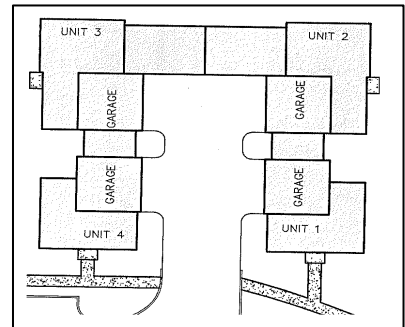


Figure 3. Courtyard Apartments

DWELLING, MANSION APARTMENT HOUSE – Three or more dwelling units arranged in a flat-over-flat configuration in a single building with an exterior design of a large single-family, attached or detached house fronting a public street. (*Zoning*)

DWELLING, MOBILE (MANUFACTURED) – A dwelling structure that is transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without permanent foundation when connected to the required utilities. The term manufactured home or mobile home shall not include a recreational vehicle. (*Zoning and Floodplain*)

DWELLING, MODULAR (INDUSTRIALIZED BUILDING) – A building assembly or system of building subassemblies manufactured in its entirety, or in substantial part, off site and transported to a site for installation or erection, with or without other specified components, as a building or as part of a finished building that comprises two or more industrial building units, and includes the electrical, plumbing, heating, ventilation, insulation and other service systems necessary for residential occupancy. This definition shall not be interpreted to include mobile (“manufactured”) homes. (*Zoning*)

DWELLING, MULTIPLE-FAMILY – A building containing three or more dwelling units (an apartment house), including triplex and quadraplex. (*Zoning*)

DWELLING, QUADRAPLEX – A building containing four dwelling units, each with its own outside entrance and each separated by a party wall or walls extending vertically from the ground to the roof. Unlike townhouses, which also permit structures with as few as four units, quadraplex dwellings may be arranged in quadrants, dividing a rectangular or square shaped building, whereas townhouses are arranged side-by-side. Quadraplexes are referred to only in provisions for cluster subdivisions. Blocks of four-unit townhouse buildings shall not be interpreted as quadraplex dwellings in zoning districts where townhouses are permitted. (*Zoning*)

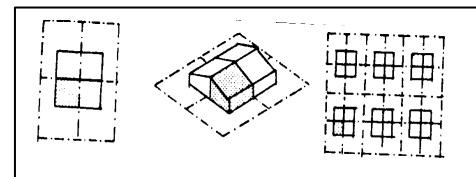


Figure 4 – Quadraplex Dwelling

DWELLING, SEMI-DETACHED – One of two buildings arranged or designed as single-family dwellings located on abutting lots and attached by a wall, without openings, extending from the cellar floor to the highest point of the roof along the common lot line and separated from any other building or structures by space on all sides. (Zoning)

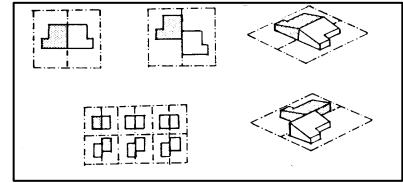


Figure 5 – Semi-Detached Dwelling

DWELLING, SINGLE-FAMILY – A detached building containing not more than one dwelling unit and not occupied by more than one family, constructed on a fully enclosed masonry foundation. (Zoning)

DWELLING, STACKED APARTMENT UNITS – Three or more dwelling units arranged along a corridor, in a single building with multiple stories and fronting a public street. (Zoning)

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. (Zoning)

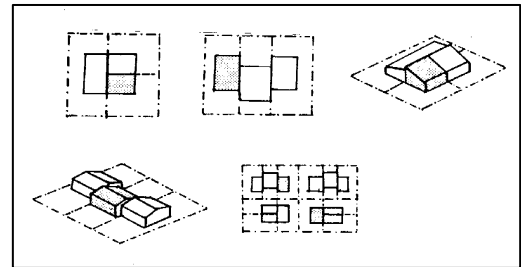


Figure 6 – Triplex Dwelling

DWELLING, TRIPLEX – A building containing three dwelling units arranged or designed each with its own outside entrance and each separated by a party wall or walls extending vertically from the ground to the roof. Unlike townhouses, which also permit structures with as few as three units, triplex dwellings may be arranged in quadrants, dividing a rectangular or square shaped building, whereas townhouses are arranged side-by-side. Triplexes are referred to only in provisions for cluster subdivisions. Blocks of three-unit townhouses shall not be interpreted as triplex dwellings in zoning districts where townhouses are permitted. (Zoning)

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, sharing a common wall or floor and not occupied by more than two families. (Zoning)

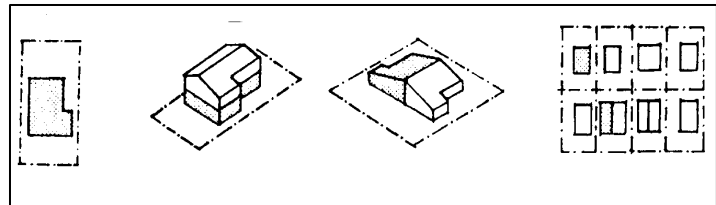


Figure 7 – Two-Family Dwelling

DWELLING UNIT – One or more rooms in a residential building or in a mixed-use building which are arranged, designed, used or intended for use by one or more persons living together and maintaining a common household and which include lawful cooking space and lawful sanitary facilities reserved for the occupants therefor. (Zoning)

EARTH TONE – A color scheme of muted tones of natural colors found in soil, sand, moss, trees and rocks, such as shades of umber, ochre, sienna, cream, olive and slate. (Subdivision and Land Development)

EASEMENT – An interest in real property generally established in a real estate document or on a recorded plat to reserve, convey or dedicate the use of land for a specialized or limited purpose without the transfer of fee title. (*Subdivision and Land Development*)

ELEVATION CERTIFICATE – FEMA form on which surveyed elevations and other data pertinent to a property and a building are identified and which shall be completed by a licensed professional land surveyor or a licensed professional engineer, as specified by the Floodplain (Zoning) Administrator. When used to document the height above grade of buildings in special flood hazard areas for which base flood elevation data are not available, the Elevation Certificate shall be completed in accordance with the instructions issued by FEMA. (*Floodplain*)

ENCLOSURE BELOW THE LOWEST FLOOR – An unfinished or flood-resistant enclosure that is located below an elevated building, is surrounded by walls on all sides, and is usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in Article 6. Also see “lowest floor.” (*Floodplain*)

ENVIRONMENTALLY SENSITIVE FEATURES – Those features contained in areas defined in the Comprehensive Plan, including such features as excessive slopes, flooding, high water tables, shallow depth to bedrock, unique natural features, desirable natural growths, water courses and other water areas, and scenic points. (*Subdivision and Land Development*)

EQUIPMENT FACILITY – Any structure used to contain ancillary equipment for a wireless communication facility which includes cabinets, shelters, a build out of an existing structure, pedestals and other similar structures. (*Zoning – Wireless*)

ESSENTIAL UTILITY EQUIPMENT – Underground or overhead electrical, gas, communications, water or sewerage systems, including poles, towers or pole structures, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone stations, police call boxes, traffic signals, hydrants, regulating and measuring devices, water pumping stations, elevated storage tanks, ground storage tanks and the structures in which they are housed, substations and associated equipment and other similar equipment and accessories in connection therewith. It does not include:

1. Buildings, yards or stations used for storage, repair or processing of equipment or material;
2. Buildings, yards, stations or substations for transforming, boosting, switching or pumping purposes where such facilities are constructed on the ground;
3. Wireless telecommunications facilities, as regulated in Article 4, Section Q of this Chapter;
4. Communications towers, unless otherwise pre-empted by law, or a project of the state or federal government; or
5. Solar collection and wind energy systems. (*Zoning*)

EXTERIOR FEATURES – The architectural style, design and general arrangement of the exterior of a site or structure, including the nature and texture of building materials, and the type and style of all windows, doors, light fixtures, signs or other similar items found on or related to the exterior of a site or structure. (*Zoning – Historic*)

FAÇADE – The side of a building below the eaves. (*Zoning*)

FAMILY –

1. A single person occupying a dwelling and maintaining a household, or
2. Two or more persons related by blood, marriage, cohabitation or adoption, occupying a dwelling, living together, and maintaining a common household.

The term “family” shall not be construed to include a fraternity or sorority, club, rooming house, residential care facility or similar use. (*Zoning*)

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – The federal agency with the overall responsibility for administering the National Flood Insurance Program. (*Floodplain*)

FENCE – A barrier constructed of any allowable material including concrete, stone, brick, tile, wood, metal or similar type of material for the purpose of providing a boundary, separating lots or enclosing space. A fence shall be made of materials made for that purpose. This definition shall not be construed to include shrubs or hedges. (*Zoning*)

FLEA MARKET – An outdoor commercial activity, not including shopping centers, individual retail operations, or sales that is open to the general public and composed of five or more semi-enclosed or outdoor stalls, rooms, stands, or spaces used for the purpose of display and sale, exchange, or barter of merchandise. The regulation of flea markets in Article 4 shall not apply to such activities conducted no more than three times per year by a nonprofit or charitable organization on their property. (*Zoning*)

FLOOD OR FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters, and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source. (*Floodplain*)

FLOOD DAMAGE-RESISTENT MATERIALS – Any construction material that is capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. For more information, consult NFIP Technical Bulletin #2, “Flood Damage-Resistant Materials Requirements.” (*Floodplain*)

FLOOD INSURANCE RATE MAP (FIRM) – An official map of which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, to designate applicable flood zones, and to delineate floodways, if applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as Digital FIRMs (DFIRMs). (*Floodplain*)

FLOOD INSURANCE STUDY (FIS) – The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and the water surface elevations. (*Floodplain*)

FLOOD, 100-YEAR – A flood which has a 1% chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded. (*Forest Conservation*)

FLOODPLAIN, 100 YEAR – An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood as shown on FEMA 100-year floodplain maps and regulated by Article 6 of this Chapter. (*Forest Conservation*)

FLOOD OPENING – A flood opening (non-engineered) is an opening that is used to meet the prescriptive requirement of one square inch of net open area for every square foot of enclosed area. An engineered flood opening is an opening that is designed and certified by a licensed professional engineer, or licensed architect, as meeting certain performance characteristics, including providing automatic entry and exit of floodwaters; this certification requirement may be satisfied by an individual certification or issuance of an Evaluation Report by the ICC Evaluation Service, Inc. (*Floodplain*)

FLOOD PROTECTION ELEVATION (FPE) – The base flood elevation plus one foot freeboard. Freeboard is a factor of safety that compensates for uncertainty in factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, climate change and the hydrologic effect of urbanization in a watershed. (*Floodplain*)

FLOOD PROTECTION SETBACK – A distance measured perpendicular to the top of bank of a watercourse that delineates an area to be left undisturbed to minimize future flood damage and to recognize the potential for bank erosion. Along non-tidal waters of the state, the flood protection setback is:

1. 100 feet, if the watercourse has special flood hazard areas shown on the FIRM, except where the setback extends beyond the boundary of the flood hazard area; or
2. 50 feet, if the watercourse does not have special flood hazard areas shown on the FIRM. (*Floodplain*)

FLOODPLAIN – Any land area susceptible to being inundated by water from any source (see definition of “Flood” or “Flooding”). (*Floodplain*)

FLOODWAY – The channel of a river or other watercourse and adjacent land area that must be reserved in order to pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. When shown on a FIRM, the floodway is referred to as the “designated floodway.” (*Floodplain*)

FLOOD PROOFING OR FLOOD PROOFED – Any combination of structural and nonstructural additions, changes or adjustments to buildings or structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents, such that the buildings or structures are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Maryland state regulations do not allow new non-residential buildings in non-tidal waters of the state to be flood proofed. (*Floodplain*)

FLOOD PROOFING CERTIFICATE – FEMA form that is to be completed, signed and sealed by a licensed professional engineer or licensed architect to certify that the design of flood proofing and proposed methods of construction are in accordance with the applicable requirements of Article 6 of this Chapter. (*Floodplain*)

FLOOD ZONE – A designation for areas that are shown on Flood Insurance Rate Maps:

1. Zone A: Special flood hazard areas subject to inundation by the 1% annual chance 100-year flood; base flood elevations are not determined.
2. Zone AE and Zone A1-30: Special flood hazard areas subject to inundation by the 1% annual chance 100-year flood; base flood elevations are determined; floodways may or may not be determined.
3. Zone AH and Zone AO: Areas of shallow flooding, with flood depths of one to three feet (usually areas of ponding or sheet flow on sloping terrain), with or without BFEs or designated flood depths.
4. Zone B and Zone X (shaded): Areas subject to inundation by the 0.2-percent annual chance 500-year flood; areas subject to the 1% annual chance 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected from the base flood by levees.
5. Zone C and Zone X (unshaded): Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, B, and X (shaded).
6. Zone VE and Zone V1-30: Special flood hazard areas subject to inundation by the 1% annual chance 100-year flood and subject to high velocity wave action (also see coastal high hazard area). (*Floodplain*)

FOREST – (*Forest Conservation*)

1. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.
2. "Forest" includes:
 - a. Areas that have at least 100 live trees per acre with at least 50% of those trees having a two-inch or greater diameter at four-and-a-half feet above the ground and larger; and
 - b. Areas that have been cut but not cleared.
3. "Forest" does not include orchards.

FOREST CONSERVATION DISTRICT BOARD – The forestry board created for each state forestry conservancy district under Natural Resources Article, §§5-601 through 5-610, Annotated Code of Maryland. (*Forest Conservation*)

FOREST CONSERVATION – The retention of existing forest or the creation of new forest at the levels set by this Article 7 of this Chapter. (*Forest Conservation*)

FOREST CONSERVATION AND MANAGEMENT AGREEMENT – An agreement as applicable and described in COMAR 08.19.05.01. (*Forest Conservation*)

FOREST CONSERVATION PLAN – A plan prepared pursuant to Article 7 of this Chapter. (*Forest Conservation*)

FOREST CONSERVATION TECHNICAL MANUAL – The technical manual incorporated by reference, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans. (*Forest Conservation*)

FOREST COVER – The area of a site meeting the definition of forest. (*Forest Conservation*)

FOREST MANAGEMENT PLAN – A plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property. (*Forest Conservation*)

FOREST STAND DELINEATION – The methodology for evaluating the existing vegetation on a site proposed for development, as provided in the City of Hagerstown Forest Conservation Technical Manual. (*Forest Conservation*)

FUNCTIONALLY DEPENDENT USE – A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. This definition shall be applied only to Article 6. (*Floodplain*)

GRADING – Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled or any combination thereof. (*Forest Conservation*)

GROSS LEASABLE AREA (GLA) – The total floor area of a commercial building designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, and exterior spaces designated for the display and sale of outdoor-oriented merchandise, expressed in square feet as measured from the center line of joint partitions and from outside wall faces. For purposes of calculating parking requirements, parking and loading areas as well as the floor area occupied by HVAC, mechanical, electrical, communications, and security equipment are all deducted from gross leasable area. (*Zoning*)

GROUP HOME, HALFWAY HOUSE AND ALTERNATIVE LIVING UNIT - A dwelling unit licensed, certified or approved by a Federal, State or local government agency, or administered by a provider which is licensed, certified or approved by a government agency, in which individuals with disabilities may be provided care or treatment in a homelike environment. The Health Article of the Code of the State of Maryland provides specific parameters for these different types of congregate housing which may result in smaller numbers of residents for specific facilities and those requirements will supersede this ordinance. For the purposes of administering the Land Management Code and consistent with State code provisions, the following maximums shall apply:

1. An alternative living unit accommodates up to 3 residents and is deemed a single-family residence and is allowed where single-family homes are allowed.
2. A small group home or halfway house accommodates up to 9 residents and is deemed to be a single-family residence and is allowed where single-family homes are allowed.

3. A large group home or halfway house accommodates 10-16 residents and is deemed to be a multi-family residence and is allowed where multi-family residences are allowed. *(Zoning)*

GROWING SEASON – The period of consecutive frost-free days as stated in the current soil survey for this county published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a) through (f). *(Forest Conservation)*

HEALTH DEPARTMENT – The Washington County Health Department, Environmental Services Division. *(Subdivision and Land Development)*

HIGH DENSITY RESIDENTIAL AREAS – Areas zoned for densities greater than one dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service. In the City of Hagerstown, residential development in the RMOD, RMED, RH, RO, CC-MU, N-MU Districts and the Planned Unit Development (PUD) Overlay, qualifies as high density residential areas. *(Forest Conservation)*

HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface, prior to construction, next to the proposed foundation of a structure. *(Floodplain)*

HOME WORKSTATION – A customary and incidental accessory use of a dwelling consisting of an office or workstation used for business or employment purposes within a dwelling or accessory structure where that dwelling is permitted by right, special exception or bona fide nonconforming use, used by a resident living in the dwelling unit, subject to the provisions of Article 4, Subsection K.10. *(Zoning)*

HOMEOWNERS ASSOCIATION – A community association organized within a development in which individual owners share common interests, expenses, and responsibilities for the organization’s activities, such as maintenance, open space, landscaping, or facilities. *(Subdivision and Land Development)*

HOOKAH LOUNGE – Any facility, establishment, or location whose business operation, whether as its primary use or as an accessory use, includes the smoking of tobacco or other substances through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha, or nareghile), including but not limited to establishments known variously as hookah bars, hookah lounges, or hookah cafes. *(Zoning)*

HUMAN BURIAL SITE – Any land or structure used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container or their placement in a columbarium, shall not constitute the creation of a human burial site. This term shall include the terms graveyard and burial grounds. *(Zoning and Subdivision and Land Development)*

HYDROLOGIC AND HYDRAULIC ENGINEERING ANALYSIS – Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Maryland Department of the Environment (MDE) and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles. *(Floodplain)*

ILLUMINATION OR ILLUMINATED – A source of any artificial or reflected light, either directly from a source of light incorporated in, or indirectly from an artificial source, so shielded that no direct illumination from it is visible elsewhere than on and in the immediate vicinity of the street sign. *(Zoning)*

ILLUMINATION, EXTERNAL – Illumination of a sign that is affected by an artificial source of light not contained within the sign itself. (*Zoning*)

ILLUMINATION, FLASHING – Illumination in which the artificial source of light is not maintained stationary or constant in intensity and color at all times when a street sign is illuminated, including illuminated lighting. Such illumination could consist of flashing bulb, LCD/LED electronic lighting or other artificial lighting source. (*Zoning*)

ILLUMINATION, INTERNAL – A light source that is concealed or contained within the street sign and becomes visible in darkness through a translucent surface. (*Zoning*)

ILLUMINATION, INDIRECT – A source of external illumination, located away from the sign that lights the sign, but which is itself not visible to persons viewing the sign from any street, sidewalk or adjacent property. (*Zoning*)

ILLUMINATION, NEON TUBE – A source of light for externally lit street sign supplied by a neon tube that is bent to form letters, symbols, or other shapes. (*Zoning*)

INDOOR PLANT CULTIVATION AND PROCESSING FACILITY – Indoor cultivation of plants for wholesale distribution of plant and/or fruit, seeds, or flowers of the plant. This use may include refinement of plant materials into end products for human consumption or personal use, including canned, preserved or frozen fruits and vegetables, dried culinary and medicinal herbs, other medicinal products, essential and infused oils, spices, teas, dried flowers, potpourri, sauces and salsas, etc. This use shall not include refinement of plant materials with other manufactured components into lotions, creams, gels, or other cosmetic products. This use shall not include refinement of plant materials into industrial products, such as paper, textiles, rubber, etc. (*Zoning*)

INSTITUTIONAL DEVELOPMENT AREA – Schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries. (*Forest Conservation*)

JURISDICTION – The geographical area within which the powers of the City of Hagerstown may be exercised. (*Subdivision and Land Development*)

JUNKYARD – A parcel of land on which waste materials, such as metals, glass, paper, plastics, rags and rubber tires, also including discarded or inoperable motor vehicles, are collected, stored, processed, sorted, salvaged or sold. A lot on which three or more inoperable vehicles are stored shall be deemed a junkyard. This does not include hazardous waste materials or spent nuclear fuels. (*Zoning*)

KENNEL – Any building or structure and/or land used, designed, or arranged for housing or boarding of more than five adult dogs, over the age of four months, including household pets. Kennels shall not be used for breeding operations that result in the housing of puppies on the premises. (*Zoning*)

LANDMARK – Any site or structure on publicly or privately owned land outside of the historic districts designated by the Mayor and City Council for its exceptional individual historical, archaeological or architectural significance, that is worthy of rehabilitation, restoration and preservation, and any alteration shall be reviewed in the same manner by the Historic District Commission as a site or structure within the historic district. (*Zoning - Historic*)

LANDSCAPING – The installation and maintenance, usually of a combination of trees, shrubs, plant materials, or other ground cover, including grass, mulch, decorative stone and similar materials, but excluding bare soil, uncultivated vegetation, impervious pavement materials, and gravel. (*Subdivision and Land Development - Landscaping*)

LANDSCAPING PLAN FOR FOREST CONSERVATION – A plan: (*Forest Conservation*)

1. Drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 2,500 square feet or greater in size;
2. Using native or indigenous plants when appropriate; and
3. Which is made part of an approved forest conservation plan.

LARGE ANIMAL VETERINARY CLINIC – A veterinary clinic or hospital that is equipped and staffed to treat animals that include large species such as horses and cattle. (*Zoning*)

LETTER OF MAP CHANGE (LOMC) – A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

1. Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure is not located in a special flood hazard area.
2. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
3. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed *flood* protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A Conditional Letter of Map Revision on Fill (CLOMR-F) is a determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective FIRM. (*Floodplain*)

LICENSED – As used in these regulations, licensed refers to professionals who are authorized to practice in the state of Maryland by issuance of licenses by the Maryland Board of Architects, Maryland Board of Professional Engineers, Maryland Board of Professional Land Surveyors, and the Maryland Real Estate Appraisers and Home Inspectors Commission. (*Floodplain*)

LINEAR PROJECT – A project which: (*Forest Conservation*)

1. Is elongated with nearly parallel sides;
2. Is used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles; and
3. May traverse fee simple properties through defined boundaries, or established easement rights.

LIVESTOCK – Animals typically grown for the purpose of production of animal byproducts (e.g., eggs, milk, meat, wool, leather, etc.) for household consumption or sale or grown for purposes of labor for the owner (e.g., transportation, plowing, etc.). For the purposes of this provision, livestock does not include animals typically owned as pets (e.g. cats, dogs, goldfish, etc.) or for service to people with disabilities (e.g., “seeing eye” dogs). All hoofed animals and fowl (chickens, turkeys, etc.) shall be considered livestock. The keeping of more than five adult rabbits and/or similar animals for any purpose (including household pets) outside of a dwelling shall be considered livestock. The keeping of livestock is only permitted in the AT district as part of a permissible land use. (See Article 4, Subsection K.11). (*Zoning*)

LOCAL AGENCY – Each unit in the executive, legislative or judicial branch of a county or municipal government, including an office or department of public works. (*Forest Conservation*)

LOOP LANE – Cul-de-sac design in which a broad median planted with shade trees runs the entire length of the street, bounded by travel lanes on both sides (typically one way). (*Subdivision and Land Development*)

LOT –

1. A parcel of land either vacant or occupied by one principal building structure, or use and its accessory buildings, uses or structures, or a group of principal buildings as allowed by Article 4 and including open spaces and landscaped areas as required. (*Subdivision and Land Development*)
2. For the purposes of Article 7, a unit of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision without an approved forest stand delineation and forest conservation plan. (*Forest Conservation*)

LOT AREA – The total area in square feet circumscribed by the lot lines of a lot, except that when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for purposes of computing the lot area shall be the street right-of-way line. (*Subdivision and Land Development.*)

LOT, CORNER – A lot abutting on two or more streets at their intersection, where the interior angle of the intersection does not exceed 135 degrees. (*Zoning*)

LOT FRONTAGE – The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as required herein, except that not more than one rear yard shall be required. (*Subdivision and Land Development*)

LOT, INTERIOR – An interior lot is a lot other than a corner lot. (*Subdivision and Land Development*)

LOT LINE, REAR – A lot line which is opposite and most distant from the front lot line, and in the case of an irregular or triangular shaped lot, a line 10 feet in length within the lot parallel to and at the maximum distance from the front lot line. *(Subdivision and Land Development)*

LOT LINE, SIDE - Any lot line that is not a front or rear lot line. *(Subdivision and Land Development)*

LOT LINE, ZERO - The location of a building on a lot such that one of the building's sides rests directly on a lot line, but not attached to another building along that lot line. *(Zoning)*

LOT LINES - The lines bounding a lot. *(Subdivision and Land Development)*

LOT MEASUREMENTS - *(Subdivision and Land Development and Zoning)*

1. Depth is the average horizontal distance between the front lot line and the rear lot line.
2. Width shall mean the horizontal distance between side lot lines measured at the midpoint of the side lot lines.

LOT, NONCONFORMING - See nonconforming lot. *(Subdivision and Land Development)*

LOT OF RECORD - A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Land Records of Washington County, or a lot described by metes and bounds, the description of which has been so recorded. *(Subdivision and Land Development)*

LOT, REVERSE FRONTAGE - A lot where the rear yard fronts on a City street and where there is typically no access. *(Subdivision and Land Development - Landscaping)*

LOT, THROUGH - A lot having its front and rear lot lines abutting street right-of-way. *(Subdivision and Land Development)*

LOWEST FLOOR - The lowest floor of the lowest enclosed area (including basement) of a building or structure. The floor of an enclosure below the lowest floor is not the lowest floor provided the enclosure is constructed in accordance with the provisions of Article 6 of this Chapter. The lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam). *(Floodplain)*

MAIN STREET DESIGN SHOPPING CENTER - A shopping center designed so that stores are arranged facing a center drive aisle which may be lined with parking and streetscape features, with the majority of parking found behind the buildings. Destination retail use stores may be found at the end of the driveway or located as part of the streetscape. *(Zoning)*

MAINTENANCE AGREEMENT – The short-term management agreement associated with afforestation or reforestation plans required under Article 7, Sections D and E of this Chapter. *(Forest Conservation)*

MAJOR ECONOMIC DEVELOPMENT OPPORTUNITY – A proposal for new construction in the Downtown Historic District that involves the demolition of a contributing resource to accommodate development that is a significant pedestrian traffic generator. This traffic could be generated via the creation of a significant number of employment positions, entertainment and tourism visitors, and/or residential units in a mixed-use building. Existing and proposed residential units shall meet or be

improved to meet the City's Partners in Economic Progress (PEP) program standards which are designed to implement Comprehensive Plan goals for the revitalization of the downtown area and diversification of the income levels of downtown residents. Standards required for residential units include:

1. Central HVAC system;
2. Washer, dryer and dishwasher;
3. Wood veneer or solid wood kitchen and bathroom cabinets;
4. Approved solid surface counter tops in kitchen and bathrooms;
5. Refinished or new hardwood floors or wall-to-wall carpeting in areas other than kitchens and bathrooms; and
6. Where possible, outdoor amenities (e.g., balconies, roof top decks, back porches, sunrooms, etc.).
(*Zoning - Historic*).

MANUFACTURING, GENERAL – Manufacturing processes that create finished and semi-finished products from already manufactured components and materials or from raw materials which do not need refining, including assembly of finished components, refinement of semi-finished materials or components into finished products, production of parts to be assembled into finished products, production of items through biological processes, and production of items requiring the mixing of chemicals. General manufacturing activities have the potential of creating moderate noise, odors, smoke, dust, vibration or other environmental impacts. (*Zoning*)

MANUFACTURING, HEAVY – Manufacturing processes that process or refine raw materials, including milling of grains, milling and preserving wood, milling of thread and cloth, production of masonry products, production of chemicals, soaps, detergents and ink, conversion of solid waste into useful products and preparation of solid waste for disposal at another location by changing its physical form or chemical composition. For the purpose of this Chapter, heavy manufacturing shall not include paper mills, smelting plants, asphalt plants, animal slaughterhouses, tanneries and steel mills. Heavy manufacturing activities have potential for creating moderate to substantial noise, odors, smoke, dust, vibration or other environmental impacts. (*Zoning*)

MANUFACTURING, LIGHT – Manufacturing processes that create finished products from already manufactured components and materials or from raw materials which do not need refining, including assembly of finished components and refinement of semi-finished materials or components into finished products. All activities related to this use are conducted entirely indoors, including storage of materials. Light manufacturing activities have little or no potential for creating noise, smoke, odors, dust, vibration or other environmental impacts. (*Zoning*)

MARKET VALUE – The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. For the purposes of Article 6, the market value of a building is determined by a licensed real estate appraiser or the most recent, full phased-in assessment value of the building (improvement) determined by the Maryland Department of Assessments and Taxation. (*Floodplain*)

MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE) – A principal department of the state of Maryland that is charged with, among other responsibilities, the coordination of the National Flood Insurance Program in Maryland (NFIP State Coordinator) and the administration of regulatory programs for development and construction that occur within the waters of the state, including non-tidal wetlands, non-tidal waters and floodplains, and state and private tidal wetlands (Tidal Wetlands). Unless otherwise specified, “MDE” refers to the Department’s Wetlands and Waterways Program. (*Floodplain*)

MASTER PLANNED PROJECT – In the Neighborhood Mixed Use Districts, a master planned project shall include multiple buildings and/or properties. A sketch plan must be submitted which is filed jointly by all owners of the property or properties included in the master planned project. (*Zoning*)

MINI WAREHOUSES – A structure containing separate cubicles which are rented to the public for storage purposes. (*Zoning*)

MINOR DEVELOPMENT PROJECT – A project on less than five acres of land containing not more than four lots per acre. (*Forest Conservation*)

MIXED USE BUILDING – A building that contains at least one floor devoted to permitted non-residential uses and at least one developed to allowed residential uses. (*Zoning*)

MIXED USE STRUCTURE – An structure that is used or intended for use for a mixture of nonresidential and residential uses in the same structure. (*Floodplain*)

MIXED USE DEVELOPMENT – A single, relatively high-density development project, usually commercial in nature which includes two or more types of uses. (*Forest Conservation*)

MIXTURE OF DWELLING TYPES - For the purposes of implementing the intent of PUD Districts and mixed use zoning districts, this term is intended to mean a development comprised of a mixture of physical dwelling types, such as single-family homes, and/or townhouses and/or other physical types of dwellings. Bedroom count shall not be considered “a mixture of dwelling types.” For example, an apartment complex with one, two and three-bedroom apartments is not a “mixture of dwelling types.” (*Zoning*)

MOBILE HOME PARK – Any area or tract of land designed for the parking or other type of installation of mobile homes on spaces or lots offered for lease or rent, including all improvements, buildings, structures, recreation areas, or other facilities for the use of the residents of such development, for non-transient use. (*Zoning*)

MULTI-USE BUILDING – A building consisting of two or more separate commercial uses. (*Zoning*)

MULTI-BUILDING COMPLEX – A grouping of two or more business establishments that either share common parking on the lot where they are located, or that occupy a single structure or separate structures that are physically or functionally related or attached. (*Zoning*)

NATIONAL FLOOD INSURANCE PROGRAM (NFIP) – The program authorized by the United States Congress in 42 U.S.C, Sections 4001-4129. The NFIP makes flood insurance coverage available in communities that agree to adopt and enforce minimum regulatory requirements for development in areas prone to flooding (see definition of “Special Flood Hazard Area”). (*Floodplain*)

NATURAL REGENERATION – The natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity. (*Forest Conservation*)

NET FLOOR AREA – That portion of any building, improvements, or use of land which is included in rental areas or normally used as a part of the quarters of any owner or tenant of such premises. Areas commonly excluded in the calculation of Net Floor Area may include entry halls or foyers; elevator shafts; stairways; janitor, electrical, or maintenance rooms; public restrooms, etc. Common areas open to the public shall be included in the calculation of parking space requirements. (*Zoning*)

NET TRACT AREA – (*Forest Conservation*)

1. Except in agriculture and resource areas or as modified by the Express Procedures in Article 7, Section E, the total area of a site, including both forested and non-forested areas, to the nearest one-tenth acre;
2. In agriculture and resource areas, the part of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities; and
3. For a linear project, the area of a right-of-way width, new access roads and storage; or the limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

NEW CONSTRUCTION –

1. As pertains to Article 4, the erection, alteration, repair or renovation of any building or structure requiring a footing and/or foundation or change to the exterior dimensions and the excavation, filling and grading of lots in connection therewith. (*Zoning*)
2. As pertains to Article 6, structures, including additions and improvements, and the placement of manufactured homes, for which the start of construction commenced on or after April 17, 1978, the initial effective date of the City of Hagerstown Flood Insurance Rate Map, including any subsequent improvements, alterations, modifications, and additions to such structures. (*Floodplain*)

NFIP STATE COORDINATOR – See Maryland Department of the Environment. (*Floodplain*)

NIGHTCLUB – An establishment operated as a place of entertainment, characterized by any or all of the following as a principal use: (1) live, recorded or televised entertainment, including but not limited to performance by magicians, musicians or comedians; (2) dancing. This use shall not be interpreted to include uses regulated in Article 4 as Adult Entertainment Uses. (*Zoning*)

NONCONFORMING STRUCTURE, LOT, PARCEL OR TRACT OF LAND – A structure or lot that does not conform to a dimensional, lot area or density regulation prescribed by Article 4 for the district in which it is located or off-street parking, off-street loading or accessory buildings, but which structure or lot was in existence at the effective date of the Zoning Ordinance. (*Zoning*)

NONCONFORMING USE – A use of a building or lot that does not conform to use regulations prescribed by Article 4 for the district in which it is located but which was lawfully in existence at the effective date of the Zoning Ordinance. Use, as it applies to a nonconformity and expiration of that

nonconformity in conformance with Article 4, means active use of property for the stated nonconforming use and/or active work diligently pursued in the effort to restart a nonconforming use that has ceased. The property owner's or nonconforming use holder's intent alone shall not be sufficient to demonstrate that an alleged nonconforming use that has ceased remains legal and valid. (*Zoning*)

NONCOMPLIANT STRUCTURE – A building or structure that does not conform to bulk regulations found in Article 4 of this Chapter, including but not limited to setback and height requirements, but which was lawfully in existence at the effective date of this Chapter, or a subsequent amendment to this Chapter that rendered the structure noncompliant. (*Zoning*)

NON-TIDAL WATERS OF THE STATE – As used in Article 6, any stream or body of water within the State that is subject to State regulation, including the “100 year frequency floodplain of free-flowing waters.” Per COMAR 26.17.04, the landward boundaries of any tidal waters shall be deemed coterminous with the wetlands boundary maps adopted pursuant to Environment Article, Section 16-301, Annotated Code of Maryland. Therefore, the boundary between the tidal and non-tidal waters of the State is the tidal wetlands boundary. (*Floodplain*)

OFFICES FOR BONDING OF DEFENDANTS IN THE CRIMINAL JUSTICE SYSTEM – Establishments involved in all or a portion of the bond origination and enforcement process that: (1) gain release of criminal defendants from jail by pledging money or property as a guarantee that the defendant will appear in court; and/or (2) seek and recover bonded defendants who attempt to avoid court appearance. (*Zoning*)

OFFICES FOR PAROLING AND THE PROBATION OF DEFENDANTS IN THE CRIMINAL JUSTICE SYSTEM – Establishments involved in the supervision of criminal defendants and convicts who have been released from confinement or granted an alternative to confinement, but are still under court supervision for a period of time. Such establishments may also be involved in the apprehension of defendants and convicts who violate the terms of their release or probation. (*Zoning*)

OFFSITE – Outside of the limits of the area encompassed by the tract. (*Forest Conservation*)

ONSITE - Within the limits of the area encompassed by the tract, including an area classified as a 100-year floodplain. (*Forest Conservation*)

OPEN SPACE – That portion of a tract that is set aside during development for the protection of sensitive natural areas, farmland, scenic views, unique features; or the creation of active, improved recreational areas; or passive, unimproved natural areas. The land is not individually owned. It is understood that this term is broad and can include land that is accessible to the residents of the development and/or the community, or it may contain areas of conservancy lots that are not accessible to the public. Paved areas other than recreational courts and paths, and stormwater management facilities that are not designed as natural features shall not constitute open space. (*Subdivision and Land Development*)

ORDINARY MAINTENANCE – Work that does not alter the exterior features of a site or structure and has no material effect on the historical, archaeological, or architectural significance of the site or structure. This includes repair or replacement in-kind of roofs, gutters, siding, trim, external doors and windows, awnings, porch floors and ceilings, lights, fences, and other appurtenance fixtures with like materials of like design; landscaping; paving repair using like materials of like design; and repainting of surfaces. (*Zoning - Historic*)

OUTPATIENT SUBSTANCE ABUSE CENTER, INCLUDING DISBURSEMENT OF ADDICTION TREATMENT DRUGS – An outpatient medical office for counselling and treatment of substance abuse, which may include disbursement of addiction treatment drugs. (*Zoning*)

PAD SITE – An outparcel in a subdivision of land in a commercial district, intended for use of a freestanding building on a fee simple lot, however, developed as part of a larger, multi-structure commercial development. (*Zoning*)

PANHANDLE LOT – An irregularly shaped lot where the buildable portion of the lot is connected to its street frontage by an arm of the lot, designed to be utilized as a means of ingress and egress that does not meet the minimum lot width and street frontage standards specified for the zoning district in which the lot is located. This portion of the lot designed as an area of access shall not be calculated into the lot area requirements. Also referred to as a Flag Lot or a Pipestem Lot. (*Subdivision and Land Development*)

PARCEL – For the purposes of Article 7, a parcel is an area of land that legally existed as a distinct entity in a deed or on an approved subdivision plat on or before the date of adoption of Article 7 and will not be the subject of further subdivision without an approved forest stand delineation and forest conservation plan. The term, parcel, may be used interchangeably with lot or tract. (*Forest Conservation*)

PARKING LOT – An area, not within a building, outside any street right-of-way, where motor vehicles may be stored for the purposes of temporary, daily, or overnight off-street parking. (*Subdivision and Land Development - Landscaping*)

PARKING LOT AISLES – That portion of the parking lot consisting of lanes providing access from a street to or through off-street spaces and/or loading areas. (*Subdivision and Land Development - Landscaping*)

PARKING, PRIVATE – A designated off-street parking area for the exclusive use of the owners or their customers, tenants, lessees, employees, or occupants of the lot on which the parking area is located. (*Zoning*)

PARKING, PUBLIC – A designated off-street parking area which is available to the general public, whether for free or payment of a fee. Ownership may be a public or private entity. (*Zoning*)

PARKING ROW – One line of vehicle spaces, or two parallel lines of adjoining vehicle spaces, adjacent to and served by at least one parking lot aisle. (*Subdivision and Land Development - Landscaping*)

PARKING VEHICLE SPACE – That portion of the parking lot designated for the parking of one vehicle. (*Subdivision and Land Development - Landscaping*)

PERFORMANCE SECURITY – Any security which may be accepted by the City of Hagerstown in lieu of a requirement that improvements be made before the Planning Commission approves a plat, including, but not limited to performance bonds, surety agreement, escrow agreements, irrevocable letter of credit, or any other similar collateral or surety agreements, with surety to be approved by the City Engineer and/or the Utilities Director. (*Subdivision and Land Development*)

PERSON – As pertains to Article 6, an individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies. (*Floodplain*)

PLANNED UNIT DEVELOPMENT – A development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in land use design approved by the City of Hagerstown with at least 10% of the land permanently dedicated to open space. (*Forest Conservation*)

PLAT, FINAL – The final map or plan which legally describes the subdivision of land (including the creation of a condominium regime in accordance with the requirements of the Annotated Code of Maryland), containing a detailed plan of the property, giving all dimensions, angles and bearings, together with such information, statements and certificates as required by these Regulations, and presented to the Commission for approval, and which if approved will be submitted to the Clerk of Circuit Court for recording among the Land Records of Washington County. (*Subdivision and Land Development*)

PLAT, SIMPLIFIED – The creation of a subdivision as defined herein not for development purposes. (*Subdivision and Land Development*)

PRELIMINARY CONSULTATION – A procedure for the presentation of a proposed subdivision to the Planning Commission for informal review prior to formal application and preparation of a Development Plan. (*Subdivision and Land Development*)

PRESERVATION – The maintenance of a site or structure in its present condition or as originally constructed. Preservation aims at halting further deterioration and providing structural safety, but does not contemplate significant rebuilding. Preservation includes techniques of arresting or slowing deterioration; improvement of structural conditions to make a structure safe, habitable, or otherwise useful; normal maintenance and minor repairs that do not change or adversely affect the fabric or appearance of a structure. (*Zoning - Historic*)

PRESERVATION RESERVE – A site or structure that is retained or set aside until a future time when proper research or financial feasibility allows for its rehabilitation, restoration and preservation. This mothballing or protective storage condition shall include: a plan; the stabilization of the structure; adequate protection from poachers and vandals; and all consideration to the health, safety and welfare of the neighboring community. The time limit for this Preservation Reserve status shall be 90 days, unless a mutually agreed upon time limit is set between the owner and the Historic District Commission. (*Zoning - Historic*)

PRIORITY FUNDING AREA – An area designated as a Priority Funding Area under Article 5-7B-02 of the state Finance and Procurement Article. (*Forest Conservation*)

PROFESSIONAL AND WORKMAN LIKE MANNER – The quality of work performed by a person who has the knowledge, training, or experience necessary for the successful practice of a trade or occupation and performed in a manner generally considered proficient by those capable of judging such work. (*Zoning*)

PROJECT PLAN – A construction, grading, or sediment control activity on an area of 40,000 square feet or greater. (*Forest Conservation*)

PUBLIC UTILITY – For the purposes of Article 7, any: (*Forest Conservation*)

1. transmission line or electric generating station; or

2. Water, sewer, electric, gas, telephone, and television cable service line.

PUBLIC WAYS CONSTRUCTION STANDARDS & ENGINEERING GUIDELINES – The formally adopted document of construction standard details, templates, and guidelines that governs development of public rights-of-way and construction within the City of Hagerstown. (*Subdivision and Land Development*)

RECONSTRUCTION – The process of reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared at a specific period of time. “Reconstruction” should be undertaken only when the structure to be reconstructed is essential for understanding and interpreting the value of an entire site or district and sufficient documentation exists to ensure an exact reproduction of the original. (*Zoning - Historic*)

RECREATION AREA – An area requiring some constructed facilities and/or organized activities. Active recreational areas may include facilities such as swimming pools, play equipment, ball fields, court games, and picnic tables. (*Subdivision and Land Development*)

RECREATIONAL VEHICLE – A vehicle that is built on a single chassis which is 400 square feet or less at the longest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as for temporary living quarters for recreational, camping, travel, or seasonal use. (*Floodplain*)

RECYCLING – An operation conducted entirely indoors which accepts recyclable materials and processes or sorts these materials for distribution back into an off-site re-manufacturing operation. This does not include operations which undertake curbside collection of recyclable materials nor the storage of a fleet of vehicles for such operations. (*Zoning*)

REDEVELOPMENT – Any construction, alteration, or improvement exceeding 2,500 square feet of land disturbance performed on sites where existing land use is commercial, industrial, institutional or multifamily residential, including the demolition and reconstruction of a building or a portion of a building. (*Subdivision and Land Development - Landscaping*)

REFORESTATION – (*Forest Conservation*)

1. "Reforestation" or "reforested" means the:
 - a. creation of a forest within seven years; or
 - b. establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.
2. “Reforestation” or “reforested” includes landscaping of areas under an approved landscaping plan establishing a forest at least 35 feet wide and covering 2,500 square feet or more of area.
3. “Reforestation” or “reforested” for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

REGULATED ACTIVITY – Any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater: (*Forest Conservation*)

1. Subdivision;
2. Grading;
3. An activity that requires a sediment control permit;
4. An activity that requires a site plan;
5. Project plan of a local agency; or
6. Development project.

REHABILITATION CENTER – an in-patient rehabilitation center with specialized therapeutic programs to assist patients achieve the necessary functional independence to return home, usually following an acute medical or surgical hospitalization, including detox for substance addiction. (*Zoning*)

REQUIRED IMPROVEMENTS – Improvements shall mean storm drainage facilities, sanitary sewerage facilities, water supply facilities, streets, curbs, street lights, street signs, gutters, gas lines, electricity lines, walks and/or other accessory works and appurtenances. (*Subdivision and Land Development*)

RESTORATION – The process of accurately recovering the form and details of a site or structure as it appeared at a particular period of time by means of removal of later work and the replacement of missing original work. (*Zoning - Historic*)

RETENTION – The deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the City of Hagerstown Forest Conservation Technical Manual. (*Forest Conservation*)

RIGHT-OF-WAY – An area of land dedicated for use as a public way, typically for pedestrian and vehicular movement. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage features. It may include special features required by topography or treatment such as grade separation, landscaped areas, viaducts, and bridges. (*Subdivision and Land Development*)

ROOMING HOUSE – a facility with sleeping rooms to rent which contains shared bathroom and kitchen facilities in common areas of the facility for use of the residents. (*Zoning*)

ROOMING UNIT – A room or group of rooms rented to an individual or household for private use as living and sleeping quarters, which is not a self-contained dwelling unit. (*Zoning*)

SAFETY SERVICES – Safety services shall include such services as police, fire, and rescue operations. (*Zoning*)

SATELLITE SIMULCAST BETTING FACILITY - A facility owned or leased by a person with a permit granted by the State Racing Commission to conduct satellite simulcast betting, as that term is defined in Maryland Business Regulation Code Ann §11-815, as amended from time to time, and which conforms to all requirements of Maryland Business Regulation Code Ann §11-815, *et seq.*, as amended from time to time. (*Zoning*)

SECURITY – Valuable consideration pledged or deposited for the purpose of assuring performance of the obligations imposed under this and other City policies in a form acceptable to the City Attorney, including an irrevocable letter of credit, performance bond, or certified check. Sureties must be of AM Best Rating, listed as US Treasury approved, licensed and certified to conduct business in the State of Maryland. The City may also require the surety to produce A Summary Balance Sheet prior to acceptance of a bond. Letters of Credit shall be drawn on a Maryland bank branch and subject to automatic renewal. Performance bonds shall also be subject to automatic renewal. *(Subdivision and Land Development)*

SEDIMENT CONTROL – The activity regulated under an approved sediment control plan pursuant to Chapter 209 (Sediment Control) of the City Code. *(Forest Conservation)*

SEEDLINGS – An unbranched woody plant, less than 24 inches in height and having a diameter of less than one-half inch measured at two inches above the root collar. *(Forest Conservation)*

SELECTIVE CLEARING – The careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan. *(Forest Conservation)*

SETBACK – The required minimum horizontal distance between the building line, as defined herein, and the related front, side or rear property line. *(Zoning)*

SEWER CAPACITY ALLOCATION PROGRAM – A Capacity Allocation Plan to provide for the management of existing and future wastewater commitments of the Hagerstown Wastewater Treatment Plant, as adopted by the City, and as may be amended from time to time. *(Subdivision and Land Development)*

SHRUB – A woody, branching plant of relatively low height, which are of a species which can be expected to reach a maximum height of 36 inches and a minimum spread of 30 inches within three years of planting. *(Subdivision and Land Development - Landscaping)*

SIGN – Any permanent or temporary structure or part thereof, or any device attached, painted or represented directly or indirectly on a structure or other surface that shall display or include any letter, word, insignia, flag or representation used as, or which is the nature of, an advertisement, announcement, visual communication, direction or is designed to attract the eye or bring the subject to the attention of the public. Flags of any governmental unit or branch are excluded. *(Zoning)*

SIGN, ANIMATION OR ANIMATED – The movement or the optical illusion of movement of any part of the street sign structure, design, or pictorial segment, including the movement of any illumination or the flashing or varying of light intensity; the automatic changing of all or any part of the facing of a street sign. *(Zoning)*

SIGN, CHANGEABLE COPY – Copy that changes at intervals including through the use of LCD, LED or other electronic technology. *(Zoning)*

SIGN, GROUND – A street sign supported by one or more uprights, posts, or bases placed upon or affixed in the ground and not attached to any part of a building. It includes a pole sign and a monument sign. *(Zoning)*

SIGN, MONUMENT – A ground sign permanently affixed to the ground at its base, supported entirely by a base structure, and not mounted on a pole. *(Zoning)*

SIGN, PORTABLE – A street sign not permanently attached to the ground or a building or not designed to be permanently attached to the ground or a building. (*Zoning*)

SIGN, PROJECTING – Any sign attached to a building or structure that is not oriented parallel to the building frontage or structure. Marquees, awnings, canopies, banners, and freestanding signs are not considered projecting signs. (*Zoning*)

SIGN, ROOF – A sign painted, erected, constructed, or maintained on the roof of a building. (*Zoning*)

SIGN, TEMPORARY – A sign, banner, pennant, poster, or advertising display constructed of cloth, plastic or vinyl sheet, cardboard, wallboard or other like materials that, by its design or use, is temporary in nature and not permanently attached to a building or the ground. Signs on umbrellas at outdoor seating areas are temporary signs. For the purposes of Article 4, Section I (Signs), temporary shall mean a period of ninety days or less. Ongoing or regular use of the same location, place on structure or façade with the intent of commercial messaging being an ongoing presence shall be considered permanent signage, subject to the requirements of Section I. (*Zoning*)

SIGN, WALL – A sign attached directly to an exterior wall of a building or dependent upon a building for support, with the exposed face of the sign located in a place substantially parallel to the exterior building wall to which the sign is attached or which supports the sign. (*Zoning*)

SIGN, WINDOW – A sign established on the exterior or interior of a window or within 12 inches of a window pane intended to be viewed from outside of the building, or any illuminated sign within a building intended to be viewed from outside. Merchandise displays located in a window are not considered a window sign. (*Zoning*)

SITE – The location of an event of historical significance or a structure, whether standing or ruined, which possesses historical, archaeological, or cultural significance. (*Zoning - Historic*)

SITE PLAN – A plan of development required pursuant to Article 4, Subsection S.2, of this Chapter. (*Zoning, Subdivision and Land Development, and Forest Conservation*)

SITE(S), HISTORIC – One or more parcels, structures, or buildings that are either: designated as an Historic Landmark, included within a Historic District, included on the County Register of Historic Properties, or designated on the National Register of Historic Places. (*Subdivision and Land Development*)

SKETCH PLAN – A preliminary sketch plan of the proposed subdivision showing the developer's desires in regard to the future development of land for informal consideration by the Commission at the Preliminary Consultation. (*Zoning and Subdivision and Land Development*)

(SMALL) WIRELESS COMMUNICATION FACILITY – Per the 2019 Federal Communications Commission ruling, a facility that meets each of the following conditions:

1. The structure on which antenna facilities are mounted is:
 - a. 50 feet or less in height, or
 - b. no more than 10 percent taller than other adjacent structures, or

- c. not extended to a height of more than 10 percent above its preexisting height as a result of the co-location of new antenna facilities; and
- 2. Each antenna (excluding associated antenna equipment) is no more than 3 cubic feet in volume; and
- 3. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- 4. The facility does not require antenna structure registration per FCC ruling; and
- 5. The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified by FCC ruling. (*Zoning – Wireless*)

SMART GROWTH ARTS AND ENTERTAINMENT DISTRICT – An area designated by the state of Maryland within a jurisdiction intended to promote economic development through the promotion and attraction of businesses and organizations focused on the arts and entertainment industries. (*Zoning*)

SOLAR COLLECTION SYSTEM – A panel or other solar energy device, the primary purpose of which is to provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling or water heating. (*Zoning*)

SPECIAL EXCEPTION – A grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in Article 4 exist, that the use conforms to the plan and is compatible with the existing neighborhood. (*Zoning*)

SPECIAL FLOOD HAZARD AREA (SFHA) – The land in the floodplain subject to a 1% percent or greater chance of flooding in any given year. Special flood hazard areas are designated by FEMA in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AH, AO, A1-30 and A99. The term includes areas shown on other flood maps that are identified in Article 6. (*Floodplain*)

SPECIFIED ANATOMICAL AREAS – (*Zoning*)

- 1. Less than completely and opaquely covered:
 - a. Human genitals, pubic region;
 - b. Buttock; and
 - c. Female breast below a point immediately above the top of the areola.
- 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES – (*Zoning*)

- 1. Human genitals in a state of sexual stimulation or arousal;
- 2. Acts of human masturbation, sexual intercourse or sodomy;
- 3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

SPECIMEN TREE – A particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species (*Subdivision and Land Development - Landscaping*)

START OF CONSTRUCTION – As pertains to Article 6, the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets, and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. (*Floodplain*)

STEALTH TECHNOLOGY – camouflaging methods applied to Wireless Communications Facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, alternative mounting structures, such as architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, and facilities constructed to resemble trees, flagpoles, light poles, etc. (*Zoning – Wireless*)

STOREFRONT SPACE – Space for occupation in a commercial or mixed-use building which has display windows on the street. (*Zoning*)

STORMWATER DETENTION STRUCTURE – A permanent structure for the temporary storage of runoff, which is designed so as not to create a permanent pool of water. (*Zoning*)

STORMWATER RETENTION STRUCTURE – A permanent structure that provides for the storage of runoff by means of a permanent pool of water. (*Zoning*)

STREAM BUFFER – All lands lying within 50 feet, measured from the top of each normal bank of a perennial or intermittent stream. (*Forest Conservation*)

STREAM, INTERMITTENT – A stream in which surface water is absent during a part of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification. (*Forest Conservation*)

STREAM, PERENNIAL – A stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey, as confirmed by field verification. (*Forest Conservation*)

STREAM RESTORATION PROJECT – An activity that:

1. Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;
2. Avoids and minimizes impacts to forests and provides for replanting on-site an equivalent number of trees to the number removed by the project;
3. May be performed under a municipal separate storm sewer system permit, a watershed implementation plan growth offset, or another plan administered by the state or local government to achieve or maintain water quality standards; and
4. Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity. (*Forest Conservation*)

STREET AND/OR ROAD – A public right-of-way or thoroughfare, intended for vehicular traffic, accepted and approved by official action of the appropriate authority. (*Subdivision and Land Development*)

STREET CLASSIFICATIONS – Functional classifications are defined in *Public Ways Construction Standards and Engineering Guidelines*, published by the City of Hagerstown Engineering Division. This document is to be utilized for the purpose of providing for the development of the streets, highways, roads and rights-of-way in the City, and for the future improvement, reconstruction, realignment, and necessary widening, including provision for curbs and sidewalks. (*Subdivision and Land Development*)

STREET, PRIVATE – A street privately owned and maintained that is used as the principal means of access to abutting lot or lots or more than two dwellings on a lot which a private way is exclusively located. The driveway network within a commercial development (including those traversing multiple properties with shared access and maintenance responsibilities), driveways through parking lots and driveways through multiple family dwelling developments shall not be considered a private street. (*Zoning and Floodplain*)

STREET TREE – A tree located between the curb and sidewalk in the public right-of-way or a tree located in a tree well within the sidewalk in the public right-of-way or a tree located within the street yard. (*Subdivision and Land Development - Landscaping*)

STREET YARD – The area of land along the front property line parallel to a right-of-way reserved for tree planting and landscaping. Also referred to as a tree planting easement. (*Subdivision and Land Development - Landscaping*)

STRUCTURE –

1. As pertains to all but Article 6, a combination of material to form a construction that is stable, including among other things, buildings, tanks and towers, trestles, piers, bridges, bulkheads, loading docks, smokestacks, cranes, booms, sheds, coal bins, shelters, fences, walls and display signs visible or intended to be visible from a public way; the term “structure” shall be construed as if followed by the words, “or part thereof.” Structures shall comply with building setbacks as required by the various provisions of Article 4. (*Zoning*)

2. As pertains to Article 6, that which is built or constructed; specifically, a walled or roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. (*Floodplain*)

STRUCTURE, HISTORIC – As pertains to Article 6, any structure that is:

1. Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the Maryland Register of Historic Places; or
4. Individually listed on the inventory of historic places maintained by the City of Hagerstown whose historic preservation program has been certified by the Maryland Historical Trust or the Secretary of the Interior. (*Floodplain*)

STRUCTURE, TEMPORARY – For the purposes of Article 6, a structure installed, used, or erected for a period of less than 180 days. (*Floodplain*)

SUBDIVISION –

1. The division of a lot, tract, or parcel of land into lots, plats, sites, condominium units or spaces, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. It includes re-subdivision and, when appropriate to the context, relates to the process of re-subdividing or to the land or territory subdivided. (*Subdivision and Land Development*)
2. For the purposes of Article 7, any division of a unit of land into two or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development pursuant to the City of Hagerstown Subdivision Regulations. (*Forest Conservation*)

SUBDIVISION, MINOR – The division of a residential parcel that has not been part of a previously recorded subdivision, into seven or fewer residential lots, fronting on an existing, approved public road and not requiring any new public or private access, nor the extension of a public wastewater or water line, nor requiring a waiver or variance from any requirement of this Chapter. (*Subdivision and Land Development*)

SUBDIVISION PROCESS – The process whereby a proposed subdivision is officially approved and thereby recorded. (*Subdivision and Land Development*)

SUBSTANTIAL DAMAGE – As pertains to Article 6, damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50% of the market value of the building or structure before the damage occurred. Also used as “substantially damaged” structures. (*Floodplain*)

SUBSTANTIAL IMPROVEMENT – As pertains to Article 6, any reconstruction, rehabilitation, addition or other improvement of a building or structure, the cost of which exceeds 50% percent of the market value of the building or structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. A project for improvement of a building or 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 prior to the submission of an application for a permit 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 structure's continued designation as a historic structure. (*Floodplain*)

SUBSTANTIALLY CHANGE OR SUBSTANTIAL CHANGE – a modification to an existing wireless communication facility substantially changes the physical dimensions of a tower or base equipment facility if it meets any of the following criteria:

1. It increases the height of the facility by more than 10%, or by the height of one additional antenna with separation from the nearest existing antenna, not to exceed 20 feet, whichever is greater;
2. It protrudes from the edge of the WCF by more than 20 feet, or more than the width of the tower structures at the level of the appurtenance, whichever is greater;
3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets;
4. It entails any excavation of deployment outside the current site of the tower-based WCF;
5. It does not comply with conditions associated with prior approval of construction or modification of the tower-based WCF unless the non-compliance is due to an increase in height, increase in width, or addition of cabinets. (*Zoning – Wireless*)

SUBSTANTIALLY REHABILITATED – For the purposes of Article 4, the alteration or repair of an existing structure, the cost of which exceeds two times the full cash value of the structure as determined by the State of Maryland Tax Assessor. The entire structure so rehabilitated must satisfy the requirements of all applicable local codes, including but not limited to the Plumbing, Electrical, Housing, Fire and Property Maintenance Codes. (*Zoning*)

TEMPORARY WIRELESS COMMUNICATION FACILITY (WCF) – A WCF which is to be placed in use for a limited period of time, is not deployed in a permanent manner, and does not have a permanent foundation. (*Zoning-Wireless*)

TENT – A structure made of materials such as, but not limited to, canvas, an architectural membrane, or other lightweight material and which is supported by a framework of supports or ropes which is intended to function as or resemble a tent or other engineered stressed membrane structure, and is used for short-term, temporary purposes. This definition shall not be construed to include bona fide permanent or semi-permanent awnings erected accessory to a permitted principal building and use. (*Zoning*)

TERMINAL VISTA – The building or landscape element that is visible at the end of a street, or along the outside edge of a curve. (*Subdivision and Land Development*)

THEATER MARQUEE – A canopy structure projecting over the entrance to a theater that contains signs to identify the name of the theater and may include a changeable message area to promote upcoming on-site events. (*Zoning*)

TIMBER HARVESTING – (*Forest Conservation*)

1. “Timber harvesting” means a tree cutting operation affecting one or more acres of forest or developed woodland within a one-year interval that disturbs 5,000 square feet or more of forest floor.
2. “Timber harvesting” does not include grubbing and clearing of root mass.

TRACT – Property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, project plan approval, or areas subject to a regulated activity. (*Forest Conservation*)

TRACT FOR A PLANNED UNIT DEVELOPMENT – The entire property subject to a planned unit development. (*Forest Conservation*)

TRANSPORTATION PLAN – The plan for streets and highways included in the transportation plan element of the City’s officially adopted Comprehensive Plan. (*Subdivision and Land Development*)

TREE – A large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least 20 feet at maturity. (*Forest Conservation*)

TREE, CANOPY (SHADE) – A species of tree which normally grows to a mature height of 40 feet or more with a minimum of mature crown width of 30 feet. Such trees shall be at least 1.75 inches to 2.5 inches in diameter, measured at five feet, when planted. (*Subdivision and Land Development - Landscaping*)

TREE, CHAMPION – The largest tree of its species within the United States, the state, county, or municipality. (*Forest Conservation*)

TREE, CHAMPION OF THE STATE – A tree designated by the Department of Natural Resources to be a state champion tree. (*Forest Conservation*)

UNDERSTORY TREE – A species of tree which normally grows to a mature height of 15 to 35 feet in height. Understory trees shall be a minimum of four feet high and one inch in caliper (measured six inches above grade) when planted. (*Zoning - Landscaping*)

UNDUE FINANCIAL HARDSHIP – A condition, demonstrated to the satisfaction of the Historic District Commission, showing that the retention of a building, structure or feature in a historic district denies the property owner all reasonable use of a property, or the cost of necessary or required improvements outweigh the anticipated fair market value of a property after completion of repairs or rehabilitation. Undue financial hardship is not an analysis of the individual financial capacity of the owner or applicant to implement rehabilitation or improvements. (*Zoning - Historic*).

USE – Any activity, occupation, business or operation conducted or intended to be conducted in a building or other structure or on a tract of land. (*Zoning*)

UTILITIES – For the purposes of Articles 4 and 5, Municipal utilities of the City of Hagerstown and other private utilities. (*Zoning and Subdivision and Land Development*)

VAPOR LOUNGE – Any facility, establishment, or location, whether fixed or mobile, whose business operation, whether as its primary use or as an ancillary use, includes the utilization of a heating element that vaporizes a substance that releases nicotine, tobacco, flavored vapor or other substances through one or more electronic or battery operated delivery devices, including any device known as an electronic cigarette (also commonly referred to as E-Cig, E-cigarette, E-pipe, Electronic cigarillo, hookah pen, E-hookah, vape pen, vape pipe or any other electronic cigarette product), including but not limited to establishments known variously as vape bars, vape lounges, e-cigarette bars, or vape cafes. (*Zoning*)

VARIANCE, FLOODPLAIN – The grant of relief from the strict application of one or more requirements of Article 6 of this Chapter. (*Floodplain*)

VARIANCE, FOREST CONSERVATION – Relief from Article 7 of this Chapter and does not mean a zoning variance. (*Forest Conservation*)

VARIANCE, ZONING – A modification only of density, bulk or area requirements in Article 4 where such modification will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of any action taken by the applicant, a literal enforcement of the Zoning Ordinance would result in unnecessary hardship or practical difficulties. (*Zoning*)

VIOLATION – As pertains to Article 6, any construction or development in a special flood hazard area that is being performed without an issued permit. The failure of a building, structure, or other development for which a permit is issued to be fully compliant with these regulations and the conditions of the issued permit. A building, structure or other development without the required design certifications, the elevation certificate, or other evidence of compliance required is presumed to be a violation until such time as the required documentation is provided. (*Floodplain*)

WALL – A constructed solid barrier of concrete, stone, brick, tile, wood, or similar type of material that restricts the flow of air and light for the purposes of providing a boundary, separating lots or enclosing space. (*Zoning*)

WAREHOUSE – A building and/or open area that is used for the temporary storage of materials or merchandise in an organized manner before their export or distribution for sale, or for the long-term storage of personal property with no definite plans for the future disposition of that property. A warehouse shall not include the processing or sorting of recyclables, scrap, or rubbish for distribution back into the chain of re-manufacture, or the bulk storage of fuels or junked automobiles and their parts. (*Zoning*)

WATERCOURSE – The channel, including channel banks and bed, of non-tidal waters of the State. (*Floodplain*)

WATERS OF THE STATE – Waters of the state include:

1. Both surface and underground waters within the boundaries of the state subject to its jurisdiction;

2. That portion of the Atlantic Ocean within the boundaries of the state;
3. The Chesapeake Bay and its tributaries;
4. All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the state, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
5. The floodplain of free-flowing waters determined by MDE on the basis of the 100-year flood frequency. (*Floodplain*)

WATERSHED – All land lying within an area described as a sub-basin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08. (*Forest Conservation*)

WETLANDS – As pertains to Article 5, those areas that are inundated and saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (*Subdivision and Land Development*)

WETLANDS, NON-TIDAL – As pertains to Article 7 of this Chapter,

1. An area that is:
 - a. Inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and
 - b. Considered a non-tidal wetland in accordance with the publication known as the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands,” published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency.
2. “Non-tidal wetlands” does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland. (*Forest Conservation*)

WHIP – An unbranched woody plant greater than 24 inches in height and having a diameter of less than one inch measured at two inches above the transition zone between stem and root at the ground line of a tree or seedling. (*Forest Conservation*)

WIND ENERGY SYSTEM, BUILDING-MOUNTED – An exterior, building-mounted, accessory device or devices and essential supporting structure to a permitted principal use specifically designed to convert kinetic wind energy to electric power and having a rated maximum output of no more than 15 kilowatts of electricity for direct consumption on the subject property or for connection to the electric power grid to offset the cost of electric service consumed on the subject property. (*Zoning*)

WIND ENERGY SYSTEM, LARGE – An exterior accessory device and essential supporting structure specifically designed to convert kinetic wind energy to electric power and having a rated maximum output of more than 15 kilowatts of electricity for direct consumption on the subject property or for connection to the electric power grid to offset the cost of electric service consumed on the subject property. (*Zoning*)

WIND ENERGY SYSTEM, SMALL – An exterior, ground-mounted, accessory device or devices and essential supporting structure to a permitted principal use specifically designed to convert kinetic wind energy to electric power and having a rated maximum output of not more than 15 kilowatts of electricity for direct consumption on the subject property or for connection to the electric power grid to offset the cost of electric service consumed on the subject property. Any wind energy system that exceeds these parameters shall be classified as a Large Wind Energy System. (*Zoning*)

WINE PUB – A pub or restaurant that manufactures wine on the premises. (*Zoning*)

WIRELESS COMMUNICATIONS – Any personal wireless services as defined by the Federal Telecommunications Act of 1996 which includes FCC-licensed commercial wireless telecommunications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed. This does not include: (1) radio antennas operated by federally licensed amateur radio operators which are exempt from local zoning restrictions; (2) antennas and towers operated by safety services, such as police, fire, and rescue operations; or (3) essential utility equipment. (*Zoning - Wireless*)

(MICRO) WIRELESS COMMUNICATION ANTENNA – An antenna for the reception of wireless communications services, less than two meters in height and diameter, which is either ground-mounted or attached to an existing building or structure. (*Zoning - Wireless*)

WIRELESS COMMUNICATION ANTENNA – Any system of wires, rods, discs, panels, flat panels, dishes, whips or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omni-directional antenna (rod), directional antenna (panel), parabolic antenna (disc), or any other wireless antenna. (*Zoning - Wireless*)

WIRELESS COMMUNICATION FACILITY (WCF) – Any unstaffed facility for the transmission, reception, distribution or accommodation of wireless communications services, usually consisting of antennas, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment. (*Zoning - Wireless*)

WIRELESS COMMUNICATION TOWER – Any structure, other than a building, that is constructed for the primary purpose of supporting one or more Communication Antennas including, but not limited to monopoles, self-supporting (lattice) towers, guy towers and other similar structures. (*Zoning - Wireless*)

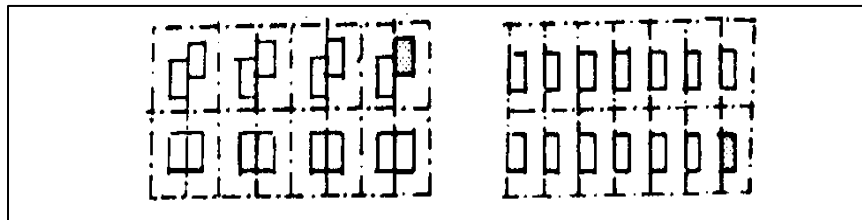
YARD SALE – All general sales open to the public, conducted by a resident from or on residential premises in any zoning district, as regulated in Article 4, Subsection K.7., for the purpose of disposing of personal property, including but not limited to all sales entitled “garage,” “lawn,” “yard,” “attic,” “porch,” “room,” “backyard,” “patio,” or “rummage” sale. A yard sale shall not include the sale of inventory purchased or acquired by the resident for the purpose of resale. (*Zoning*)

YARD TYPES: (Note: For methods of calculation, please refer to Article 4, Subsection K.6 of this Chapter). (*Zoning*)

1. **FRONT YARD** – A yard extending between side lot lines across the front of a lot.

2. **REAR YARD** – A yard extending across the rear of the lot between inner side yard lines. In the case of through lot and reversed frontage corner lots with normal frontage, the rear yard shall extend from the inner side yard line of the side yard adjacent to the interior lot to the rear line of the half-depth front yard.
3. **SIDE YARD** – A yard extending from the rear line of the required front yard to the rear lot line.

ZERO LOT LINE DEVELOPMENT – A method of developing land where single-family detached dwellings are built on a side lot line. This form of development is not currently permitted by this Chapter, however, any such existing development in existence as of September 26, 2008, is a legal non-conforming use. (*Zoning*)



**Figure 8 – Left: Semi-Detached Dwelling Units
Right: Zero Lot Line Dwelling Units**

ZONING ADMINISTRATOR – The administrative officer appointed by the City Council of Hagerstown to administer and enforce the provisions of this Chapter. For the purposes of the administration of this Chapter, this definition shall include the Zoning Administrator’s staff or authorized representative acting on the Zoning Administrator’s behalf. (*Zoning*)

ZONING MAP – The Zoning District Map of the City of Hagerstown, Maryland, and adjacent areas, adopted as part of the Zoning Ordinance, together with all amendments and revisions thereto subsequently adopted. (*Zoning*)

ZONING ORDINANCE – The officially adopted Zoning Ordinance and Zoning Map for the City of Hagerstown, Maryland, and all amendments thereto. [*Editor’s Note: Article 4 of this Chapter*] (*Subdivision and Land Development*)

ZONING PERMIT – A written statement issued by the Zoning Administrator authorizing buildings, structures or uses consistent with the terms of the Zoning Ordinance and for the purpose of carrying out and enforcing its provisions. (*Zoning*)

ARTICLE 4
Zoning Ordinance
Table of Contents

Section	Page
A. General Provisions	4 – 3
B. AT (Agricultural Transition) Zoning District	4 – 9
C. Reserved	4 – 11
D. Residential Zoning Districts	4 – 13
E. Mixed-Use Zoning Districts	4 – 25
F. Commercial Zoning Districts	4 – 31
G. Reserved	4 – 41
H. Industrial Zoning Districts	4 – 43
I. Signs	4 – 49
J. Overlay Zoning Districts	4 – 57
K. Supplementary Regulations	4 – 75
L. Reserved	4 – 89
M. Maintenance, Expansion, Expiration, Confirmation and Change of Nonconforming Uses	4 – 91
N. Noncomplying Structures and Uses	4 – 97
O. Off-Street Parking Requirements	4 – 99
P. Reserved	4 – 105
Q. Wireless Communications Facilities (WCF)	4 – 107
R. Temporary Uses	4 – 117
S. Zoning Permit and Site Plan Requirements	4 – 119
T. Historic District Review	4 – 125
U. Board of Zoning Appeals – Applications, Notice, Powers and Duties	4 – 133
V. –Y. Reserved	4 - 141
Z. Chart of Permitted and Special Exception Uses	4 – 143
Use Chart 1: Agricultural Transition District and Residential Districts	4 - 145
Use Chart 2: Mixed-Use, Commercial, Industrial and Overlay Districts	4 - 147

This page intentionally left blank.

ARTICLE 4
Zoning Ordinance

A. General Provisions

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

In interpreting the appropriateness of proposed uses, the North American Industry Classification System (U.S. 2002) (NAICS) will be considered along with other factors to determine similarity to delineated uses in the zoning districts. It is to be used as a guide, and not a default interpretation of the intent and purpose of this Article and is non-binding upon the Zoning Administrator.

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

3. **Essential Utility Equipment.** Essential utility services, public and private, including but not limited to water, wastewater, electricity, natural gas, telephone and cable television utilities shall be permitted in any district as authorized and regulated by law and ordinances of the City of Hagerstown. This provision shall not apply to the construction of wind turbines and solar arrays. Regulations pertaining to the erection or installation of wireless communications antennas, poles and towers are specified in Article 4, Section Q.
4. **Definitions.** Article 3 of the Land Management Code shall govern all definitions as they apply to this Article.
5. **Applicability.** All departments, officials and public employees of the City of Hagerstown vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this Article.
6. **Compliance With This Article.** Except as hereinafter specified, no land, building, structure or premises shall hereafter be used and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located.

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

7. **Variations Not Required When Subdividing Existing Dwellings.** When a lot is subdivided which contains more than one dwelling legally created at the time of their construction, and the sole purpose of the subdivision is for transferring ownership of individual units, no bulk regulation variance will be required when the new lots will not comply with current lot area, lot width and/or building setback requirements.

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

 - b. **Map and Ordinance.** The official Zoning Ordinance and Map shall be filed in the office of the City Clerk for the City of Hagerstown, Maryland, among the official records of the City.

9. **Amendment of the Zoning Ordinance and/or Map.** The Mayor and City Council may from time to time amend, supplement, change, modify or repeal this Article including the Zoning Map.
 - a. **Generally; Findings for Reclassification.** Such regulations, restrictions and boundaries may from time to time be amended, supplemented, modified or repealed. Where the purpose and effect of the proposed amendment is to change the zoning classification, the Mayor and City Council shall make findings of fact in each specific case, including but not limited to the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the Planning Commission and the relationship of such proposed amendment to the jurisdiction's plan; and may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all members of the Council shall be kept.

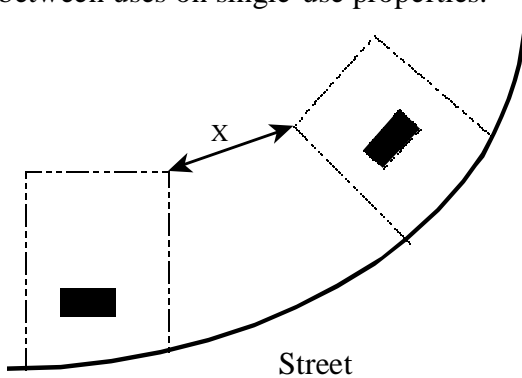
 - b. **Restriction Upon Acceptance of Application for Reclassification.** An application for a reclassification shall not be accepted for filing by the Mayor and City Council if the application is for the reclassification of the whole or any part of land the reclassification of which has been denied by the Council on the merits within twelve months from the date of the Council's decision.

 - c. **Source of Proposals.** Proposals for amendment, supplement, change, modification or repeal may be initiated by the Mayor and City Council on its own motion, by the Planning Commission or by petition of one or more owners of property to be affected by the proposed amendment. Forms available from the Planning and Code Administration Department shall be used for this purpose.

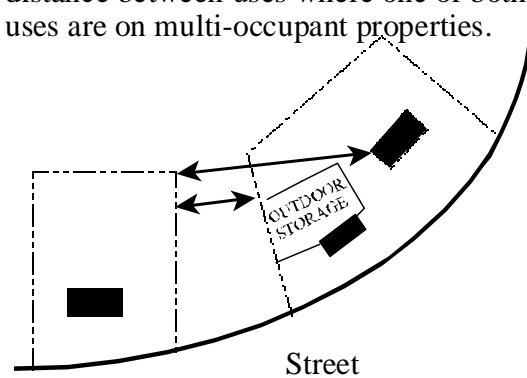
 - d. **Effective Date and Notice.** No such amendment, supplement, change, modification or repeal shall become effective until at least ten days after one review and one public hearing are held. One review shall be held by the Planning Commission within 45 days of receipt of application and recommendation of findings forwarded to the Mayor and City Council. One public hearing shall be held by the Mayor and City Council who shall determine if the amendment, supplement, change, modification or repeal shall be granted at which time the parties in interest and citizens shall have an opportunity to be heard. Notice for the public hearing shall be given as follows:

-
- (1) Legal Notice. Notice of the time and place of the public hearing, together with a summary of the proposed regulation, restriction or boundary, shall be published in at least one newspaper of general circulation in the city once each week for two successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.
 - (2) Written Notice. Send written notices of hearing to other interested persons, organizations or agencies at the Council's discretion.
 - (3) Additional Notice. Except for a Historic District or Landmark, when the proposed hearing concerns a Zoning Map change altering the classification of fewer than 25 lots of record, the following additional notice is required:
 - (a) Posting in a conspicuous place on the property involved a notice of pending action containing the same information as in Subsection d(1) above, such posting to take place at least 15 days prior to the date fixed for the public hearing.
 - (b) Giving written notice of the time and place of such hearing sent by certified mail to the applicant and to the owners of property contiguous to or opposite the property affected.
10. **Rules of Interpretation of District Boundaries.** Where uncertainty exists as to the boundaries of districts as shown on the official Zoning Map, the following rules shall apply:
- a. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines.
 - b. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
 - c. Boundaries indicated as approximately following city limits shall be construed as following city limits.
 - d. Boundaries indicated as following railroad lines shall be construed to be midway between the right-of-way lines.
 - e. Boundaries indicated as approximately following the center lines of streams, lakes or other bodies of water shall be construed to follow such center lines.
11. **Measuring distances Between Land Uses.** Unless otherwise stated in this Article, when measuring required minimum distances between certain uses, that distance shall be measured on a straight line from the nearest points of the units of land on which the uses occupy. For single-use properties, the distance is measured on a straight line from the nearest point of the property boundaries between the uses. For multi-use properties, such as shopping centers, the distance shall be measured on a straight line from the nearest point of the land or building unit occupied by the use on the multi-use property. If any part of the land or building units are less than the required distance, the proposed new use will not comply with the distance requirement between uses. *[ADMINISTRATIVE NOTE: See illustrations on page 4-6.]*

X = Measurement of required distance between uses on single-use properties.



Examples of measurement of required distance between uses where one or both uses are on multi-occupant properties.



12. Zoning Districts.

a. For the purpose of this Article, zoning districts are hereby established as follows:

AT District	(Agricultural Transition)	
RMOD District	(Residential - Moderate Density)	
RMED District	(Residential - Medium Density)	
RH District	(Residential - High Density)	
RO District	(Residential - Office)	
N-MU District	(Neighborhood - Mixed Use)	
CC-MU District	(City Center - Mixed Use)	
CL District	(Commercial - Local)	
CG District	(Commercial - General)	
CR District	(Commercial - Regional)	
POM District	(Professional Office - Mixed)	
INST District	(Institutional)	
I-MU District	(Industrial - Mixed Use)	
IR District	(Industrial Restricted)	
IG District	(Industrial General)	
PUD District	(Planned Unit Development)	<i>(An Overlay District)</i>
PUD-V District	(Planned Unit Development - Village)	<i>(An Overlay District)</i>
PUD-R District	(Planned Unit Development - Regional)	<i>(An Overlay District)</i>
Conversion District		<i>(An Overlay District)</i>
Local Conversion District		<i>(An Overlay District)</i>
Historic District		<i>(An Overlay District)</i>
Landmark		<i>(An Overlay District)</i>

b. For the purposes of this Article, the zoning districts established by Subsection a. above shall be shown on the City Zoning Map adopted and incorporated herein in its entirety as a part of this Chapter.

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

13. **Newly Annexed Areas.**

- a. **Shall Be Assigned Zoning Classification.** All areas annexed to the City of Hagerstown after the effective date of this Ordinance shall be zoned in accordance with the applicable resolution pertaining thereto as duly adopted by the Mayor and Council in accordance with the then applicable provisions of the *Annotated Code of the Public General Laws of Maryland, Local Government Article, Subsection 4-401 through 4-416 (Annexation)*.
- b. **Annexation of Inventoried Historic Properties.** When County-designated historic districts and County inventory properties are annexed into the City, they will be annexed with a landmark overlay or be considered City Potential Landmarks. If demolition is proposed for any such Potential Landmarks, the review process in Subsection T.6 must be followed. Landmarks are subject to Section T of this Article.

14. **Effective Date of Adoption.** This Article was adopted as Chapter 68 (Zoning) by the Mayor and City Council, effective March 7, 1977, and subsequently amended.

Effective September 26, 2008, this Article was reformatted for structural purposes with minor amendments and incorporated into this Chapter. It shall be interpreted to be the Ordinance as adopted on March 7, 1977 and subsequently amended.

The Comprehensive Zoning plan implementing the policies of the 2008 Comprehensive Plan was implemented in several stages. This Article shall be interpreted that any use made nonconforming by any of the several map amendments part of the 2008-2010 Comprehensive Zoning Plan shall have an effective date of nonconformity of the last amendment of the map for this process, being November 10, 2010.

The 2020 Comprehensive Zoning Plan implemented the policies of the 2018 Comprehensive Plan, known as “VisionHagerstown 2035.” The map amendments that implemented the policies of this Plan became effective on July 23, 2020, and those uses rendered nonconforming by these map amendments shall have an effective date of nonconformity on that date.

15. **Violations and Penalties.** The treatment of violations of this article, and penalties for those violations shall be in accordance with Article 8 of this Chapter.

This page intentionally left blank.

B. AT (Agricultural Transition) District.

1. Purpose.

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

All lands within this district proposed for development shall be rezoned to another district to accommodate that development, in accordance with the policies and procedures set forth in this Article.

The Planning Commission and the Mayor and City Council shall consider the policies and recommendations of the Comprehensive Plan when re-assigning zoning classification for AT land for development.

When the property is to be given another classification, whether there was a mistake in assigning the AT classification and/or whether changes in the character of the neighborhood have occurred may be taken into consideration. However, a finding of mistake or change in character of the neighborhood shall not be required.

2. Uses.

a. Permitted and Special Exception Uses.

Uses in this district shall be permitted, permitted by special exception in accordance with the general and specific performance criteria found in Subsection U.8 of this Article, or not permitted, as enumerated in Section Z of this Article.

b. Special Exception Use Conditions.

No special exception use shall be granted by the Board of Zoning Appeals unless the use is found to be in accordance with the following requirements:

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

3. Accessory Uses.

- a. Accessory buildings and uses customarily incidental to any principal permitted use or authorized special exception use.
- b. Living quarters for persons employed on the premises in connection with farming operations.
- c. The parking and storage of commercial vehicles directly and regularly used in the furtherance of farming or other permitted commercial activities on the property. In addition, one commercial

vehicle used in the furtherance of off-site employment by a resident of the property may be parked or stored on the property.

- d. Home workstations, subject to the requirements of Subsection K.10 of this Article. The requirements shall not be relaxed for residences in zoning districts where commercial uses may be enumerated as a permitted use in that district.

4. Maximum Building or Structure Height.

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

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

AT District Dimensional Requirements (Minimum)								
	Lot Area (square feet)	Lot Width (feet)	Lot Area Per Dwelling Unit (square feet)	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
Dwellings, Single-family detached	Existing	Existing	n/a	40	50	20	10	2
Other principal-permitted or conditional uses	3 acres	Existing	n/a	50	50	100	40	2

6. Subdivision Prohibited.

No lot or parcel in the AT District shall be subdivided.

7. Minimum Size of Dwelling Units.

All new residential units shall comply with the requirements of Section K.18.

C. Reserved.

This page intentionally left blank.

D. Residential Zoning Districts.

1. Purpose.

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

- a. **RMOD District.** To provide areas for moderate-density residential development.
- b. **RMED District.** To provide areas for medium-density residential development.
- c. **RH District.** To provide for areas of high-density residential development. Also permitted are businesses of a type which serve nearby residents.
- d. **RO District.** To provide for office uses in residential neighborhood containing large houses to make continued use of these properties feasible; and to provide a buffer between residential and commercial areas.

2. Uses.

a. **Permitted and Special Exception Uses.**

Uses in these districts shall be permitted, permitted by special exception in accordance with the general and specific performance criteria found in Subsection U.8 of this Article, or not permitted, as enumerated in Section Z of this Article.

b. **Special Exception Use Conditions.**

No special exception use shall be granted by the Board of Zoning Appeals unless the use is found to be in accordance with the following requirements:

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

c. **Accessory Uses.**

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

- (1) Private detached garages and accessory buildings (such as garden sheds, pool houses, craft studios, “she sheds” and “man caves”, but not including dwellings), subject to limitations in Subsections D.2.c(4), D.4 and D.5.b, below. Such accessory garage or building shall not be used as a dwelling or for sleeping purposes.
- (2) Uses and structures customarily and incidental to any principal-permitted use or authorized special exception use.

-
- (3) Home day-care of up to eight (8) children, as licensed by the State of Maryland. The number of children cared for in an apartment unit that are not members of the household shall not exceed two (2). A home day-care may utilize non-resident employees only for occasional back up staff for the purpose of covering on-site operations for the resident staff during vacations, personal emergencies, appointments, etc. when the resident provider will not be present, as required by their State license. Otherwise, a home day-care shall not employ persons who do not reside on the property. *[Ed. Note: State licensure counts those children under age 6 living in a dwelling among those being cared for under the license. This requirement prohibits a home day-care operator's ability to care for five or more children under the age of two unless a second care giver (as required by State licensure) is also a resident of the dwelling.]*
 - (4) Use of detached accessory residential garages of 900 gross square feet or less in floor area by non-residents of the property, provided:
 - (a) The use shall be limited to parking of vehicles and personal storage that does not involve generation of noise from the garage or attract persons other than the tenant, and shall not be used for storage for any commercial or institutional purpose, and
 - (b) Two off-street parking spaces are provided for each dwelling on the subject property for each non-owner-occupied dwelling on the property.
 - (5) Home workstations, subject to the requirements of Subsection K.10 of this Article. The requirements shall not be relaxed for residences in zoning districts where commercial uses may be enumerated as a permitted use in that district.
 - (6) See Subsection K.11 of this Article regarding fowl and farm animals (livestock).

3. Parking Requirements.

a. When New Parking is Required.

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

b. Parking and Storage of Unregistered Vehicles.

Motor vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any property in a residential or mixed-use district used for residential purposes other than in completely enclosed buildings. This provision shall also apply to residential elements of PUD Developments.

c. Parking and Storage of Commercial Vehicles.

One commercial vehicle shall be permitted to be parked on a transient basis on a residential lot or parcel, provided:

- (1) The vehicle is currently registered, displays valid license plates, and is regularly used by a resident of the property to commute to and from and used in the course of their employment, and
- (2) The vehicle may be an automobile, pick-up truck, sport utility vehicle or van up to 3/4 ton, and
- (3) The vehicle does not exceed 20 feet in length. Tow trucks (including "rollback" trucks) are not permitted.
- (4) In the parking lots of multi-family developments, commercial vehicles shall be permitted to be parked in accordance with Subsections 3.c.(1) through (3) above, provided that only those spaces that are available after providing two parking spaces for each dwelling unit on the property are used.
- (5) Vehicles used by publicly supported emergency responders (fire, police, EMS) shall not be subject to the limitations of this provision.

4. Height Limitations.

No principal permitted structure shall exceed the following:

Zoning District	RMOD	RMED	RH	RO
Maximum Height	3 stories or 35 feet	3 stories or 35 feet	5 stories or 60 feet	3 stories or 40 feet

No accessory structure shall exceed one story in height. However, when a property is 20,000 square feet in area or larger, an accessory structure may be two stories in height if it complies with all required principal structure setbacks without variance.

5. Minimum Lot area, Locational, Lot Width and Yard (Setback) Requirements.

The minimum lot area, lot width and yard (setbacks) requirements for residential districts shall be as stated in the following chart. Yards shall be measured and determined in accordance with the standards set forth in Subsection K.6 of this Article.

a. Bulk Requirements Chart and Regulations.

See chart on page 4-17.

b. Detached Garages and Accessory Buildings.

Private detached accessory buildings are permitted cumulatively totaling not over 900 square feet. Minimum setbacks for accessory buildings shall be as follows:

	Front Yard Depth (feet) (or to established line on same side of street for infill)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
Accessory Building	25	5	8	4	2

When a property is 20,000 square feet in area or larger, an accessory structure may be up to a total of 1,800 square feet in gross floor area, provided it is built in accordance with principal structure setbacks without variance and a special exception is approved by the Board of Zoning Appeals.

No detached accessory building shall be located forward of the primary front façade of any dwelling. The Board of Zoning Appeals shall not grant a variance to this requirement.

c. **Lot Averaging on Residential Infill Lots.** Where at least 66% percent of all lots on the same side of the same street block as the subject lot have been developed:

- (1) The front yard setbacks of the subject lot shall conform to the average established front yard setbacks, and
- (2) The side yard setbacks of the subject lot shall not be less than the average side yard setbacks, and
- (3) For single-family residences, the lot area and width requirements shall be not less than the average lot area and width of all lots on that side of the same street block.

Lot averaging is not to be used for lot area and width on two-family and semi-detached dwellings. Regardless of whether sixty-six (66%) of the block has been developed, for the construction of two-family and semi-detached residences, the lot area and widths of the subject lot shall conform to the minimum lot area and width requirements established for the zoning district.

Notes for chart on following page:

For the minimum width of a side yard for a new construction courtyard, mansion house and stacked apartment building, when the property line is adjacent to the rear of a building, the 20 foot side setback shall be increased one additional foot for each foot of building height over 20 feet.

Accessory buildings located within three feet of a principal structure shall be considered part of the principal structure for setback purposes. Accessory buildings on the same lot located within three feet of another accessory buildings shall be considered cumulatively as if they were attached for bulk regulations purposes.

Setbacks for mobile home parks are found in Subsection D.5.h.

Residential District Dimensional Requirements (Minimum)								
	Lot Area (square feet)	Lot Width (feet)	Lot Area Per Dwelling Unit (square feet)	Front Yard Depth (feet) (or to established line on same side of street for infill)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
Single-family dwellings RMOD District	7,500	50	7,500	25	35	15	4	2
Single-family dwellings RMED and RO Districts	5,000	40	5,000	15	30	N/A	5	2
Single-family dwellings, RH District	4,000	40	4,000	15	30	N/A	5	2
Two-family dwellings, RMOD District	10,000	75	5,000	25	35	20	10	2
Two-family dwellings, RMED, RH and RO Districts	8,000	50	4,000	15	30	N/A	5	2
Single-family semi-detached dwellings, RMOD District	5,000	37.5	5,000	25	35	N/A	10	1
Single-family semi-detached dwellings, RMED, RH and RO Districts	3,000	25	3,000	15	30	N/A	5	1
Townhomes * or to established in neighborhood if less	7,500	20	2,500	15	30	N/A	8* (see note at left)	
Mansion Apartments in Existing Buildings (with 1 unit per 1,000 gross square feet of floor area of the building) and Mansion Over-Under Flats in Existing Buildings ** or existing building	Existing	Existing	N/A (see building area requirement at left)	Existing	30** (see note at left)	20** (see note at left)	10** (see note at left)	2** (see note at left)
Courtyard, New Construction Mansion House and Stacked Apartment Units ***35 when adjacent to RMOD or RMED Zoning	20,000	100	2,700	0	20*** (note at left)	N/A	20 (see note on next page)	2
Hospitals	5 acres	N/A	N/A	150	50	200	75	2
Nursing homes, Assisted Living Facilities and Rehabilitation Centers	1 acre	N/A	N/A	25	50	20	10	2
Schools, Churches, Nursery Schools, Day-Care Centers and Funeral Homes	20,000	75	N/A	25	50	20 School - 50	10 School - 25	2
Other permitted or special exception uses in RMOD and RH Districts	20,000	100	N/A	25	40	20	10	2
Other permitted or special exception uses in RMED and RO Districts	15,000	80	N/A	25	20	20	10	2

d. **Projections into Yards on All Dwellings and Additions to the Rear of Semi-Detached Dwellings and Townhouses.**

- (1) If attached to the main building, a one-story open porch, with or without a roof, may extend into a front yard not more than 30% of the existing front yard depth.
- (2) Projections such as bay windows, chimneys, entrances, vestibules, balconies, eaves and leaders may extend into any required yard not more than four feet, provided that such projections (excepting eaves) are not over ten feet in length and no closer than four feet to any property line.
- (3) If attached to the dwelling, a one-story open deck without a roof may extend into the required rear yard not more than 35% of the required setback.
- (4) No addition shall be made to the rear of an existing semi-detached dwelling or townhouse unless a three foot setback is provided along the interior lot line (in the case of a semi-detached dwelling or end unit townhouse) or each side lot line (in the case of an interior townhouse) adjacent to the addition.

This provision may be waived by the Zoning Administrator provided that the applicant obtains a non-exclusive perpetual access and maintenance easement from the adjacent property owner along the interior property line that is at least three feet wide and running the full length of the proposed addition. The easement may be written in such a way where it specifically reserves the adjacent owner's right to build their own addition within the easement area.

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

f. **Townhouse Developments.**

- (1) Streets, storm water management facilities and parking lots shall be excluded from the required lot area.
- (2) The minimum horizontal distance between facing walls of any two buildings on one lot shall be 25 feet.
- (3) Where common open space is provided for a townhouse development in the RO District, the minimum lot size may be reduced to 2,000 square feet provided the gross density does not exceed 15 dwelling units per acre.

g. **Stacked and Mansion Apartment Developments and Over-Under Flats.**

- (1) Mansion house apartments in existing buildings in locally designated historic districts in the RMED, RO and CC-MU Districts shall be permitted only under the following conditions:
 - (a) The building was constructed prior to October 1, 1956;

- (b) The building shall be at least 4,000 square feet in area; and
 - (c) The number of units is limited to one per 1,000 square feet of floor area as reflected on Department of Assessments and Taxation assessment records.
 - (d) Except in the CC-MU Zoning District, the property shall be located in a locally designated historic district or in a designated landmark.
 - (e) All new residential units shall comply with the requirements of Section K.18.
 - (f) Off-street parking shall be provided in accordance with Section O of this Article. The Board of Zoning Appeals shall not grant a variance to this requirement.
- (2) Mansion House over-under flats in existing residential buildings in the RMED, RO and CC-MU District shall be permitted only under the following conditions:
- (a) The building was constructed prior to October 1, 1956; and
 - (b) The building shall be at least three stories above grade in height, not including attics; and
 - (c) The area of the building shall be at least 2,500 square feet of floor area as reflected on Department of Assessments and Taxation assessment records, and
 - (d) The interior space of the building shall be so configured that the entirety of each floor shall be used for one dwelling unit (except for interior stair towers and landings); and
 - (e) One dwelling unit is permitted for each floor of the building (not to include basements); and
 - (f) All new residential units shall comply with the requirements of Section K.18.
 - (g) Off-street parking shall be provided in accordance with Section O of this Article. The Board of Zoning Appeals shall not grant a variance to this requirement.
 - (h) Over-under flats shall only be permitted in the RMED District when the property is also located in a locally-designated historic district.

h. Mobile Homes.

Mobile homes shall be permitted outside of a mobile home park only when the dwelling is placed on and secured to a fully enclosed masonry foundation as set forth in the building code.

The following minimum requirements shall be observed for mobile home parks:

- (1) Minimum Area of Park: 10 acres

-
- (2) Building Setbacks:
- (a) From external public street right of way and property lines: 50 feet
 - (b) Rear of unit to rear of unit: 60 feet
 - (c) Between structures: 20 feet
 - (d) From surface of internal access roads fronting pad: 10 feet
 - (e) Across an internal access road between structures: 40 feet
 - (f) Minimum lease area on which a home can be located: 1,000 sq. feet

Covered entryway steps may project not more than five feet from the unit. Decks without roofs may be added to a unit provided that a distance of at least 10 feet is maintained between the deck and other mobile homes and decks thereof.

- (3) Individual accessory buildings (sheds) are not permitted on individual dwelling pads. Common storage facilities for use by residents may be designed into an overall park site plan.
- (4) A heavy landscape buffer, as described in Article 5, Subsection I.4.j(1) shall be installed in all areas subject to the setback requirement in (2)(a) above.
- (5) Parking shall be prohibited on driveways unless designed to a width that allows two vehicles to pass in addition to the designated parking lane.
- (6) Parking of boats, campers, trailers, recreational vehicles and other similar vehicles shall be prohibited on the individual unit lease area. The developer may design and designate a common parking area within the mobile home park for such vehicle parking and storage.
- (7) No camper, recreational vehicle or similar vehicle shall be interpreted as a mobile home for the purposes of this Subsection.

i. Construction On And Use Of Lots That Do Not Front Public Streets.

On lots in residential zoning districts that do not front a public street, one garage, residential in size and scale, shall be permitted as a principal use, provided:

- (1) The lot shall front on an existing paved alley;
- (2) New construction of a garage or construction of an addition to an existing garage shall not result in a building exceeding 900 square feet in area;
- (3) New construction of a garage or construction of an addition to an existing garage shall not exceed one story in height;

- (4) New construction of a garage or construction of an addition to an existing garage shall be designed architecturally and so located as to appear to be an accessory structure in the neighborhood in which it is located;
- (5) The garage may be used by an owner or lessee for parking and personal use storage only. The garage shall not be used for business or institutional purposes and shall not generate activity other than the occasional delivery or retrieval of vehicles or personal materials stored in the garage, nor attract persons other than the tenant;
- (6) No outdoor storage of any kind is permitted;
- (7) No garage or addition to an existing garage shall be constructed closer than five feet to any property line or alley right of way.

j. **Distance Requirements On Commercial and Private Membership Outdoor Swimming Pools.**

The following setback requirements for the pool shall be required:

- (1) Distance of pool to property lines: 75 feet.
- (2) Distance of pool to any existing dwelling: 125 feet.

6. **Minimum Size of Dwelling Units.**

All new residential units shall comply with the requirements of Section K.18.

7. **Cluster Developments.**

- a. **Description.** Clustering is an alternative type of development which provides for reduction in minimum lot size for residential development. It permits a reduction in the size of individual lots while maintaining the maximum gross density allowed in the district in which it is located. This land development technique involves siting clusters of home sites on smaller lots than those permitted under conventional development regulations with the remaining “saved” land being retained as common open space.
- b. **Use of Open Space.** The permanent, common open space, legally dedicated through subdivision plat recordation and deed restriction, can be used for natural conservation and/or recreational facilities for benefit of the residents of the development. Such open space may also be made available for the use and enjoyment of the general population if public dedication of the open space is accepted by the Mayor and City Council.
- c. **Site Design Criteria.**
 - (1) Subdivision Approval for Cluster Development.
 - (a) No cluster development may be constructed except in accordance with a Development Plan and Final Subdivision Plat approved by the Planning Commission under the Subdivision Regulations.

-
- (b) Wherever the yard and lot dimensional requirements are less than those required in non-cluster developments, they shall be shown and identified on the Development Plan and Final Subdivision Plats.
- (2) Open Space.
- (a) Lot reduction shall be compensated for by the provision of one square foot of open space for each square foot of area that each lot in the subdivision is reduced below non-cluster lot area requirements, providing such minimum open space is configured for the use and enjoyment of the residents of the subdivision as the Planning Commission determines to be suitable to meet the intent of this Article. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land which provide for the preservation of significant natural features on the land, and/or provide recreational amenities for the use of the residents of the development. The Planning Commission must be furnished satisfactory evidence as a condition of approval that such open space area will be continued and that perpetual maintenance is provided for.
 - (b) Up to 25% of this area may be designated forest retention areas intended to meet the requirements of the Forest Conservation Ordinance, provided that at least 75% of the forest conservation requirement is being met within the development (retention, afforestation and street trees). The Planning Commission may consider a deviation from this forest conservation standard to allow up to 50% of open space area designated for forest retention areas intended to meet the requirements of the Forest Conservation Ordinance, provided that 100% of the Forest Conservation requirement is being met within the proposed development.
 - (c) "Open space" does not include public or private streets, rights-of-way, or off-street parking.
 - (d) The open space shall be either publicly or privately owned. A deed with covenants or other legal arrangements shall specify ownership of the cluster open space; method of maintenance; responsibility for maintenance; maintenance taxes and insurance; compulsory membership and compulsory assessment provisions; guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Planning Commission and any other specifications deemed necessary by the Planning Commission. Unless specifically agreed to by the Mayor and Council, approval of the cluster open space does not commit the City to maintenance of the cluster open space.
- (3) Buffer Zones.

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

- (a) Landscaping and buffer strips may be required to reduce noise or visual impacts between developments.
 - (b) Common open space, if appropriately located, may be used in satisfying buffer requirements, provided that the open space is adequately landscaped to prevent or minimize the adverse effects of the proposed development.
- (4) Cluster dimensional requirements.
- (a) Lot area requirements shall be based on the average for the entire development.
 - (b) Maximum number of townhouse units per building: Eight.
 - (c) The minimum lot area, lot width and yard requirements for dwellings in cluster subdivisions shall be in accordance with the requirements set forth in the following chart.
 - (d) Each single-family detached dwelling, semi-detached dwelling, two-family dwelling (as defined in Article 3), triplex dwelling unit, quadraplex dwelling unit and townhouse dwelling in a cluster subdivision shall be located on a separate fee-simple lot when constructed in a subdivision created in accordance with this subsection.
 - (e) The reduced lot area on residential lots created by the recording of a cluster subdivision shall not later be used as justification for further relaxation of setback requirements through variance sought from the Board of Zoning Appeals or any other method, as by intentionally creating a cluster subdivision, this is a self-created hardship.

Cluster Subdivision Minimum Dimensional Requirements Schedule								
Type of Building	Minimum Lot Area (square feet)	Lot Width (minimum feet)	Minimum Lot Area Per Dwelling Unit (square feet)	Front Yard Depth (feet) (C)	Rear Yard Depth (feet) (C) (D)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
Single-family	5,000	40	5,000	5	20	10	4	2
Single-family semi-detached	2,500	25	2,500	5	20	5	5	1
Two-family	5,000	65	2,500	5	20	10	4	2
Triplex (A)	4,500	65	1,500	5	20	10	5	2
Quadraplex (A)	6,000	65	1,500	5	20	10	5	2
Townhouse (B)	1,000	15	1,000	5	20	10 between buildings	5	1 (end unit)
Accessory Building (E)	N/A	N/A	N/A	15	5	N/A	4	N/A

NOTES REGARDING CHART ON PREVIOUS PAGE:

- (A) Triplexes and quadraplexes are permitted in cluster developments only. This shall be applied as if they were permitted in other districts, and in accordance with the provisions of Subsection 7.c above. Due to their design, a triplex or quadraplex unit may not front on a public street per provisions elsewhere in this Chapter, but since fee-simple subdivision is required in cluster developments, such lots may be accessed through dedicated open space areas.
- (B) Townhouses are not a permitted use in the RMOD Zoning District. They are permitted in the RMED, RH and RO Districts.
- (C) All elements of the front and rear facades, including porches, decks or stoops, shall comply with this setback, and development shall not benefit from the provisions found elsewhere in this Section that permit such features to extend into front and rear setbacks for developments created under the standard lot area and setback provisions.
- (D) Rear yards shall have a minimum 20 foot deep area un-encumbered by sheds, detached garages or other detached buildings of any size.
- (E) Accessory structure side setback shall not apply on lots containing attached dwellings, along the lot line containing a party wall if the accessory structure is a garage attached to another garage on the adjacent property or a storage shed attached to another storage shed on the adjacent property.

7. Zero Lot Line Development.

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

E. Mixed-Use Districts.

1. Purposes.

The purposes of the mixed-use districts are as follows:

a. CC-MU (City Center - Mixed Use)

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

b. N-MU (Neighborhood – Mixed Use).

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

2. Uses.

a. **Permitted and Special Exception Uses.**

Uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Subsection U.8, or not permitted, as enumerated in Section Z of this Article.

b. **Special Exception Uses.**

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

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

c. **Accessory Uses.**

- (1) Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception.
- (2) Home day-care of up to eight (8) children, as licensed by the State of Maryland. The number of children cared for in an apartment unit that are not members of the household shall not exceed two (2). A home day-care may utilize non-resident employees only for occasional back up staff for the purpose of covering on-site operations for the resident staff during vacations, personal emergencies, appointments, etc. when the resident provider will not be present, as required by their State license. Otherwise, a home day-care shall not employ persons who do not reside on the property. *[Ed. Note: State licensure counts those children under age 6 living in a dwelling among those being cared for under the license. This requirement prohibits a home day-care operator's ability to care for five or more children under the age of two unless a second care giver (as required by State licensure) is also a resident of the dwelling.]*
- (3) Home workstations, subject to the requirements of Subsection K.10 of this Article. The requirements shall not be relaxed for residences in zoning districts where commercial uses may be enumerated as a permitted use in that district.
- (4) The outdoor storage of inventory, merchandise and supplies accessory to a principal use, subject to the requirements of Subsection K.17.

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

- a. **Location.** Off-street parking spaces must be located to the rear of the principal building.
- b. **Reduction.** A development can reduce the required off-street parking spaces up to 50% when it can be demonstrated, in a parking-traffic study, prepared by a traffic engineer, that use of transit or demand management programs, special characteristics or customer, client, employee or resident population will reduce expected vehicle use and parking space demand for their development, as compared to standard Institute of Transportation Engineers vehicle trip generation rates and city parking requirements. Approval of such reduction would be by the Planning Commission in the review and approval of the site plan for a development.
- c. **Small Commercial Exception.** No off-street parking is required for nonresidential uses in this district unless such uses exceed 3,000 square feet of gross floor area.

4. Minimum and Maximum Height Requirements.

a. **Height Limitation Chart.**

	N-MU	CC-MU
Maximum Height	4 stories	7 stories

b. **Special Exceptions for Height.**

The Board of Zoning Appeals may grant a special exception to increase the height of a building, pursuant to the general criteria for special exceptions found in Subsection U.8.a(2), as follows:

	N-MU	CC-MU
Maximum Permitted Height by Special Exception	6 stories	12 stories

c. **Minimum Height Requirements.**

All new principal structures shall be at least two stories in height. The maximum permitted height of an accessory structure shall be two stories or 25 feet.

5. Minimum and Maximum Lot Width and Yard (Setback) Requirements.

a. **Minimum Bulk Requirements Chart.**

The minimum lot width and yard (setback) requirements for mixed-use districts shall be as stated in the following chart:

Mixed Use District Minimum Yard Requirements for All Buildings					
Zoning District	Front Yard Depth (feet)	Rear Yard Depth (feet)	Minimum Aggregate Width of Side Yards (feet)	Minimum Width of Side Yards (feet)	Number of Side Yards Required
N-MU	0	5	0	0	0
CC-MU	0	0	0	0	0

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

b. Maximum Setback Requirements.

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

6. Residential Uses.

a. **Minimum Unit Area Requirements.**

All new residential units shall comply with the requirements of Section K.18.

b. **Minimum Facilities.**

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

c. **Densities.**

Residential densities in the mixed-use districts will vary based on the planning process, but it is anticipated that the average density in the City Center Mixed Use District will be between ten and 22 units per acre and the average density in the Neighborhood Mixed-Use District will be between six and ten units per acre. Individual sites within the mixed-use districts may have much higher densities; however, the average for all properties in a single district is anticipated to be as stated above.

7. Commercial Establishments in the Neighborhood Mixed Use District.

a. **Maximum Size.**

The gross floor area of an individual commercial establishment in a building built after February 25, 2010, shall not exceed 15,000 square feet.

b. **Commercial Appearance.**

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

c. **Ground Floor Restriction.**

For new construction, commercial uses are restricted to the ground floor. This restriction does not apply to bed and breakfast inns.

d. **Commercial Uses in Upper Floors of Existing Buildings.**

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

8. Signs.

Regulation of signs shall be per Section I of this Article.

9. Projecting Signs in the CC-MU Zoning District.

Regulation of projecting signs shall be per Section I of this Article.

F. Commercial Zoning Districts.

1. Purpose.

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

- a. **CL (Commercial - Local).** To provide for the daily shopping and business needs of nearby residents and workers by permitting retail and service uses which are compatible in use and scale with the adjacent residential neighborhood.
- b. **CG (Commercial - General).** To provide locations for businesses of a general nature to serve the community.
- c. **CR (Commercial - Regional).** To provide for commercial uses customarily found in a regional shopping center.
- d. **POM (Professional Office - Mixed).** To provide locations for offices, medical offices, research and development, institutional uses, certain industrial uses, and limited support retail. Retail and service uses are secondary and should generally serve the businesses and employees in the office area including personal services, restaurants, day-care and other similar support services. These uses should be met in ways that do not substantially increase peak-hour traffic. It is anticipated that projects within this zoning classification will be planned and designed as a unified development.
- e. **INST (Institutional).** To provide locations for institutional uses to serve the community. Examples of existing large-scale institutional uses include public school campuses, hospital and nursing home properties, recreational facilities with fields, parks, professional ball stadiums, cemeteries, etc.

2. Uses.

a. **Permitted and Special Exception Uses and Performance Standards.**

Uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Subsection U.8 or not permitted, as enumerated in Section Z of this Article.

b. **Performance Standards.**

(1) Size limitation on retail trade in the CL and CG Districts and restaurants in the CL District.

- (a) In the CL District, retail trade shall not exceed 5,000 gross square feet in area per establishment, and restaurants shall not exceed 3,000 gross square feet per establishment.

(b) Retail trade in the CG district shall not exceed the following:

- (i) Maximum floor area for freestanding building: 75,000 square feet.
- (ii) Maximum floor area for a shopping center: 150,000 square feet with a 75,000 square foot maximum floor area for any individual unit.

(2) Development of Destination Retail Uses.

In the CR District, any development containing a “destination retail use” shall be subject to design and maintenance standards cited in Article 5, Subsection I.6.

(3) Maintenance of Abandoned Destination Retail Use Buildings.

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

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

(4) Adult Entertainment Businesses in the CG Zoning District.

Adult entertainment businesses as defined in Article 3 are permitted in the CG Zoning district, provided no such use may be permitted within 1,000 feet of the boundary of property upon which exists any:

- (a) Church;
- (b) School;

- (c) Hospital;
- (d) Nursing home;
- (e) Park, or
- (f) Any multiple-family dwelling owned by public or quasi-public authority and intended primarily for use by senior citizens or other similar land uses for human care and needs.

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

- (5) Uses identified in the POM District in the Use Chart cited in Section Z as a permitted use, but marked with reference to this subsection shall:
 - (a) Not exceed 25% of the gross floor area of the building (except restaurants), or
 - (b) Not exceed in the aggregate 20% of the gross floor area of a group of adjacent buildings under common ownership or a group of buildings designed and approved as a unified development or business park, as designated on the approved Site Plan(s) or subdivision development plan.
 - (c) Gasoline service stations (4471) are not permitted in the POM District, including incidental sales associated with a convenience store.
 - (d) Retail uses shall not be the sole occupant of a structure.
 - (e) See Article 5, Subsection I.9 regarding nonconforming commercial subdivisions.
- (6) Temporary outdoor principal use sales facilities, whether in the open or enclosed in a tent, established for the sole purpose of engaging in sales commerce are prohibited unless they are accessory to a civic special event, not to exceed ten days in duration or are accessory to an otherwise permanent business operation conducted from buildings.
- (7) Conditions for Kennels in CG and CR Zoning Districts.
 - (a) Use area must be set back at least 100 feet from any nearby property containing a residential dwelling unit, religious organization's place of worship, educational service facility, residential care facility, hospital, assisted living facility or nursing home.

- (b) Exterior exercise/play areas must be enclosed with solid fencing, at a minimum of six feet in height.
 - (c) The total number of dogs permitted at any one time shall not exceed one dog per 100 square feet of combined interior/exterior lease area.
- (8) An automobile and/or truck sales and/or rental facility shall:
- (a) Provide landscaped buffers for all parking and inventory display or storage areas in accordance with the requirements of Article 5 of this Code, both in required minimum buffer widths and required landscape plantings; and
 - (b) Provide sufficient employee and customer parking and install signage identifying parking for customers and employees, and provide adequate on-site traffic circulation for safe and orderly egress from and ingress to the site; and
 - (c) All on-premise business identification signs shall be professionally designed and constructed for long-term use; and
 - (d) The developer shall submit a site plan for review and approval in accordance with the provisions of Article 5. The type of site plan shall be consistent with the requirements of that Article based on the amount of land disturbance that is proposed. The Planning Commission may reduce or waive provisions of the landscaping and design requirements based on unique site conditions, practical difficulties, or presentation of an alternate plan that achieves the intent of the Ordinance requirements. Such use shall not commence until the site plan is approved and the improvements are completed. Vehicles will not be stored or displayed in buffer areas.
 - (e) Automobile sales shall be permitted in the CL Zoning District only when all for-sale inventory and all vehicles on site for repair or preparation for sale shall be stored inside of fully enclosed buildings at all times. At no time will for-sale inventory, vehicles awaiting preparation for sale, or on-site for service be stored outdoors. Nothing in this provision shall be interpreted to permit warehousing of automobiles as a principal use. Automobile and/or truck rental, and the sale of recreational vehicles and/or boats shall not be permitted in the CL District.
 - (f) The provisions of this subsection shall not apply to any facility that is proposed for a location where the most recent use of the area to be used was a motor vehicle sales facility for a period of up to five years prior to application, however, all other requirements of the Land Management Code shall be met. This exemption shall not apply to any facility where the last use of the property for automobile sales occurred five or more years in the past.

- (9) Performance Standards for Mixed Use Buildings in the CG and CR Zoning Districts:
- (a) The land on which a mixed use building (or buildings) is proposed shall not exceed 15 acres in area, including all lands within the legal description of the property, as it existed April 24, 2020.
 - (b) Commercial uses shall be located on all at-grade floors, however no dwelling shall be located on a floor below a non-residential use.
 - (c) Uses of at-grade floor space shall be limited to, and contain at least two of the following:
 - i. Restaurants.
 - ii. Fitness and Recreational Sports Centers.
 - iii. Administrative Support Services.
 - iv. Ambulatory healthcare facilities, with the exception of outpatient substance abuse centers.
 - v. Banks, savings institutions and credit unions.
 - vi. Drinking places and brewpubs, distillery pubs and wine pubs.
 - vii. Dry cleaning and laundry services.
 - viii. Hair, nail and skin care stores, ear piercing services, hair replacement services, tattoo parlors, permanent makeup salons, dog grooming establishments and tanning salons.
 - ix. Retail and wholesale trade, excluding auto and other motor vehicle dealers, gasoline sales and adult entertainment businesses. In the CG District, no single unit shall exceed 75,000 square feet.
 - x. Live-work spaces, provided that the residential portion of the space is located above the work space, and the work use is among those cited in this subsection.
 - xi. Child day care centers.

Only those uses listed above shall be permitted in mixed-use buildings regardless of whether other uses are listed as a permitted use in the district.

- (d) Permitted accessory uses of residential units shall be consistent with Section F.2.d, as applicable.
- (e) The sketch plan proposed for this development shall include generalized concepts for the appearance of the proposed building. This may be as simple as providing photographs of existing developments that inspire this proposal, however customized drawings are encouraged.
- (f) The mixed-use building shall be no less than three complete stories in height.
- (g) Parking shall be in accordance with Section O of Article 4.

- (10) A flea market shall:
 - (a) Comply with current requirements for vendor (employee) and customer parking, calculated based on retail use parking requirements; and
 - (b) All elements of the use are setback at least the required structure setback for the district, and
 - (c) The use area meets current landscaping requirements from adjacent commercial and residentially used properties and zoning districts.

c. **Special Exception Uses.**

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

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

d. **Accessory Uses.**

- (1) Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception, including but not limited to garages used to store vehicles associated with a use permitted by right or special exception.
- (2) Home workstations, subject to the requirements of Subsection K.10 of this Article. The requirements shall not be relaxed for residences in zoning districts where commercial uses may be enumerated as a permitted use in that district.
- (3) Home day-care of up to eight (8) children, as licensed by the State of Maryland. The number of children cared for in an apartment unit that are not members of the household shall not exceed two (2). A home day-care may utilize non-resident employees only for occasional back up staff for the purpose of covering on-site operations for the resident staff during vacations, personal emergencies, appointments, etc. when the resident provider will not be present, as required by their State license. Otherwise, a home day-care shall not employ persons who do not reside on the property. *[Ed. Note: State licensure counts those children under age 6 living in a dwelling among those being cared for under the license. This requirement prohibits a home day-care operator's ability to care for five or more children under the age of two unless a second care giver (as required by State licensure) is also a resident of the dwelling.]*

- (4) The outdoor storage of inventory, merchandise and supplies accessory to a principal use, subject to the requirements of Subsection K.17.

3. Parking Requirements.

As applicable under Section O of this Article.

4. Height Limitations.

No structure shall exceed the following:

a. **Height Limitation Chart.**

	CL	CG	CR	POM	INST
Height	2 stories or 35 feet	60 feet	60 feet	100 feet	60 feet

b. **Special Exceptions for Height.**

The Board of Zoning Appeals may grant a special exception to increase the height of a building, pursuant to the general criteria for special exceptions found in Subsection U.8.a(2)., as follows:

	CG	CR	POM	INST
Maximum Permitted Height by Special Exception	6 stories or 90 feet	150 feet	150 feet	6 stories or 90 feet

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

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

a. **Bulk Requirements Chart.**

Commercial District Dimensional Requirements for All Buildings					
Measured in Feet.					
Zoning District	Minimum Front Yard Depth	Minimum Rear Yard Depth	Minimum Aggregate Width of Side Yards	Minimum Width of Side Yards	Number of Side Yards Required
CL	15	30	20	10***	2
CG	15	30	20	10***	0
CR	25	50*/**	40	20*	2
POM	15	25****	20	10****	2
INST	15	25****	20	10****	2

NOTES:

- * 100 feet when adjoining a residential district.
- ** 20 feet when a pad site adjoins a CR development.
- *** 25 feet when adjoining a residential district.
- **** Where adjoining a residential district, the setback shall be one foot for each foot of building height, but not less than 35 feet.

Yards shall be measured and determined in accordance with the standards set forth in Subsection K.6 of this Article. Increased setbacks assigned when adjacent to residential zoning shall be applied when property is adjoining only, and is not to be applied across public street rights-of-way.

b. Residential Development in the CL (Commercial Local) Zoning District.

- (1) All new residential units shall comply with the requirements of Section K.18.
- (2) The construction of buildings for residential and mixed uses, as allowed in the CL District in Section Z (use chart) shall be permitted to contain more than one dwelling unit only if the lot area per dwelling shall comply with the following:

Use	Maximum Density/Minimum Lot Area
Multi-family and mixed-use buildings	One unit per 2,700 square feet of land area.
Two family dwellings and semi-detached dwellings	One unit per 3,000 square feet of land area
Townhouses	One unit per 2,500 square feet of land area and minimum tract area of 7,500 square feet.

Compliance with current parking requirements shall apply.

- (3) The adaptive reuse of existing buildings for residential or mixed-use purposes shall not be subject to b.(2) above.
- (4) Building Setbacks for residential and mixed use buildings in the CL Zoning District shall be the same as all other buildings in the CL District.

c. Attached Units in Commercial Developments.

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

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

d. **All Public Street Frontages Are Front Yards.**

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

6. Signs in the Commercial Zoning District.

Regulation of signs in the commercial zoning districts shall be per Section I of this Article.

This page intentionally left blank.

G. Reserved.

This page intentionally left blank.

H. Industrial Districts.

1. Purpose.

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

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

2. Uses.

a. **Permitted and Special Exception Uses.**

Uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Subsection U.8, or not permitted as enumerated in Section Z of this Article.

b. **Conditions for Kennels in the I-MU District.**

- (1) Use area must be set back at least 100 feet from any nearby property containing a residential dwelling unit, religious organization's place of worship, educational service facility, residential care facility, hospital, assisted-living facility or nursing home.
- (2) Exterior exercise play areas must be enclosed with solid fencing at a minimum of six feet in height.
- (3) The total number of dogs permitted at any one time shall not exceed one dog per 100 square feet of combined interior/exterior lease area.

c. **Conditions for Flea Markets.**

A flea market shall:

- (1) Comply with current requirements for vendor (employee) and customer parking, calculated based on retail use parking requirements; and

- (2) All elements of the use are setback at least the required structure setback, and
- (3) The use area meets current landscaping requirements from adjacent commercial and residentially used properties and zoning districts.

d. Special Exception Uses.

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

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

e. Accessory Uses.

- (1) Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception.
- (2) Home workstations, subject to the requirements of Section K.10 of this Article. The requirements shall not be relaxed for residences in zoning districts where commercial uses may be enumerated as a permitted use in that district.
- (3) Home day-care of up to eight (8) children, as licensed by the State of Maryland. The number of children cared for in an apartment unit that are not members of the household shall not exceed two (2). A home day-care may utilize non-resident employees only for occasional back up staff for the purpose of covering on-site operations for the resident staff during vacations, personal emergencies, appointments, etc. when the resident provider will not be present, as required by their State license. Otherwise, a home day-care shall not employ persons who do not reside on the property. *[Ed. Note: State licensure counts those children under age 6 living in a dwelling among those being cared for under the license. This requirement prohibits a home day-care operator's ability to care for five or more children under the age of two unless a second care giver (as required by State licensure) is also a resident of the dwelling.]*
- (4) The outdoor storage of inventory, merchandise and supplies accessory to a principal use, subject to the requirements of Subsection K.17.

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

4. Height Limitation Chart.

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

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

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

Industrial District Dimensional Requirements for All Buildings (Measured in feet)				
Zoning District	Front Yard Depth	Rear Yard Depth	Minimum Width of Side Yards	Number of Side Yards Required
IR	50*	25*	25*	2
IG	50*	25**	25**	2
I-MU	35	25***	15***	2

NOTES:
 * 100 feet when adjoining an “R” district.
 ** 200 feet when adjoining an “R” district.
 *** Where adjoining an “R” district, the setback shall be one foot for each foot of building height, but not less than 35 feet.

Yards shall be measured and determined in accordance with the standards set forth in Subsection K.6 of this Article. Increased setbacks assigned when adjacent to residential zoning shall be applied when property is adjoining only, and is not to be applied across public street rights-of-way.

6. All Public Street Frontages Are Front Yards.

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

7. Industrial Performance Standards.

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

- a. **Control of Smoke, Dust and Dirt, Fumes, Vapors, Gases and Odors.** The Maryland air pollution control standards shall be used to control the emission of smoke, dust, dirt, fly ash, fumes, vapors, gases or odors.
- b. **Control of Heat and Glare.** No use shall carry on an operation that will produce heat or constant glare which will adversely affect the uses of an adjacent property.
- c. **Vibration Control.** Machines or operations which cause vibration shall be permitted, but in no case shall any such vibration adversely affect the uses of an adjacent property.

-
- d. **Radiation of Electrical Emissions, Radioactivity or Electrical Disturbance.** Activities which may emit dangerous radioactivity beyond closed areas shall comply with state and federal codes. No electrical disturbances (except from domestic household appliances) shall be permitted to affect adversely at any point any equipment other than that of the creator of such disturbance.
 - e. **Electric, Diesel, Gas or Other Power.** Every use requiring power shall be so operated that any service line, substation, etc., shall conform to the highest applicable safety requirements. They shall be constructed, installed, etc., so that they will be an integral part of the architectural features of the building or, if visible from abutting residential properties, shall be concealed by evergreen planting.
 - f. **Wastewater and Waste Treatment.** All methods of wastewater and industrial waste treatment and disposal shall be approved by the Department of Utilities and shall be in accordance with all applicable regulations.
 - g. **Storage of Materials.**
 - (1) No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces, nor shall any substance which can contaminate a stream or watercourse or otherwise render such stream or watercourse undesirable as a source of water supply or recreation or which will destroy aquatic life be allowed to enter any stream or watercourse.
 - (2) All materials or wastes which may cause fumes or dust or which may be edible or otherwise attractive to rodents or insects shall be stored only if enclosed in containers which are adequate to eliminate such hazards.

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

a. **Limitations on Retail and Service Uses.**

Uses identified in the I-MU District in the Use Chart cited in Section Z of this Article as a permitted use, but marked with two asterisks shall:

- (1) Not exceed 25% of the gross floor area of the building, or
- (2) Not exceed in the aggregate 20% of the gross floor area of a group of buildings designed and approved as a unified development, as designated on the approved site plan.
- (3) Gasoline service stations (4471) are not permitted in the I-MU District, including incidental sales associated with a convenience store.
- (4) Retail shall not be the sole occupant of a structure.

9. Minimum Size of Dwelling Units.

All new residential units shall comply with the requirements of Section K.18.

10. Signs.

Regulation of signs in the industrial zoning districts shall be in accordance with Section I of this Article.

This page intentionally left blank.

I. Signs.

1. Purpose and Intent.

It is the purpose of this Section to promote the public health, safety and general welfare of the City through reasonable, consistent and non-discriminatory sign standards. The sign regulations in this Section are intended to serve substantial government interests by regulating the secondary effects of signs that may adversely impact aesthetics, community character, traffic safety, pedestrian safety, as well as protect and increase property values within the City, protect the general public from damage and injury which may be caused by the faulty and uncontrolled construction of signs. The regulation of signs within the City of Hagerstown have been adopted with the intent of enhancing the visual environment of the City and promoting its continued well-being, and are intended more specifically to address:

- a. **Aesthetics.** Maintain and enhance the unique character, aesthetic environment, and quality of the City of Hagerstown, that will attract commerce, businesses, economic development, residents and visitors by exercising reasonable control of the physical characteristics and structural design of signs;
- b. **Traffic and Pedestrian Safety.** Maintain and improve traffic and pedestrian safety through properly located and constructed signs so as to not interfere with, obstruct the vision of, or distract motorists, bicyclists or pedestrians;
- c. **Economic Development.** Promote economic development and the value of properties in all zoning districts and zoning overlays (as may be appropriate to the nature of those districts), through sensitivity to surrounding land uses and maintaining an attractive community appearance, and protect property values by precluding, to the greatest extent possible, sign types that create a nuisance to the occupancy or use of nearby properties as a result of their physical characteristics;
- d. **Effective Communication.** Encourage signs which are clear and legible and maximize the effective use of signs as a means of communication and aid the public and private sectors in effectively and efficiently identifying the location of goods and services and reduce visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size of signs which compete for the attention of pedestrian and vehicular traffic;
- e. **Enforcement.** Enable the fair and consistent enforcement of these signs regulations; and to provide standards regarding the non-communicative aspects of signs, which are consistent with local, county, State and Federal law.

2. Minimum Standards, Prohibitions and Applicability.

- a. **Minimum Standards.**
 - (1) All signs shall be designed, constructed and installed with permanent materials and finishes (except for temporary signs permitted in Subsection 3.c below).
 - (2) Temporary signs, such as but not limited to vinyl banners, shall not be used as permanent or ongoing principal signs.

- (3) All signs shall be maintained in good repair, properly painted and maintained in a skillful and reasonable manner.
- (4) Signs advertising a business that has been out of operation for more than 30 days shall be removed.

b. **Prohibitions.**

The following types of signs are not permitted:

- (1) Animation, bare bulbs, or flashing illumination or imagery. All lighting shall be steady, stationary, and/or shielded light sources directed solely onto the message.

The prohibition of bare-bulbs shall not prohibit the use of decorative neon tube lighting used:

- (a) in straight sections used only to highlight architectural features (and such use shall not be counted toward sign area), and/or
 - (b) when formed into shapes with the intended use of signage (and such use shall be counted toward sign area).
- (2) Roof-mounted signs are not permitted. Portable street signs, except as exempted per Subsection 3.b.(2) below, are not permitted.
 - (3) Signs on or attached to stationary equipment, such as vehicles, trailers, storage containers, etc., when conveying information or a message is the apparent principle use of the equipment on either a temporary or permanent basis.
 - (4) Signs placed in the public street or alley right-of-way of the City of Hagerstown, unless approved by the City of Hagerstown under Chapter 216, Streets and Sidewalks, of the Code. This provision does not apply to portable non-illuminated, changeable message board signs for businesses located in buildings with zero setback, as described in Subsection 3.b(2) below.
 - (5) Signs positioned so that it obstructs traffic visibility along streets as determined by the City Engineer.
 - (6) Window signs applied to the surface of a glass door that create a solid screen which prevents views into occupied commercial or institutional space.
 - (7) Signs for Home Workstations, which by definition are accessory residential uses.

- c. **Off-Premise Signs.** This section of Article 4 does not apply to signs advertising products or businesses located off the premises where the sign is located, commonly known as billboards or off-premise signs. Such signs are regulated under the City Code, Chapter 204, Signs.

3. Measuring Signs and Building Frontages.

a. **Procedures for Measuring Signs.**

Channel letter signs (individual or raceway mounted): measure around outside edge of letters, but do not include descenders of letters. Logos shall be included in measurements for area maximums.

b. **Signs Excluded From Maximum Area Requirements.**

- (1) Window signs.
- (2) Portable non-illuminated, changeable message board signs for street level occupants and uses, and arts and entertainment uses on upper floors, provided:
 - i. The sign must be placed within the vicinity of the entry door to the use and occupied space;
 - ii. The sign shall be taken in when the business or use is closed;
 - iii. The maximum size for these signs is 6 square feet per side;
 - iv. The signs shall be limited to one per business or use.
- (3) Wall-mounted directory signs for multiple use buildings, provided:
 - i. Signs shall be located beside the entry door;
 - ii. The maximum size for directory signs is 12 square feet.
- (4) Entrance, exit, and other parking lot directional signs along internal road or driveway networks of development.
- (5) Cornerstones not of an advertising nature built into or attached to a wall of a building.
- (6) Historic interpretive markers.
- (7) Government signs: Signs of any size or shape erected by or under the direction of any governmental body or agency in any location for the purpose of promotion, identification, direction, safety, or convenience of the public.
- (8) Theater Marquees in the CC-MU District: Historically, the theaters in the CC-MU district had large marquees projecting over the sidewalk to promote the theater and the theater's upcoming events. As marquee signs are a character defining feature of downtown theaters and are crucial to their success, and to the success of uses occupying

historic former theaters which are character defining features of the Downtown Historic District, the continued use of theater marquees in the CC-MU is a public goal. In order to allow that tradition to continue, approval of any new theater marquee and associated signs and any replacement or reconstruction of a marquee to serve the needs of a use reoccupying a building formerly used as a theater will be by the Historic District Commission on a case by case basis considering the historic nature of an existing building or, in the case of a new theater building, historic precedent for such signs in the downtown historic district.

- (9) Gasoline Price Signs As Required by Maryland Law: Maryland law requires the price of gasoline be posted on properties where it is sold, and sets minimum standards for such posting. Signs posting the price of gasoline shall not be included in the calculation of permitted sign area up to a minimum required by State Law. That which exceeds the minimum required by State Law shall be included in the calculation of sign area.
- (10) Building or house number sign, as may be required by City Code for emergency services purposes.
- c. **Temporary Signs.** Temporary signs, for short term use and as defined in Article 3, are exempt from this section.
- d. **Procedures for Measuring Building Frontage.**
 - (1) Sign area calculations are based on width of front entrance wall.
 - (2) For downtown storefront and other strip store tenants: measure width of lease space on front entrance wall.
 - (3) For two-sided storefronts (display windows and customer entry doors on two sides): measure width of lease space on both front entrance walls.
 - (4) For buildings or lease spaces that front on two or more public streets:
 - i. Front entrance wall: measure width as prescribed for that district;
 - ii. Secondary walls on public streets: 30% of width of front entrance wall.
 - (5) For buildings containing multiple tenants (office buildings, upper floors of downtown storefront buildings): measure width of building on front entrance wall. If building has customer entrances on more than one wall, measure width of each entrance wall.

4. Maximum Number of Signs Permitted.

- a. **Maximum Number of Signs.** There is no limitation on number of wall-mounted signs provided the total area of all wall-mounted signs falls within maximums prescribed for that district.
- b. **Multiple Occupant Buildings.** If a building contains multiple non-residential occupants (e.g., office buildings, downtown commercial buildings), total wall mounted sign area is limited to

formula prescribed for the entire building (e.g., if cap for building is 30 square feet., the total for all signs must add up to 30 or less square feet in area).

- c. **Freestanding Signs.** Except in accordance with Section 5.a, below, there shall be no more than one freestanding sign installation per building or shopping center per each street or highway on which the building has frontage. Each pad site in a shopping center shall be permitted one freestanding sign installation.

5. Sign Dimensional and Design Requirements.

Site plan applicants are required to present a Program for Signs as part of a required site plan that integrates the design of signs with the design of the building (and/or development) on which they will be displayed and with the surrounding area. An office park may display no more than one freestanding sign to identify the park at each exit and entrance. The style, color and materials of signs shall be consistent with other signs on the property and with the main structure.

Regardless of whether a sign’s installation is part of a project that requires a site plan, dimensional and design requirements are as follows.

- a. **Freestanding Signs.**

Zoning District/Use	Maximum Height (feet)	Maximum Area (square feet)	Number of Signs Permitted
RMOD*, RMED*, RH*	10	36 for buildings set back 25 feet or less from the street, 48 for buildings set back more than 25 feet from the street.	1 per street.
RO*, N-MU, CC-MU, CL, C, LC	10	40	1 per street.
CG, CR, POM, INST	30	100	1 per street.
CG, CR on a four-lane road or right of way 100 feet or more wide.	35	150	1 per street.
CG, CR, multi-use commercial strip/building with over 500 linear feet of arterial road frontage	40	300	1 per entrance, with a maximum of 4 signs per property and spaced at least 500 feet apart.
AT, I-MU	10	100	1 per street.
IR, IG	30	100	1 per street.

* For permitted non-residential uses (excluding home work stations)

All permit applications for freestanding signs shall include a plan for landscaping the base of the sign, which shall include, but is not limited to, low lying shrubs, flowers and other plantings. Such plantings shall be maintained and kept in presentable condition. Failure to maintain landscaping as approved as part of the permit for the sign shall constitute a violation of this Article.

b. **Flush, Wall-Mounted Signs.**

Zoning District	Maximum Cumulative Area 50 feet or less of building or strip store frontage (square feet)	Maximum Cumulative Area More than 50 feet of building or strip store frontage (square feet)
RMOD, RMED, RH*	1 per each linear foot of building frontage	1.5 per linear foot of building frontage
RO*, N-MU, CC-MU, CL, C, LC	1 per each linear foot of building frontage	1 per linear foot of building frontage
CG, CR, POM, INST, IR, IG, I-MU, AT	1.5 per linear foot of building frontage	2 per linear foot of building frontage

* For permitted non-residential uses (excluding home work stations)

c. **Projecting Signs.**

No sign shall project more than 52 inches from the building wall or within two feet of the curb line. Dimensional and Design Requirements are as follows for all zoning districts, including non-residential uses in RH and RO Districts (not home workstations):

Maximum area for storefront or strip store occupant	8 square feet
Maximum area for single-user building and for upper floor occupant in multi-use buildings	No more than one 36-square foot vertically oriented sign per building frontage
Minimum vertical clearance	8 feet
Maximum vertical clearance	Below the second floor for storefront occupants and below the roof line for upper floor occupants and single- user buildings

d. **Secondary Changeable Copy/Image Signs.**

- (1) For freestanding sign installations, secondary changeable copy/image signs shall be located on the same base as the primary freestanding sign.
- (2) Shall be subject to the total area maximums identified in the preceding subsections for signs.
- (3) Signs which automatically change messages or copy electronically must be set to maintain the image for a minimum of ten seconds in residential districts and six seconds in all other districts. In the residential districts, such signs shall be locked in a single image between the hours of 10:00 p.m. and 6:00 a.m. Message changing shall be instantaneous. Also, see regulations in Subsection 2.b(1) above regarding flashing and animation.
- (4) All digital signs shall be equipped with automatic dimming capabilities that adjust the brightness to the ambient light at all times of the day and night.

e. **Flags.**

Unless otherwise required by Maryland law or specified in this Section, a flag flown from a flagpole, bracket or stanchion conveying a commercial or corporate message shall not exceed twenty-four (24) square feet. The flag shall not require a permit or zoning certificate, however requirements for obtaining building permits may apply to the pole, bracket or stanchion.

6. Graduated Progress to Conformity and Prohibition of Electronic Message Boards on Nonconforming Freestanding Signs.

- a. Upon application, the Zoning Administrator may approve a replacement sign unit on an existing freestanding sign structure that contains multiple signs exceeding the total permitted sign area, provided that the new sign does not exceed a proportionate share of the total permitted sign area for the number of businesses on the property. When replaced later, existing signs for other users on a property shall comply with this standard. When completed and all existing signs are ultimately replaced, the collective area of the new sign units shall not exceed the total permitted sign area.
- b. No electronic sign shall be added to an existing nonconforming freestanding sign structure.

This page intentionally left blank.

J. Overlay Zones.**1. Planned Unit Developments (PUD).****a. Purpose.**

The PUD District is established to permit and promote community scale, open air streetscape/main street style commercial and mixed-use areas consisting of businesses serving the shopping and service needs of the community at large in an attractive public realm and promote public convenience and accessibility and contain common spaces, commercial, office and residential uses, and even limited warehousing and light manufacturing if designed in keeping with the scale of the development. The PUD District is designed to be flexible in development controls, but requires integrated design and appropriate transitions to surrounding existing land uses and promotes a diverse mix of housing options. The district is not intended to be accomplished in a fragmented, lot-by-lot fashion, developed with a single type of land use, nor developed in a manner where uses are segregated into dedicated pods throughout the tract. The uses will develop in an orderly manner in order to ensure achievement of a development with multiple uses and will be developed on a harmonious architectural theme and in a manner that focuses traffic flow on vehicles, bicycles and pedestrians.

Design and scale of a PUD will vary depending on the size of the tract and intended mix of uses. PUD development will be implemented as one of the two following types:

PUD-V: The village style PUD is intended for a predominantly residential community, with an integrated mix of housing types on traditional streetscapes and village greens with a commercial component that, through necessity, must be oriented to adjoining collector and/or arterial streets, but will be developed with very small setbacks unless offset by amenity laden streetscaping.

PUD-R: The regional style PUD is intended to serve a regional market that is predominantly commercial but will contain an integrated mix of uses, using traditional streetscapes, but permit more intense commercial and light manufacturing and warehousing type uses than would otherwise be permitted in the PUD-V development scheme. While the PUD-R development concept is predominantly commercial, it will contain a significant residential element with multiple housing types.

In all PUD development, housing types are required to be mixed and to the degree possible, commercial and residential uses mixed in buildings and streetscapes. The Mayor and Council shall only approve a concept plan and the Planning Commission shall only approve development plans and site plans that generally integrate housing types and commercial types and do not create segregated areas or pods that separate housing types and commercial use types.

b. Location.

The PUD-V District may be established in the RMOD, RMED, RH, N-MU and CG Districts. The area proposed to be zoned as a PUD-V District shall have an area of at least ten (10) acres.

The PUD-R District may be established in the N-MU, CG and CR Districts. The area proposed to be zoned as a PUD-R District shall have an area of at least fifteen (15) acres.

Since the residential component of a PUD rarely supports the commercial component in its entirety, all PUD Districts established after April 24, 2020 shall front on a collector or arterial street, as defined by the City Engineer's office, or upgrade existing local street(s) to collector or arterial status that will create frontage for the development. This is for the purpose of ensuring that there is sufficient regional and drive-by traffic and visibility to contribute to the economic viability of the commercial component of the PUD development.

- c. **Principal Permitted Uses and Special Exception Uses, In Accordance With Section S (Site Plan Requirements).**
- (1) All uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Subsection U.8, or not permitted as enumerated in Section Z of this Article.
 - (2) A PUD District shall be a mixed-use area and shall contain a mixture of residential types and commercial uses. Residential types shall be mixed among each other and not segregated into housing type pods. Mixing of commercial and residential uses in mixed-use buildings and in compatible adjacency is a defining element of a PUD-R development.
- d. **Accessory Uses.**
- (1) Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception use.
 - (2) Home workstations, subject to the requirements of Subsection K.10 of this Article. The requirements shall not be relaxed for residences in zoning districts where commercial uses may be enumerated as a permitted use in that district.
 - (3) Home day-care of up to eight (8) children, as licensed by the State of Maryland. The number of children cared for in an apartment unit that are not members of the household shall not exceed two (2). A home day-care may utilize non-resident employees only for occasional back up staff for the purpose of covering on-site operations for the resident staff during vacations, personal emergencies, appointments, etc. when the resident provider will not be present, as required by their State license. Otherwise, a home day-care shall not employ persons who do not reside on the property. *[Ed. Note: State licensure counts those children under age 6 living in a dwelling among those being cared for under the license. This requirement prohibits a home day-care operator's ability to care for five or more children under the age of two unless a second care giver (as required by State licensure) is also a resident of the dwelling.]*

e. **General Requirements for a Planned Unit Development.**

Applications for planned development shall meet the following requirements:

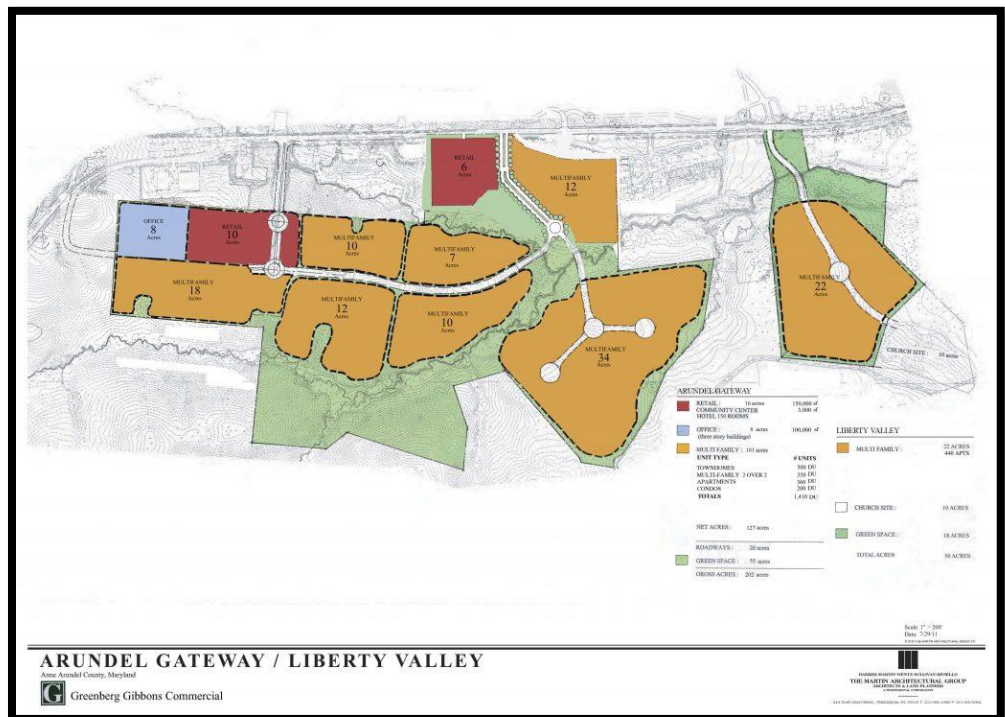
- (1) The area proposed for a planned unit development shall be in one ownership, or, if in several ownerships, the proposal shall be filed jointly by all the owners of the property included in the development plan.
- (2) The site shall be of a size and shape suitable for the development proposed.
- (3) The site is or can be served with public water and wastewater facilities. Public water and wastewater facilities shall be required in all PUDs.
- (4) The site shall be located adjacent to adequate highway facilities capable of serving existing traffic and that expected to be generated by the proposed development, as well as create exposure for commercial elements of the PUD. Opportunities for adjusting local public transportation service to the development should be explored by the developer.
- (5) The owners or developers must indicate that they plan to begin construction of the development within three years after final approval. If construction does not begin within three years, the zoning of the site shall revert to its previous classification unless a time extension is requested by the developer and agreed to by the Planning Commission. If an appeal is pending on approval of a PUD, the three year clock will not start until the conclusion of the appeal process. For the purposes of this section, construction shall mean securing Planning Commission approval of the development plan or site plans for the first phase of development, securing grading permits for that section or those sections, and bona-fide commencement of site construction unless some alternative definition is incorporated by the Mayor and City Council into the Ordinance rezoning the property to include a PUD Overlay.

f. **Application Procedures.**

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

- (1) **Step I. Preliminary Consultation.** A preliminary consultation shall be held between the Planning Commission and the applicant or developer of the proposed planned unit development. The application for PUD District zoning shall be accompanied by a concept plan prepared by a registered professional engineer, registered architect or landscape architect or registered land surveyor. The concept plan shall be to scale and contain sufficient information to establish the identity of proposed uses and approximate dimensions and locations of proposed major structures, general street alignments, regional and/or local open space, pedestrian walkways and project boundaries.

The Concept Plan. In addition to the basic intent of a Concept Plan as defined in Article 3, for the purposes of a PUD Overlay District, the Concept Plan is a generalized, non-specific plan that shows the general intent of the layout and arrangement of the development in what is generally known as a “bubble plan” format. It allows the developer to obtain approval of the overlay zoning provided by the PUD without having to invest in detailed engineering studies or other expensive services. See below example.



Development plans, site plans and building design are required to be substantially consistent with the Concept or “bubble” Plan. More detailed drawings, such as conceptual streetscapes, building elevations, etc. shall be provided with the Concept Plan by the developer to better explain and illustrate their proposal, and shall be considered as part of the general testimony in favor of the proposal. Detailed site analysis will occur following PUD approval with the development of site plans and development plans for the subdivision. The support drawings are illustrative only and are not intended to commit development and site plans to duplication or near duplication of them, but final plans shall be substantially consistent with them. The Concept Plan shall include the following information:

- (a) Generalized development layout.
- (b) Generalized reservations for parks, parkways, playgrounds, school sites, delineated 100-year floodplain, anticipated forest conservation areas and other open spaces, and the location of any human burial sites identified as a result of the research required by Article 5, Section K.

-
- (c) Generalized locations of residential uses, non-residential uses and mixed use areas within the PUD, the location of commercial areas and a listing of those uses that are to be permitted in this PUD Development, as found among those uses found in the PUD column of Section Z (Use Chart).
 - (d) Types, general locations and approximate numbers of dwellings and portions of the area proposed therefor.
 - (e) A tabulation of the total number of acres in the proposed project and the percentage thereof designated for each of the proposed land use types, parks, schools and other reservations.
 - (f) Generalized elevations of dwellings and commercial, industrial and institutional buildings intended to be the template upon which the final architecture of the development will be formulated, as an attachment. Renderings and/or photographs of examples from existing developments are acceptable. In PUD-R developments, generalized architectural renderings of the planned general appearance of the Regional Streetscape Focal Point (referred to hereafter as RSFP - see Subsection j, below) shall be provided and the final adopted version shall be considered part of the Concept Plan. A draft forest stand delineation shall be included as an attachment.

Traffic studies shall not be required of the developer during the PUD review and adoption process. Traffic studies will be required at development plan or site plan stage, as required by the City Engineer.

- (2) **Step II. Planning Commission Review and Action.** The Planning Commission shall hold a review and make its recommendations to the Mayor and City Council in accordance with the Zoning Map amendment provisions enumerated in Subsection A.9 of this Article.
- (3) **Step III. Mayor and City Council Action.** Upon receipt of the recommendation of the Planning Commission, the Mayor and City Council shall hold a review of the application in accordance with said Subsection A.9, consider the recommendations of the Planning Commission and take formal action to approve or disapprove the PUD District Zoning Map amendment.
- (4) **Step IV. Development Plan and Site Plan Review and Action.** Upon Mayor and City Council approval of a PUD District Zoning Map Amendment, the applicant shall prepare detailed development plans and site plans, as may be required in accordance with the site plan requirements delineated in Section S of this Article, and in accordance with the subdivision and site development standards found in Article 5, as may be applicable. Development plans and site plans shall be in substantial conformance with the Concept Plan adopted with the creation of the PUD, or as may later be amended by the Mayor and City Council.

g. **Off-Street Parking.**

See Section O of this Article for parking requirements for all uses in the PUD Districts.

h. **Density of Development, Minimum Lot Size and Other Bulk Requirements.**

There is no specific prescribed permitted residential density, setbacks, height limitations or minimum lot size for a PUD Development.

As part of the Concept Plan proposed in the application for a PUD Overlay, the developer shall propose maximum building heights, maximum “build-to” lines, minimum lot area requirements, minimum building setbacks, sign regulations and any other bulk requirements that would impact the development, its uses, separation of uses when necessary, and specific requirements in any specific use areas (when the nature of the development warrants bulk requirements that vary within the District). The proposed bulk regulations shall create a dense, traditional neighborhood environment.

i. **Special Design Requirements in the PUD-V Overlay.**

(1) **Design Requirements.** A PUD-V Development shall be designed in accordance with design requirements as set forth in Article 5, Section E (Subdivision Design Principles and Standards).

(2) **Minimum Size of Dwelling Units.** All new residential units shall comply with the requirements of Section K.18.

(3) **Open Space.**

(a) Open space shall be so located and designed to complement the development and serve as an amenity to the development. Common open space shall comprise not less than ten percent (10%) of the total gross area.

(b) Character-defining open space in the form of “town greens” and other traditional urban or village forms of open space shall comprise not less than 7.5% of the total gross area, but this shall be included in the total amount of open space required in subsection (a) above.

(c) Forest retention and reforestation required to meet the terms of Article 7 may be included as part of the required open space, provided it is not located in flood plains or other residual areas, and that wooded area is included in a comprehensive strategy for recreation and aesthetics within the development. The relationship and interaction of forest conservation with required open space shall be demonstrated to the Planning Commission’s and Mayor and City Council’s satisfactions that sufficient open space is provided meeting the general recreational needs of the development.

- (d) Such space shall include land area to be developed as recreational areas or which is designated for the common use of all occupants of the planned unit development but shall not include streets, storm water management facilities (unless specifically designed to be a community amenity or natural feature), off-street parking areas, or utility easements. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land or a planned, coordinated strategy of distributed open space areas intended to enhance the village environment experience subject to the approval of the Planning Commission based on reasons set forth in this Article.
- (e) Open space also should provide for the preservation of significant natural features on the land and/or provide recreational amenities for the use of the residents of the development. The Planning Commission must be furnished satisfactory evidence as a condition for approval that such open space area will be continued and that perpetual maintenance is provided for.
- (f) Open space will be for the benefit of the residents and visitors of the development, however, these features and amenities may be made available for use by the general public through dedication to and acceptance by the Mayor and City Council as a city park.

(4) **Maximum Allocation of Commercial Uses and Residential Uses.** All planned unit developments shall include both non-residential (commercial) and residential elements.

The intent of the PUD-V Overlay is to be predominantly residential in character and land use. While this Section does not establish minimum or maximum percentages of land that shall be allocated for commercial or residential use, the Planning Commission shall not recommend and the Mayor and City Council shall not approve a PUD-V Overlay proposal that is not predominantly residential in nature.

- (5) **Compatibility with Neighboring Developments.** The perimeter of infill PUD developments shall consider neighboring developments and established building patterns with regards to use, density, street orientation, and landscaping.
- (6) **Fences.** Requirements for fencing on residential properties in the PUD-V District shall be the same as is required for all residential properties, per Section K.1. Fences that define the boundaries of village greens and open spaces shall be consistent with the environment thereof, and subject to site plan review and approval by the Planning Commission.

j. **Special Design Requirements in the PUD-R Overlay.**

- (1) **Design Requirements.** A PUD-R Development shall be designed in accordance with design requirements as set forth in Article 5, Section E (Subdivision Design Principles and Standards).

-
- (2) **Minimum Size of Dwelling Units.** All new residential units shall comply with the requirements of Section K.18.
- (3) **Regional Streetscape Focal Point (RSFP) and Mixture of Residential Uses.** A PUD-R Overlay shall have as its focus a mixed use traditional “main street” corridor consisting of mixed-use buildings three or more stories in height, that include residential uses, utilizing minimal setbacks, a mixture of green and hardscape open space amenities, rear-load parking and such other design features that accomplish this design expectation. The Planning Commission and the Mayor and Council may consider a design that contains this feature on only one side of a streetscape if necessary only to accommodate the unique site constraints of a property proposed for this form of development. However the preferred design is a two-sided urban mixed use streetscape and the one-side option shall be applied only when it is clearly shown that a two-sided mixed-use streetscape cannot be achieved due to site limitations and is not created by developer intent or choice.

Housing types (single-family, semi-detached, townhouse and apartment dwellings) shall be mixed and not segregated into individualized pods. An exception can be made when it is necessary to transition effectively to existing surrounding development in accordance with (6) below.

- (4) **Open Space.**
- (a) Open space shall be so located and designed to complement the development and serve as an amenity to the development. Common open space shall comprise not less than ten percent (10%) of the total gross area.
- (b) Character-defining open space in the form of hardscaped areas in the RSFP that are available to all residents and visitors shall be included in meeting the minimum ten percent (10%) open space requirement.
- (c) Forest retention and reforestation required to meet the terms of Article 7 may be included as part of the required open space, provided it is not located in flood plains or other residual areas, and that wooded area is included in a comprehensive strategy for recreation and aesthetics within the development. The relationship and interaction of forest conservation with required open space shall be demonstrated to the Planning Commission’s and Mayor and City Council’s satisfactions that sufficient open space is provided meeting the general recreational needs of the development.
- (d) Such open space shall include land area to be developed as recreational areas or which is designated for the common use of all occupants and visitors of the planned unit development but shall not include streets, storm water management facilities (unless specifically designed to be a community amenity or natural feature), off-street parking areas, or utility easements, but shall include hardscaped community areas in the RSFP. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land or a planned, coordinated strategy

of distributed open space areas intended to enhance the urban environment experience subject to the approval of the Planning Commission based on reasons set forth in this Article.

- (e) Open space also should provide for the preservation of significant natural features on the land and/or provide recreational amenities for the use of the residents of the development. The Planning Commission must be furnished satisfactory evidence as a condition for approval that such open space area will be continued and that perpetual maintenance is provided for.
- (f) Open space will be for the benefit of the residents and visitors of the development, however, these features and amenities (other than the RSFP hardscape/greenscape) may be made available for use by the general public through dedication to and acceptance by the Mayor and City Council as a city park.

- (5) **Maximum Allocation of Commercial Uses and Residential Uses.** All PUD-R developments shall include both non-residential (commercial) and residential elements.

The intent of the PUD-R Overlay is to be predominantly non-residential and mixed-use in character and land use. While this Section does not establish minimum or maximum percentages of land that shall be allocated for commercial or residential use, the Planning Commission shall not recommend and the Mayor and City Council shall not approve a PUD-R Overlay proposal that is not predominantly non-residential and mixed-use in nature.

- (6) **Compatibility with Neighboring Developments.** The perimeter of infill PUD developments shall consider neighboring developments and established building patterns with regards to use, density, street orientation, and landscaping.
- (7) **Fences.** Requirements for fencing on residential properties in the PUD-R District shall be the same as is required for all residential properties, per Section K.1.

- k. **Approval at the Discretion of the Mayor and Council.**
 No party is entitled by law to approval of a PUD Overlay. Approval of such an overlay is a discretionary legislative act of the Mayor and City Council. No PUD Overlay shall be approved unless determined to be in compliance with the requirements of this subsection and achieves the purpose of this subsection.

- l. **Existing PUD Developments in Effect on April 24, 2020.**

Existing PUD Developments that are valid and appear on the adopted Zoning Map on April 24, 2020, approved under previously effective versions of the Zoning Ordinance and appearing without an R or V suffix, shall remain in full force and effect and shall be administered per the zoning map amendment by which they were created. They may be revised and amended as the Zoning Ordinance required and permitted prior to the above date. In such cases, the procedures

and text that were in effect prior to the above date shall control and be used to process and decide any amendments or revisions to those previously existing PUDs.

2. Conversion District.

a. **Purpose.**

The purposes of this district are to stimulate the adaptive reuse of existing, nonresidential, multi-story and large one-story structures, to maintain and increase the City's assessable base, to expand business and employment opportunities, and to protect residential neighborhoods from excessive traffic, odors, fumes, noise, and light. The Conversion District provides an alternative development concept for underutilized structures while protecting the general health, safety, welfare, and aesthetics through the commitment to an approved development concept plan. Such structures must be in existence prior to March 7, 1977.

b. **Location.**

The Conversion District may be located in the following districts: RMOD, RMED, RH, RO, CL, CG, POM, INST, CC-MU, N-MU, I-MU, IR and IG.

c. **Permitted and Special Exception Uses.**

Uses in these districts shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Subsection U.8, or not permitted as enumerated in Section Z of this Article.

d. **Accessory Uses.**

- (1) Uses and structures customarily accessory and incidental to any principal permitted use or authorized special exception.
- (2) Home workstations, subject to the provisions of Subsection K.10 of this Article.
- (3) Home day-care of up to eight (8) children, as licensed by the State of Maryland. The number of children cared for in an apartment unit that are not members of the household shall not exceed two (2). A home day-care may utilize non-resident employees only for occasional back up staff for the purpose of covering on-site operations for the resident staff during vacations, personal emergencies, appointments, etc. when the resident provider will not be present, as required by their State license. Otherwise, a home day-care shall not employ persons who do not reside on the property. *[Ed. Note: State licensure counts those children under age 6 living in a dwelling among those being cared for under the license. This requirement prohibits a home day-care operator's ability to care for five or more children under the age of two unless a second care giver (as required by State licensure) is also a resident of the dwelling.]*

e. **General Requirements.**

- (1) The area proposed for a conversion district shall be in one ownership, or, if in several ownerships, the proposal shall be filed jointly by all the owners of property included in the development plan.
- (2) The development shall be for an existing, nonresidential structure containing at least two floors within which all proposed uses, except parking, will be contained.
- (3) The owners or developers must indicate that they plan to begin construction of the development within two years after final approval. If construction does not begin within two years, the zoning of the site shall revert to its previous classification unless a time extension is requested by the developer and agreed to by the Planning Commission.
- (4) A site plan in accordance with Section S for entire area to be utilized shall be reviewed and approved by the Planning Commission prior to the use of the property.
- (5) A concept plan, as required in Subsection f.(2), below, shall be submitted with the application for a conversion district.

f. **Application Procedure.**

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

- (3) **Step 3.** Planning Commission Review and Action. The Planning Commission shall hold a review and make its recommendation to the Mayor and City Council in accordance with the zoning map amendment provisions enumerated in Subsection A.9 of this Article.
- (4) **Step 4.** Mayor and City Council Action. In accordance with Subsection A.9, the Mayor and City Council shall consider the recommendations of the Planning Commission and take formal action to approve or disapprove the Conversion District Zoning Map amendment.
- (5) **Step 5.** Site plan review and action. Upon Mayor and Council approval of a Conversion District Zoning Map amendment, the applicant shall prepare a detailed development plan in accordance with the site plan requirement delineated in Section S of this article and concept plan approved by the Mayor and City Council.

g. **Height.**

The height of any approved additions shall be in accordance with the height limitation of the base zoning district.

h. **Off-Street Parking.**

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

i. **Special Design Requirements.**

- (1) In a residential district, commercial uses shall only be allowed when mixed with residential uses unless otherwise approved by the Mayor and City Council. The total floor area used by all commercial uses, whether principal permitted or by special exception, shall not exceed 50% of the existing structure's gross floor area, unless otherwise approved by the Mayor and City Council. In commercial and industrial districts, residential uses are only permitted when mixed with non-residential uses.
- (2) Additions shall be designed consistent with the architectural theme of the structure and shall be located in the space least visible to the general public.
- (3) The CL maximum square footage requirements for retail trade and restaurants shall only apply where the underlying zoning district is Residential or CL.

j. **Lot Area Requirements.**

The minimum lot area for a Conversion District shall be 20,001 square feet.

k. **Minimum Size of Dwelling Units.**

All new residential units shall comply with the requirements of Section K.18.

3. Local Conversion District.

a. **Purpose.**

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

The Local Conversion District provides an alternative development concept for underutilized and vacant non-residential and mixed-use structures while protecting the general health, safety, welfare, and aesthetics in the vicinity of the site through the commitment to an approved development concept plan. A Local Conversion District can be overlaid on an active or expired non-conforming non-residential or mixed-use structure provided that it has not been converted to a use permitted by right or special exception, which voids the nonconformity.

It is acknowledged that such uses will be outwardly commercial or mixed-use in nature and operation, but are reviewed individually to ensure the proposed use or uses and improvements are not an undue burden on the surrounding area.

b. **Location.**

The Local Conversion District may be located in the following districts: RMOD, RMED, RH and RO.

c. **Permitted and Special Exception Uses.**

Uses in the Local Conversion District shall be permitted, permitted by special exception in accordance with general and specific performance criteria found in Subsection U.8, or not permitted as enumerated in Section Z of this Article.

d. **Accessory Uses.**

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

e. **General Requirements.**

- (1) The area proposed for a Local Conversion District shall be in one ownership, or, if in several ownerships, the proposal shall be filed jointly by all the owners of property included in the development plan.
- (2) The development shall be for an existing, nonresidential or mixed use structure, constructed or altered to that configuration before March 7, 1977, in which all proposed uses will be contained, except:
 - (a) Outdoor dining areas and outdoor merchandise display, as regulated elsewhere in this provision; and
 - (b) Additions, as permitted in Subsection i. below.
- (3) The uses proposed for a Local Conversion District may be:
 - (a) Those dwelling uses that last occupied the non-residential or mixed-use structure, provided those dwelling units comply with the occupancy limitations of the Property Maintenance Code, and provided that residential uses not occupy all spaces in the building, and/or
 - (b) The building contains a non-residential use or uses that are listed as permissible for Local Conversion Districts in Section Z (Chart of Permitted and Special Exception Uses).

Final approval of the list of uses for the proposed Local Conversion District shall be by the Mayor and City Council, but shall not include uses not listed in Subsections (a) and (b) above, and shall contain at least one non-residential use, per (b) above.

- (4) The owners or developers must indicate that they plan to begin construction of the development or commence the use within one year after the overlay is approved. If the use does not commence within two years, the zoning of the site shall revert to its previous classification unless a time extension is requested by the developer and agreed to by the Planning Commission.
- (5) This overlay district shall only be used for buildings or parts of buildings that are oriented in appearance and access to a public street. This overlay district shall not be used for buildings and uses oriented predominantly toward an alley.

f. **Application Procedure.**

- (1) **Step 1. Preliminary Consultation.** The applicant may request a preliminary consultation with the Planning Commission prior to submission of an application.

- (2) **Step 2. Concept Plan.** A concept plan shall be submitted with the application. The concept plan shall include sufficient detail to determine consistency with this Article. At a minimum, the concept plan shall show the building as existing and as proposed after development, landscaping, parking, signage, general nature of street furniture and the following information:
 - (a) Proposed development layout.
 - (b) A tabulation of the total square footage in the building, existing and proposed, plus the area and percentage for each residential or non-residential use within the structure.
 - (c) Plans, schematics, and elevations of the structure showing how the architectural theme of the building will be retained and not unduly impact adjacent residential properties.
- (3) **Step 3. Planning Commission Review and Action.** The Planning Commission shall hold a review and make its recommendation to the Mayor and City Council in accordance with the zoning map amendment provisions enumerated in Subsection A.9 of this Article.
- (4) **Step 4. Mayor and City Council Action.** In accordance with said Subsection A.9, the Mayor and City Council shall consider the recommendations of the Planning Commission and take formal action to approve or disapprove the Local Conversion District Zoning Map amendment.
- (5) **Step 5. Site Plan Review and Action.** Upon Mayor and Council approval of a Local Conversion District Zoning Map amendment, the applicant shall prepare a detailed site plan or minor site plan in accordance with the site plan requirement delineated in Section S of this Article and the concept plan approved by the Mayor and City Council. The plan shall be subject to Planning Commission approval.

g. **Height.**

No increase in height is permitted, except in accordance with the height limitation in the underlying zoning district.

h. **Lot Area Requirements and Off-Street Parking.**

- (1) The maximum lot area for a Local Conversion District shall be 20,000 square feet.
- (2) Minimum parking requirements and lot size requirements shall not apply to this overlay district, however existing on-site parking shall not be reduced unless the remaining parking meets current Ordinance requirements. The Board of Zoning Appeals shall not grant a variance to this requirement. However, upon illustration in a rezoning exhibit, the Mayor and Council, as part of the petition for rezoning, may approve a site design that

reduces the amount of existing parking if it finds that to do so is an acceptable step to ensure the adequate landscaping and screening of the use from adjacent properties.

i. **Special Design Requirements.**

- (1) Additions shall be designed consistent with the architectural theme of the structure and shall be located in the space least visible to the general public.
- (2) No outdoor vending machines shall be permitted.
- (3) No outdoor storage of any kind is permitted except display of merchandise at convenience and grocery stores if historically part of a use on the subject property.
- (4) No outdoor dining or seating area for a restaurant shall be permitted in any of the rear yard area between the building and rear property line or within ten feet of a side property line unless historically part of the on-site use.
- (5) Buildings of an industrial, warehouse or automotive service design shall be enhanced via architectural or cosmetic enhancement, site amenities, landscaping, and other strategies to achieve suitability for their new use(s) within a residential district and compatibility with the neighborhood.
- (6) Storefronts previously modified or enclosed shall be rehabilitated to reintroduce a storefront window display design.
- (7) All new residential units shall comply with the requirements of Section K.18.

4. Historic Districts and Landmarks.

a. **Location.**

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

b. **Criteria.**

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

- (1) Historical significance:
 - (a) Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, county, state, or nation;
 - (b) Is the site of an historic event;

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

c. **Procedure.**

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

This page intentionally left blank.

K. Supplementary Regulations.

1. Fences and Walls.

No fence or wall shall be constructed without first securing a zoning certificate from the Planning and Code Administration Department. The applicant shall submit a plan for the fence for review of the zoning certificate application. The following standards shall apply:

a. Visibility at Intersections.

With respect to corner lots, no fence, wall, gateway, ornamental structure, hedge, shrubbery and other fixtures, construction or planting shall exceed three (3) feet in height in either direction back from the street corner (measured from the intersection of the street rights of ways) for a distance of 25 feet. This restriction applies to all corner lots in all zoning districts where front yards are required.

b. Height and Setback.

The following maximum height limitation shall be applied to fences (except as regulated by Section K.1.a, above):

District	Front Yard	Side Yard	Rear Yard
Residential Zoning Districts <i>[ADMINISTRATIVE NOTE: see illustration on next page]</i>	4 feet b(1)	6 feet b(1) and b(4)	6 feet b(1) and b(4)
Residential Uses in a Mixed-Use District	4 feet b(1)	6 feet b(1) and b(4)	6 feet b(1) and b(4)
Commercial Zoning Districts	Not Permitted c.2	8 feet c(1)	8 feet c(1)
Commercial and Industrial uses in a Mixed-Use District	Not Permitted c.2	8 feet c(1)	8 feet c(1)
Industrial Zoning Districts, Including the I-MU District	10 feet c.2	10 feet c(1)	10 feet c(1)

[ADMINISTRATIVE NOTE: The letters in each box shown in parentheses correspond to notes and requirements in subsections shown below and on the following two pages.]

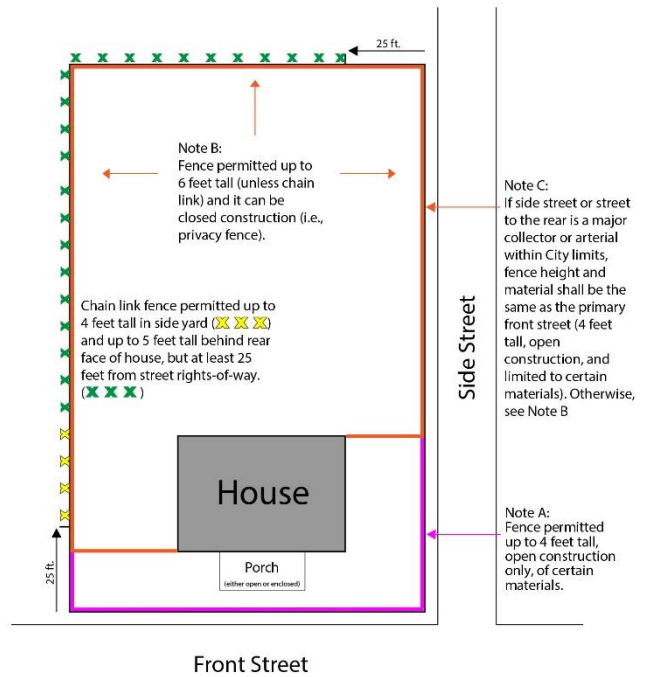
(1) Residential Districts and Residential Uses in Mixed Use Districts.

- (a) When a residential property in a residential zoning district fronts more than one public street, the frontage on the side street and/or street to the rear shall be treated as a side or rear setback for the purpose of fence location, provided the fence is not installed closer to the principal frontage along the side street than the rear façade of the dwelling.

This provision shall not apply when the side street or street to the rear is a major collector or arterial roadway as determined by the City Engineer, and the adjoining street is located within the municipal boundary. In such cases, the

front yard fence limitations shall continue to apply. [Ed. Note: See drawing to right.]

- (b) Front yard fences shall be constructed only of decorative metal, wood picket, vinyl picket or composite picket construction, with the spaces between the pickets being at least one inch wide or half the width of the picket, whichever is greater.



- (c) Chain link and wire fences are specifically prohibited within 25 feet of a street right of way. However, wire mesh may be used as a backing to a picket, paddock or similar fence material. On residential properties, chain link fencing shall be limited to no more than four feet in height in side yards and five feet in height behind the rear face of a dwelling in rear yards. Barbed wire fences are prohibited.

The Board of Zoning Appeals shall not grant variances to the requirements of this paragraph.

(2) **Entrance Features.**

Fences or walls which serve as entrance features to subdivisions or developments shall be limited to four feet in height.

(3) **Specialty Features.**

Specialty fences of a specific and unique purpose, typically not associated with a property boundary, may exceed the height limits of a particular zoning district, subject to Planning Commission approval of the fencing plan as part of the Site Plan or Subdivision Plan approval. Fences of this type may include, but are not limited to, those associated with athletic fields, tennis courts, swimming pools, commercial and industrial storage areas, fencing surrounding telecommunications facilities, and noise attenuation walls.

(4) **When Adjacent to More Intense Uses.**

- (a) When a property in a residential or mixed-use zoning district used for residential purposes is adjoining a CG, CR, POM, INST or I-MU district or adjoining a non-conforming commercial or industrial use similar in character to what would be permitted in the CG, CR, POM, INST or I-MU District, the fence in a side or rear yard may be eight feet in height. No landscaping outside the fence shall be required.
- (b) When a property in a residential or mixed-use zoning district used for residential purposes is adjoining an IR or IG zoned property or adjoining a non-conforming commercial or industrial use similar in character to what would be permitted in the IR or IG Districts, the fence in the side or rear yard may be ten feet in height. No landscaping outside of the fence shall be required. Such fence shall comply with the required front yard setback.

(5) **Setbacks for Retaining Walls.**

See Subsection e, below.

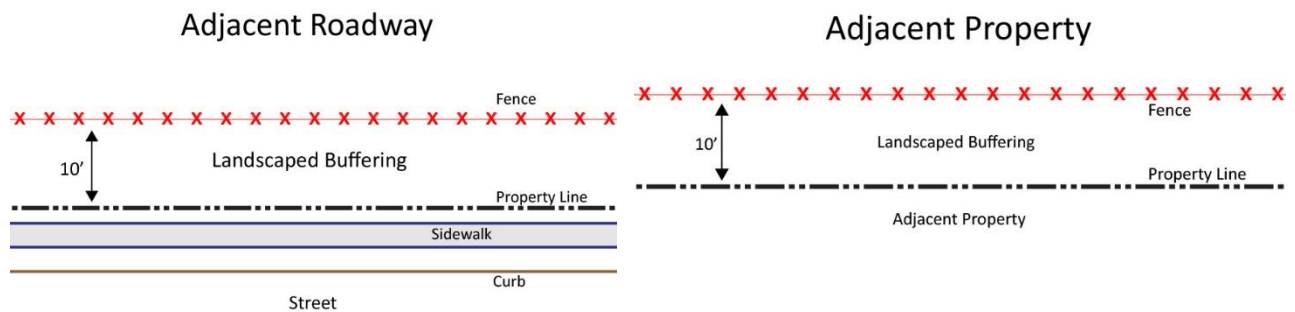
c. **Buffers.**

(1) **When Adjacent to Less Intense Districts.**

When properties in the commercial, mixed use or industrial districts are adjacent to a residential district (and in industrial districts when the property is adjacent to a commercial or mixed use district), landscaping shall be provided in accordance with Section S of this Article and Article 5, Section I. The appropriate buffer shall be located outside the perimeter of the fence. The Planning Commission has the authority to reduce or eliminate the buffer requirement outside of the fence based on individual and unique circumstances.

(2) **Buffers Required When Adjacent to Public Streets.**

Fences or walls constructed in a commercial or industrial district adjacent to a public street shall provide a perimeter roadside buffer in accordance with Section S of this Article and Article 5, Section I.4.h(8). The appropriate buffer shall be located outside the perimeter of the fence. The Planning Commission has the authority to reduce or eliminate the buffer requirement outside of the fence based on individual and unique circumstances.



d. **Construction Standards and Materials.**

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

- (1) Fences shall be constructed of materials specifically designed and manufactured for fencing purposes.
- (2) Barbed wire is not permitted in or adjacent to residential, mixed use and commercial districts. Barbed wire fences are permitted in industrial districts provided the barbed wire is installed on top of a fence that is at least six feet in height.
- (3) See Subsection K.1.b. of this section regarding limitations on materials for fences in front yards in residential districts.
- (4) The finished side of any fence shall face outward towards surrounding public street rights-of-way, public parks and public school properties.

e. **Retaining Walls and Safety Fences Thereon.**

- (1) **Retaining Wall Setbacks.** In order to ensure that a retaining wall can be maintained or repaired without trespass onto adjacent property, when a retaining wall is constructed on a property that contains or is planned to contain a use other than a single-family dwelling, single-family semi-detached dwelling or two family dwelling, and the wall faces away from the property, the wall shall be set back as follows:

Wall height:	24 to 48 inches above adjacent grade:	3 feet.
	More than 48 inches above adjacent grade	6 feet.

- (2) **Safety Fences on Retaining Walls.** The provisions of this subsection regarding fences shall not be applied to those installed above retaining walls that are without integral safety railings or where safety railings are set back from the top of the wall by a minimum of three feet. However, safety railings made of fence materials shall comply with limitations on materials found in this subsection.

2. **Special Height Regulations.**

The height limitations contained in the height regulations and yard requirements do not apply to belfries; steeples; spires; electric or communication poles or towers; electric transforming or switching equipment; radio, television, or radar towers; chimneys or smoke stacks; flagpoles; fire towers; cupolas; domes; monuments; penthouses or roof structures for housing stairways; or to tanks, ventilating fans, air conditioning equipment or similar equipment required to operate and maintain the building.

No penthouse or roof structure subject to this height limitation exception shall have a total area greater than 25% of the roof area, nor shall such structure be used for any purpose other than a use incidental to

the main use of the building. The height limitations for wireless communications antennas, poles, and towers are specified in Section Q.

3. Structures to Have Access.

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

4. Floodplain.

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

5. Storm Water Detention and Retention Structures.

Design, buffering, location and other considerations for the construction of stormwater detention and retention structures are found in Article 5, Section I, of this Code and those Ordinances administered by the City Engineer for the purpose of governing design of such structures.

6. Procedure for Measurement of Yards.

a. **Front Yard.**

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

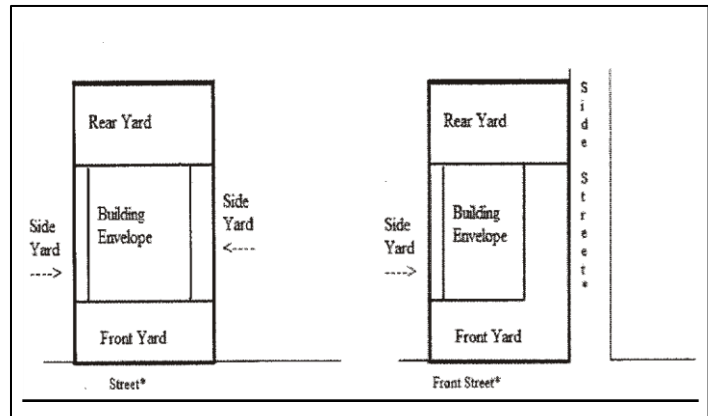
b. **Rear Yard.**

Depth of required rear yards shall be measured at right angles to a straight line joining the rearmost points of the side lot lines. The forward rear yard line of a required rear yard shall be parallel to the straight line so established.

c. **Side Yard.**

Width of required side yards shall be measured at right angles to a straight line joining the ends of front and rear lot lines on the same side of the lot. The inner side yard line of a required side yard shall be parallel to the straight line so established.

All public street frontages are “front” yards. These two examples illustrate how yard requirements are determined, both in interior lots and corner lots. The area shown as “street” in these illustrations includes everything within the street right-of-way, not just the improved surface of the road.



7. Yard Sales.

Yard sales, as defined in Article 3, are permitted for all residential properties permitted by right, special exception or bona fide nonconforming use, as an accessory use to that dwelling provided there are no more than four such yard sales in a calendar year, and each sale is no longer than three consecutive days in duration.

8. New Residential Development Sales and Leasing Facilities.

The use of sales trailers or a constructed home as a model home and/or sales office shall be permitted for the purpose of marketing units for rent or sale within that development, provided that the type and location are shown on the approved site plan or development plan. Otherwise a site plan will be required.

9. Use of Semi-Trailers and Use of Vehicles and Trailers as a Substitute for a Building for Vending.

a. Use of Semi-Trailers.

Semi-trailers shall not be used for the purpose of storing material or merchandise on a property beyond that customarily associated with the temporary and transitory use of the semi-trailer to transport goods. They shall not be used as storage facilities, except as otherwise permitted on an active construction site. Every semi-trailer maintained on a property shall be kept roadworthy and currently registered and display valid license plates registered to that vehicle. Any semi-trailer made nonconforming by this Article shall be brought into compliance within 24 months of the effective date of this Ordinance or be removed from the property. *[ADMINISTRATIVE NOTE: The amortization period for this provision expired on October 25, 2014.]*

Use of a semi-trailer for a one-time or rare extenuating circumstance of business operations shall be permitted for a period of up to 180 days on commercial properties in commercial and industrial zoning districts, provided the use of the semi-trailer(s) is located on existing paved or gravel surfaces, does not occupy required on-site parking and remains roadworthy and licensed as described above. This provision shall not be interpreted to permit serial use of semi-trailers for ongoing on-site storage or for use in repetitive circumstances. Semi-trailers may be used for on-site secure storage of building supplies and tools at an active construction site as long as

construction is ongoing. When used at a construction site, the semi-trailer(s) shall be immediately removed when construction is stopped or is completed.

b. Use of Vehicles and Trailers as a Substitute for a Building for Vending.

Any vehicle used for vending purposes shall be fully operational and capable of being legally driven on public streets or towed on public streets in the case of trailers. Vehicles or trailers may not be placed on blocks or jacks. No permanent or temporary foundation may be placed or constructed for a temporary vending operation.

All vehicles used for vending purposes effectively become permanent structures by remaining immobile at the same location and not removed from the premises each day upon the conclusion of business. In cases where such vehicle and/or trailer is to remain in place when closed and unoccupied;

- (1) A site plan approved by staff or the Planning Commission shall be required; and
- (2) The location of the vehicle and/or trailer shall comply with building setbacks for the district in which it is located without variance; and
- (3) The vehicle and/or trailer shall not occupy parking spaces necessary for the property to comply with the Requirements of Section O of this Article; and
- (4) The vehicle and/or trailer shall not occupy landscaped areas installed pursuant to an approved site plan.
- (5) The vehicle and/or trailer shall be self-contained and may not use the utilities on the site on which it is operating.

Any vehicle and/or trailer that does not comply with this paragraph shall be removed within 180 days of the adoption of this provision.

10. Accessory Use Home Workstations.

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

There shall be no sign and no outdoor storage of any kind. Deliveries are limited to those made by the U.S. Postal Service and similar carriers in vehicles of a size that routinely serve residential areas and in a volume and frequency consistent with those deliveries made to a dwelling. There is no external evidence of any sort that the dwelling is used for any purpose other than that of a dwelling other than:

- a. The commercial appearance of one vehicle used for commuting associated with the business, as limited by Subsection D.3.c. of this Article in residential zoning districts; or

- b. The arrival and departure of individual students of tutors.

11. Fowl and Farm Animals and Livestock.

Except as may be permitted by the terms of the Agricultural Transition Zoning District, and zoning districts which specifically permit such use as part of another industry (such as slaughterhouses), the keeping of livestock, fowl and farm animals is not permitted within the City of Hagerstown. Livestock and farm animals include, but are not limited to horses, cattle, sheep, pigs or hogs, goats, alpaca, chickens, turkeys and similar animals. Such animals shall not be kept for any reason, including as household pets.

12. Alternative Energy Sources/Generators.

To obtain approval for a wind or solar energy system, the applicant shall submit a zoning permit application with a plan for review by the Planning and Code Administration Department. Once the zoning permit is approved, the applicant may apply for proper permits from the Code Administration Office.

a. Small Wind Energy Systems.

Small Wind Energy Systems shall be permitted as an accessory use to any principal-permitted use in any zoning district.

- (1) No more than one freestanding Small Wind Energy System shall be permitted on any individual property.
- (2) The minimum setback from any property line for a Small Wind Energy System shall be:
 - (a) One and one-tenth (1.1) foot from the base of the structure to each property line for every one foot in structure height (as measured from the lowest point along the base to the highest point of the support tower, the top of either the turbine device or the area swept by the rotor blades, whichever is greatest).
 - (b) In the event that the maximum permitted height for Small Wind Energy System cannot be achieved on a specific property, the maximum permitted height shall be controlled by the setback constraints. The Board of Zoning Appeals shall not issue a variance to the minimum required setbacks for a Small Wind Energy System.
 - (c) Location in the required front building setback is prohibited.
- (3) No Small Wind Energy System shall have a rated maximum output in excess of 15 kilowatts of electricity. No variance to this electric generating capacity shall be granted by the Board of Zoning Appeals.
- (4) No support tower for Small Wind Energy System shall be taller than 100 feet in height.

-
- (5) All wind energy systems shall be designed such that the lowest point of the area that may be swept by the rotor blades shall have a clearance of not less than 15 feet above the base of the supporting structure. The supporting tower shall not be climbable for the first 12 feet above the base of the structure. Any access doors to wind energy towers and electrical equipment shall be secured by safety locks.
 - (6) Guy wires used to support a Small Wind Energy System structure shall be set back at least ten feet from all property lines and shall be secured to stationary anchors properly and securely mounted into the ground, not a tree or other structure on the property. Appropriate, but not excessive, reflective or visible painting or colored objects (such as flags, reflectors, or tapes) shall be placed on all guy wires within ten feet of the ground in sufficient quantities or spacing to make them visible.
 - (7) Public Airports and Heliports: With respect to the Federal Aviation Administration (FAA): CRF Title 14, Part 77.13 defines the controlling language for towers. The FAA must be notified when: a Wind Energy System is erected within 5,000 feet of a public use heliport that exceeds a 25:1 surface ratio; when requested by the FAA (applicant must contact FAA); when any construction or alteration is located on a public use airport or heliport.
 - (8) All supporting towers for a Small Wind Energy System shall be specifically engineered to support a wind turbine. Steel lattice support towers shall be prohibited in all residential zoning districts. The use or modification of a supporting tower originally designed for a telecommunications antenna as a supporting tower for a Small Wind Energy System shall be prohibited. Supporting towers constructed of aluminum also shall be prohibited.
 - (9) The applicant shall document that the proposed Small Wind Energy System shall not generate audible noise levels over 55 dBA at all property boundaries.
 - (10) All Small Wind Energy Systems shall be designed with braking, governing, or feathering systems to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and system components.
 - (11) To the maximum extent practicable under the applicable regulatory requirements, rotor blades for all Small Wind Energy Systems shall be designed with non-reflective (non-gloss) paints and materials to minimize the potential “flicker” or “strobing” effect of reflected sunlight on adjoining properties. The system also shall be designed or sited to minimize the potential impacts of rotor blade shadow strobing on nearby residential dwellings, where such siting flexibility exists.
 - (12) No Small Wind Energy System shall be lighted or illuminated in any way that is not otherwise specifically required by the Federal Aviation Administration.

-
- (13) No Small Wind Energy System shall contain any lettering, advertisement, or signage of any kind, with the exception of any required or standard warning signage and not more than one (1) manufacturer label bonded to or painted upon the Wind Energy System.
 - (14) Small Wind Energy Systems shall be designed and painted in a manner that is appropriate to minimize visual impacts on the area and setting.
 - (15) To the maximum extent practicable, all on-site wiring or power lines necessary to control or transmit power from the Wind Energy System shall be placed underground or hidden from public view, except where necessary to connect the system with an above-ground power line.
 - (16) Where a Small Wind Energy System will be connected to the electric power grid to permit “net-metering”, the applicant also shall provide an affidavit signed by the owner documenting that *“the owner will comply with all applicable utility notification requirements contained in the Maryland net metering law and the system will comply with the Institute of Electrical and Electronics Engineers (IEEE) 1547 Standard for Interconnecting Distributed Resources with Electric Power Systems, as may be amended, and the applicable requirements promulgated by the Maryland Small Generator Interconnection Standards by the Maryland Public Service Commission.”*
 - (17) When an approved Small Wind Energy System has ceased active production of electricity for a period of at least 12 consecutive months, the owner of said property shall remove the Wind Energy System and supporting structure from the property.
 - (18) Small Wind Energy Systems that are proposed for location in historic districts shall be required to obtain a Certificate of Appropriateness from the Historic District Commission (HDC). The HDC may reject the application if found to compromise the historic architecture of a building or the historic environment of a site.

b. **Large Wind Energy Systems.**

Large Wind Energy Systems shall not be permitted in any zoning district within the City.

c. **Building-Mounted Wind Energy Systems.**

Building-Mounted Wind Energy Systems shall be permitted as an accessory use to any principal-permitted use in any zoning district.

- (1) No more than one Building-Mounted Wind Energy System with a rated maximum output of not more than 15 kilowatts of electricity shall be permitted on any individual property. No variance to this electric generating capacity shall be granted by the Board of Zoning Appeals.

- (2) The highest part of the Building-Mounted Wind Energy System may not exceed ten feet above the highest point of the roof in all zoning districts.
- (3) Safety and aesthetic standards under Subsection 12.a.9 through 18 of this Section shall also apply to Building-Mounted Wind Energy Systems.

d. Ground-Mounted Solar Collection Systems.

Ground-Mounted Solar Collection Systems are permitted as an accessory use in any zoning district.

- (1) In residential and mixed-use zoning districts and for residential uses in any other zoning district, Ground-Mounted Solar Collection Systems shall not occupy more than nine hundred (900) square feet of the lot, shall not be taller than ten (10) feet in height, and shall meet all setback requirements for accessory structures.
- (2) In commercial and industrial districts, Ground-Mounted Solar Collections Systems shall meet the height and setback requirements for accessory structures in that district.

e. Building-Mounted Solar Collection Systems.

Building-Mounted Solar Collection Systems are permitted in any zoning district.

- (1) Building-Mounted Solar Collection Systems may not exceed 12 inches in height on gabled or hipped roofs or ten feet on flat roofs.
- (2) Building-Mounted Solar Collection Systems that are proposed for location in historic districts shall be required to obtain a Certificate of Appropriateness from the Historic District Commission (HDC).
- (3) To the greatest extent possible, the finished material on the panels should be treated to reduce glare.

13. Temporary Contractor Staging Facilities.

When property is developed or redeveloped in an urban environment, it is very difficult or impossible to stage construction activities only on the property being developed or redeveloped. Therefore, the Zoning Administrator, upon request, receipt of property owner’s authorization of the request and subsequent to notice provided to adjacent property owners 15 days in advance of a decision, may issue a zoning certificate for a temporary contractor staging facility in any zoning district, subject to the following requirements.

- a. The Applicant shall demonstrate that containing all construction staging activity cannot be accommodated only on the subject property.

- b. The Applicant shall demonstrate that the property selected is the most practical location for such staging activity, considering distance to the construction site, keeping potential impacts to as few adjacent properties as possible, access to and from the site and other considerations of the unique conditions of the property selected. The certificate shall be valid for a specified period of time, but can be renewed. The use shall be for an active construction site only. If construction is halted, the temporary staging facility must be cleared within five business days.
- c. The Applicant shall provide a plan to the Zoning Administrator showing the use areas on the site, mitigation steps that may be taken to minimize impacts on surrounding properties and the measures that will be taken to return the property to the same or better condition that existed at the beginning of the use. Upon completion of the need for the staging area as part of the construction project, all materials, equipment, supplies, etc. shall be removed from the staging site within five business days, and required remediation of the site conditions shall be completed within 30 days.
- d. Parties aggrieved by the Zoning Administrator's decision whether to issue a zoning certificate for such use may appeal this decision to the Board of Zoning Appeals within 30 days of the date assigned to the certificate.

14. Work to Be Completed in a Professional and Workmanlike Manner.

Construction of any building, addition to a building, fence, shed, carport, landscaping area required as an element of a site plan, paving or other site feature shall be completed in a professional and workmanlike manner.

15. Tarps and Pliable Material as Building Materials.

Tarps, canvas and similar pliable material shall not be used as enclosures for or building materials of buildings or structures. This provision shall not apply to bona fide awnings designed and constructed as such of material intended for use in awnings, or canvas or other pliable materials engineered or professionally designed for such purposes. Any existing material noncompliant to this requirement shall be removed within 180 days of October 30, 2015. *[ADMINISTRATIVE NOTE: The amortization period for this provision expires on April 25, 2016.]*

Tents shall be used for temporary uses only, for a period of up to 60 days within any 365 day period. Tents shall not be used for a use that is intended to be a semi-permanent or permanent use.

16. Dumpster Enclosures.

Installations of new trash dumpsters on existing developments (where site plan is not required) shall be required to have a dumpster enclosure. The dumpster enclosure shall be compliant with the standard detail maintained by the City Engineer. The Planning Commission may waive this requirement if convinced that the dumpster location is the most logical placement due to unique site constraints and that installation of the enclosure is not practical due to those constraints.

17. Outdoor Storage of Inventory, Merchandise and Supplies.

All outdoor storage of inventory, merchandise and supplies shall be in accordance with Article 5, Section I.13. This provision shall also be applied to properties and uses where a site plan is not required for a new or expanded use which introduces outdoor storage to an area, regardless of whether a site plan is required for the proposed use.

18. Minimum Size of Dwelling Units.

Effective April 24, 2020, except as approved by the Board of Zoning Appeals as part of an approved change of a nonconforming use or otherwise unless specifically exempted elsewhere in this Article, every new dwelling unit of any type created or constructed within the City of Hagerstown shall comply with the following minimum requirements for finished living area:

Efficiency Unit:	400 square feet.
One-bedroom Unit:	500 square feet.
Two-bedroom Unit:	650 square feet.
Three-or-more bedroom Unit:	900 square feet.
Efficiency Unit with live/work space:	800 square feet.
One-bedroom Unit with live/work space:	1,000 square feet.
Two-bedroom Unit with live/work space:	1,300 square feet.
Three-or-more bedroom Unit with live/work space:	1,800 square feet.

When units are being created in existing buildings, and the existing configuration of the structure makes it difficult, awkward or impossible to meet these minimum requirements, the Zoning Administrator may approve minor variations from these standards, reducing them up to a maximum of 15 percent when offset by space provided in another newly created unit that exceeds the minimum floor area requirement for that unit by a like or greater amount. Reduction to 85% or less of the requirement shall require a variance approved by the Board of Zoning Appeals.

The portion of a live/work space used for residential purposes shall meet the minimum square footage requirement for the same type of unit that does not include work space.

19. Rooming Houses.

Rooming Houses shall be permitted in existing buildings in those zones identified in Section Z provided the facility complies with the following conditions:

- a. Maximum of sixteen (16) rooming units per rooming house property, except a greater of number units may be possible in the CG district if approved by Special Exception by the Board of Zoning Appeals;
- b. Maximum of three (3) residents per rooming unit;
- c. Minimum size of rooming units based on occupancy:
 - (1) Minimum of 150 square feet for one person;
 - (2) Minimum of 200 square feet for two persons;
 - (3) Minimum of 320 square feet for three persons;

- d. Minimum of one bathroom containing at least one toilet, at least one sink and at least one bathtub or shower per four rooming units and not more than one flight of stairs between rooming units and bathroom;
- e. Cooking shall not be permitted in rooming units;
- f. Minimum of one kitchen per rooming house in a common area of the facility;
- g. Twenty-four-hour per day on-site supervisor representing the owner when the rooming house contains more than 16 rooming units;
- h. Meets off-street parking requirements for Group Quarters. The Board of Zoning Appeals shall not have the authority to grant a variance to this requirement.

L. Reserved.

This page intentionally left blank.

M. Maintenance, Expansion, Expiration, Confirmation and Change of Nonconforming Uses.

- 1. Confirmation of Nonconforming Use.** In the event that there is a nonconforming use in existence on the date of adoption of this article, the owner or lessee of the premises in question may file with the Zoning Administrator a certification in writing of such form furnished by the Zoning Administrator and shall set forth fully the type of nonconforming use and all other applicable information in reference to the structure location and general use. With the information provided, the Zoning Administrator shall have the authority to confirm the existence of a nonconforming use. Should the initial application's information be insufficient to confirm the nonconformity and continuous use of the alleged nonconformity to the Zoning Administrator's satisfaction, he or she may request additional information of the applicant prior to rendering a decision. The Zoning Administrator shall not have the authority to approve expansions, enlargements or changes of nonconforming uses. In the event that the Zoning Administrator declines to confirm the existence of a nonconforming use, the applicant may apply to the Board of Zoning Appeals seeking confirmation. The case would be heard by the Board *de novo*.
- 2. Restoration.** Nothing in this article shall prevent the restoration of a nonconforming use, building or structure destroyed by fire, windstorm, explosion, act of public enemy, accident or for any other reason whatsoever, or prevent the continuance of said nonconforming use, provided that the owners of the property in question shall file with the Zoning Administrator a notice of intention to continue the nonconforming use within six months of said destruction or damage, and provided further that said restoration or construction is commenced within one year of the date of said notice of intention to continue the nonconforming use in question. In the event that said notice is not filed, then the nonconforming use in question shall be deemed to have been abandoned.
- 3. Expiration of Nonconforming Use.** Except as hereinafter provided, nonconforming uses, as defined herein, shall be allowed to continue in existence in perpetuity, provided that said use does not cease for any reason whatsoever through a period of two years. If any nonconforming use of land shall cease for any reason whatsoever through a period of two years, said nonconforming use shall be deemed to have been abandoned, and the then applicable zoning provisions shall apply to the area in question.
- 4. Amortization of Certain Uses.**
 - a. **Adult Entertainment Businesses.** Adult book, video and merchandise stores, adult motion picture theaters and adult mini motion picture theaters, situate in the zoning districts CL, CC-MU or CR (formerly the C-1, C-3/D-MU and C-4 Districts) at the time this Article becomes effective shall be removed by two years from the effective date of the article.
[ADMINISTRATIVE NOTE: Effective date of Ordinance amendment is October 22, 1991. Uses shall have been removed by October 22, 1993.]
 - b. **Bail Bonding and Parole/Probation Offices.** An office for (1) bonding of defendants in the criminal justice system or (2) paroling and the probation of defendants in the criminal justice system made nonconforming due to amendments to this Chapter adopted on September 25, 2012 and effective on October 25, 2012 shall be removed by five years from the effective date of the amendment to this Chapter, being October 25, 2017. Nonconformity may be created due to (1) location within a zoning district in which such uses are prohibited, (2) being closer than the

- minimum 500 foot distance from Public Square or (3) closer than the minimum 250 foot distance to another such use. When nonconformity is created by distance between uses, the more recently established use shall be removed.
- c. **Inoperable Motor Vehicles.** Any car repair facility storing inoperable motor vehicles outdoors in excess of the number described in the definition of “junkyard” claiming nonconforming status shall remove any vehicles in excess of the two vehicles described therein within 36 months of the effective date of this Article. This provision shall not apply to a motor vehicle impound and storage facilities as defined and regulated by this Chapter. *[ADMINISTRATIVE NOTE: The effective date of Ordinance amendment is October 22, 2013. The amortization period expires on October 22, 2016.]*
- d. **Use of Semi-Trailers.** Per Subsection K.9.a, the parking and storage of semi-trailers is limited to certain activities. Existing uses other than those enumerated became nonconforming. Nonconforming trailers are to be removed within 24 months of the effective date of the Ordinance amendment. *[ADMINISTRATIVE NOTE: The amortization period for this provision expired on October 25, 2014]*
5. **Change and Expansion of Nonconforming Use.** Structural alterations of a building or structure or the use of a parcel, lot or tract of land which does not conform to the provisions of this article shall be allowed only if the building or structure to be altered or the parcel, lot or tract of land to be used is in conformance with the requirements of the zoning district in which it is located.

However, upon application, the Board of Zoning Appeals may approve the structural alteration of a building or structure or the use of a parcel, lot or tract of land which is not in conformance with the provisions of this article. The cumulative effect of the alteration(s) or extension(s) shall not exceed 35% of those existing buildings or structures and parcels devoted to a nonconforming use. The 35% maximum shall be applied to new buildings and additions as related to the cumulative existing area of buildings and shall be applied to new uses of land as related to the cumulative existing area used for the specific purpose of the expansion. Parking, landscaping and other areas shall not be included in determining the 35% maximum of building and land use expansion areas, however parking areas may be enlarged by up to the same 35% figure in order to provide additional parking for the enlarged use.

No nonconforming use shall be enlarged, expanded or extended to an adjacent property on which no part of the nonconforming use is located.

A use that is enumerated as a special exception use in a zoning district, but has been conducted without a special exception because of nonconformity or due to being in existence on land prior to annexation into the city, shall be treated as if a special exception has been obtained, and is not subject to expiration upon two years of inactivity per Subsection M.3., above. However, in cases where a nonconforming special exception use proposes to enlarge or expand, the applicant shall be required to obtain the special exception, or be subject to the limitations on expanding a nonconforming use found in the paragraph above.

-
- 6. Automatic Expiration Upon Bringing Property into Conformance.** Once changed to a use permitted by right or special exception in the district in which it is located, no building, structure or land shall be permitted to revert to a nonconforming use.
- 7. Change of Nonconforming Use to Another Use.** A nonconforming use may be changed to another use not permitted by right or special exception in the district in which the property is located if the applicant shows that the proposed change will have less objectionable external effects than the existing nonconforming use with respect to traffic generation and congestion, including truck, passenger car and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration; storage and waste disposal; and appearance. Such a change is termed a special exception, requiring the approval of the Board of Zoning Appeals. The Board of Zoning Appeals is prohibited from changing a nonconforming use to any of the following uses:
- a. Adult entertainment business;
 - b. Bonding, probation and parole of defendants in the criminal justice system;
 - c. Drinking place;
 - d. Homeless shelter;
 - e. Hookah or vapor lounge;
 - f. Kennel;
 - g. Sale of fireworks;
 - h. Tattoo parlor, massage parlor, steam bath or sauna;
 - i. Nursing home;
 - j. Outpatient substance abuse centers, including disbursement of addiction treatment drugs;
 - k. Hospitals, including psychiatric, substance abuse and specialty hospitals;
 - l. Assisted living facilities; and/or
 - m. Rehabilitation centers.

When a district permits the above uses, changing the use is not subject to this provision and the use shall comply with all performance standards as may apply in that district.

- 8. Expansion of Nonconforming Single-Family Dwellings.** Existing nonconforming, single-family dwellings in any district may expand without limitation with respect to area. Such dwellings shall be

treated as principal-permitted uses in that district and shall conform to yard requirements and all other regulations for that district.

9. Expansion of Nonconforming Residential Uses to Increase Number of Dwelling Units.

Nonconforming single-family, two-family and multi-family dwellings in any zoning district shall not be expanded or altered for the purpose of creating additional residential units.

10. On-Site Redevelopment of a Nonconforming Use. When a structure or facility containing a valid and legal nonconforming use has deteriorated or aged to a point that renovation or rehabilitation is not practical, it may be reconstructed on the subject property at a location that is not the existing footprint of the building or improvements, provided that the proposed redevelopment complies with all setback and parking requirements of this Article and the landscaping buffer requirements of Article 5. The Planning Commission may consider requests for waivers to this requirement for appropriate cause. Architectural renderings of the proposed redevelopment and a signage plan shall be included in the application and improvements shall be constructed in accordance with those plans.

Such a proposal shall be subject to review and approval by the Board of Zoning Appeals through the process set forth in the change or expansion of a nonconforming use, which shall specifically find that the proposal is not detrimental to the local community and the general welfare.

11. Exemption for Buildings Constructed as Two-Family Dwellings. A structure is exempt from the effects of the expiration period of nonconformity under the following conditions:

- a. The building was constructed as and appears as a two-family dwelling, displaying such features as two front doors, two driveways, separate porches, addresses, and/or other physical characteristics of a two-family dwelling; and
- b. That building has not been modified on the interior for use as a single-family dwelling; and
- c. The building is located in a zoning district that permits two-family dwellings, but is rendered noncomplying or nonconforming due to the property not meeting lot area, width, and other bulk requirements.

Under the above conditions, each of the two units may be reoccupied regardless of any period that the building has been vacant.

12. Expansion of Nonconforming Residential Uses in Non-conforming Mixed-use Building. A valid and legal nonconforming mixed-use structure in any residential district where mixed-use structures are not permissible may convert the vacant ground floor commercial space to a single residential unit. Such a proposal shall be subject to review and approval of the Board of Zoning Appeals through the process set forth in the change or expansion of a nonconforming use, which shall specifically find that the proposal is not detrimental to the local community and the general welfare.

The Board of Zoning Appeals application shall include exterior building elevations illustrating how the commercial front shall be renovated to convert the appearance of the commercial area to residential in appearance consistent with the architectural design and appearance of the rest of the structure. Should the Board of Zoning Appeals approve the application, the exterior modifications shall be completed in accordance with the approval provided by the Board, including any conditions of approval that may be required.

This page intentionally left blank.

N. Noncomplying Structures and Uses.

- 1. Maintenance.** A structure or use which does not comply with current bulk requirements, but which complied with the requirements in effect when it was constructed, may remain in place and may be maintained or repaired as necessary.
- 2. Additions Not Requiring Variances.** Any additions to a noncomplying structure or use must comply with current bulk requirements unless a variance is granted. However, an addition to a single-family, two-family or semi-detached dwelling may encroach into a front, side or rear setback without a variance, provided that:
 - a. The addition comes no closer than three feet to a side property line; and
 - b. The addition encroaches no further into the setback than the existing dwelling; and
 - c. Does not result in the creation of additional dwelling units.
- 3. Restoration.** If a noncomplying structure is destroyed by fire, flood or other calamity, it may be replaced without a variance, without complying with current bulk requirements, provided that:
 - a. It may be replaced with a structure of the same or lesser size and dimensions in the same location as the destroyed structure, provided the Zoning Administrator determines that it is not feasible to replace the structure in a location closer to compliance with current bulk requirements.
 - b. It may be replaced with a structure of the same or lesser size and dimensions in a location which is closer to compliance with current bulk requirements than the original location, provided that the Zoning Administrator determines that it is not possible to replace the structure in a location fully in compliance with current bulk requirements.
 - c. Redevelopment as a result of destruction by fire, flood or other calamity may be permitted subject to Subsection M.10.
- 4. Vacancy Exception.** The provisions of Subsection 3 above (and any potential addition permitted by Subsection 2 above) shall not apply if the structure was vacant for more than two years immediately prior to being destroyed. Subsection 3 shall apply only if a building permit is obtained within two years of the date the structure was destroyed, construction pursuant to the building permit begins within six months of the issuance of the permit, and construction is substantially completed within one year of the issuance of the permit. The building permit shall be revoked and a variance shall be required if these conditions are not met.
- 5. Intentional Demolition and Replacement.** These provisions shall not be deemed to permit the intentional demolition and replacement of a structure which does not comply with current bulk requirements, which is governed by Subsection M.10.

This page intentionally left blank.

O. Off-Street Parking Requirements.

1. Purpose and Applicability.

a. Requirement and Exceptions. Permanent off-street automobile parking space and truck loading space shall be provided for all new structures, except:

- (1) Single-family, two-family and semi-detached dwellings on infill lots within subdivisions recorded prior to the effective date of this article, and
- (2) Existing structures or uses, increased in size by less than 35% after the adoption of this article.
- (3) Structures and uses in existence on the date this Zoning Ordinance becomes effective shall not be subject to parking and loading requirements, except when specified as a condition of use approval in this Article.
- (4) In the CC-MU District, if parking available to the public is located within 500 feet of the use and the applicant can demonstrate the availability of sufficient quantity to serve the required parking for the use, the creation of additional off street parking shall not be required.

b. Existing Parking Below Current Requirements Shall be Retained.

- (1) Any parking or loading facilities now in existence to serve such structures or uses shall not, in the future, be reduced except where they exceed such requirements, in which case they shall not be reduced below such requirements.
- (2) This provision shall not apply to a Conversion District, Local Conversion District or the CC-MU District. *[ADMINISTRATIVE NOTE: See Subsection O.5].*

c. Garages Not To Be Counted Toward Parking Requirements.

For single-family detached, semi-detached and townhome dwelling units, garage spaces shall not be counted toward this requirement unless the dwellings are part of a condominium regime and the condominium rules and condominium plat require the parking spaces in the garage to be kept clear of storage and the spaces therein are required to be maintained for parking use. Deed restrictions shall be entered into the Land Records of Washington County to require this as long as the development exists.

d. Off-Street Yard Parking for Residential Development.

On all existing improved residential lots and lots in new residential development, the following off-street parking design requirements shall apply:

- (1) Parking Areas shall be solid paved surfaces or permeable pavers;
- (2) Rear yard parking garages or parking pads are the preferred off-street parking system;
- (3) Driveways accessing the lot from a front or side street shall be one vehicle in width;
- (4) Driveways serving front-loaded garages from front and/or side streets shall be permitted to be as wide as the garage;
- (5) For lots without garages and without the ability to provide rear yard parking, front yard parking pads or turn-arounds of single-vehicle-width driveways shall be permissible provided the parking area does not exceed 50% of the front yard area.

2. Application Procedure.

No application for a site plan shall be approved unless there is included with the plan for such buildings, improvement or use (See Article 5, Section I - Site Plan Standards) a plan showing the adequate space to comply with acceptable design standards and criteria indicating and designating off-street parking and/or loading.

The plan shall clearly show the size and location of parking and loading spaces, the width and arrangement of access driveways and arrangement of walls, fences and screen planting as they apply to parking areas and adjacent streets, alleys and highways.

3. Off-Street Parking Requirements.

Off-street parking and dimensional requirements are found in Article 5, Section I (Site Plan Standards).

4. Required Number of Parking Spaces.

Use	Required Spaces
Ambulance facility	Two spaces per ambulance
Assisted-living facility	One space per every four beds plus one space per employee on largest shift
Auto sales and service	One space per employee plus one per 2,000 square feet of lot area.
Auto service station	Two spaces per service bay, plus one per employee
Banks and financial institutions	One space per 200 square feet of net floor area
Barber shops, beauty parlors and similar uses	Two spaces per practitioner
Bed and breakfast inns	One space per guest room
Bowling lanes	Three spaces per bowling lane
Buildings consisting of a mixture of residential and commercial uses in the CG and CR Zoning Districts	1.5 parking spaces per dwelling unit. Ground floor commercial space shall meet the requirements of this subsection for a shopping center.
Cluster development	Two spaces per dwelling unit (may include garage, carport or driveway)

Use	Required Spaces
Commercial retail sale (less than 2,000 square feet of floor area)	One space per 350 square feet of net floor area
Commercial retail sale (freestanding and 2,000 square feet or greater of floor area)	5.5 spaces per 1,000 square feet net floor area
Community center, library, museum	One space per 400 square feet net floor area
Drive in/Walk up restaurant or food service	0.8 parking spaces per employee on largest shift, plus 1 space per 25 square feet of walk up service counter and outdoor seating areas
Educational (schools)	One space per employee; ample student and visitor parking as determined by the Planning Commission
Elderly housing	One space per every three units
Fire stations	10 spaces minimum
Group quarters, including rooming houses, dormitories, alternative living units, group homes and halfway houses	One space per employee on largest shift plus one space for each sleeping room or one space for each two beds, whichever is greater
Hospitals	Four spaces per bed
Hotel, resort, motels (see restaurant and meeting/banquet hall, if applicable – additional space is required)	One space per guest room
Manufacturing plant	The greater of one space per employee on maximum working shift or one space per each 1,000 square feet gross floor area and one space for each 200 square feet net floor area of office space or sales floor space
Medical or dental offices/clinics	The greater of four spaces per practitioner or one space per 200 square feet of net floor area
Mortuary or funeral home	One space per 150 square feet of visitor floor area
Apartment dwellings	Two spaces per unit, except for mansion house apartment over-under flats, which shall provide 1.5 spaces per unit. If over 25 dwelling units, one space for each 25 units must be set aside for recreational vehicles. This requirement for recreational vehicle spaces shall not be applied in the CC-MU District.
New residential units in new construction in the CC-MU Zoning District	0.5 spaces per dwelling unit plus 0.5 spaces per bedroom, rounded up to the nearest whole number
Nursing homes and rehabilitation centers	One space for every four beds plus one space per employee on the largest shift.
Office building	One space per 200 square feet of net floor area
Outpatient substance abuse centers, including disbursement of addiction treatment drugs	The greater of four spaces per practitioner or one space per 200 square feet of net floor area. For any use established after the adoption of this provision, when by the conduct of the use large numbers of clients will arrive on site at the same time for regular administration of addiction treatment medications, the provider shall demonstrate to the Zoning Administrator that there is adequate parking supply to serve their clients.
Place of worship	One space for each 5 persons for which seating is provided in sanctuary, except where mass transit is provided by the church
Private club/lodge	One space for each 2 persons for which seating or lodging is provided
Recreational establishment (other than theaters, swimming pools and bowling lanes)	One space per 80 square feet of floor space and/or as determined by the extent of outdoor use by the Planning Commission

Use	Required Spaces
Restaurants, taverns, lounges, night clubs, meeting room/banquet hall	One space per 50 square feet customer floor space [NOTE: see separate requirements for walk up or drive in restaurants]
Shopping center: 25,000 to 400,000 square feet 400,000 to 600,000 square feet More than 600,000 square feet	Per 1,000 square feet customer floor space: 4.0 spaces 4.25 spaces 4.5 spaces
Single-family detached dwellings, two-family dwellings, semi-detached dwellings, townhouses, mansion apartment houses	Two spaces per unit
Small scale brewery, distillery or winery	One space per 50 gross square feet of tasting room or similar public spaces, and for the manufacturing and/or warehousing area, the greater of one space per employee on the maximum working shift or one space per 1,000 gross square feet.
Swimming pool	One space per every seven persons lawfully permitted at any one time
Theaters, auditoriums, stadiums	One space per every four seats
Townhouses or single-family attached dwellings	Two spaces per unit
Transportation terminals (trucking, etc.)	One space per main shift employee
Two-family dwelling	Two spaces per unit
Warehouses or wholesale establishments	One space per 2,000 square feet gross floor space and one space for each 200 square feet net floor area of office or sales floor space

Unless otherwise enumerated in the above chart, the number of parking spaces required shall be determined by the Zoning Administrator based on the standards found in the Institute of Transportation Engineers *Parking Generation Manual, 3rd Edition*. When a use is not addressed in the *Parking Generation Manual*, the Zoning Administrator shall render an interpretation of the nearest use addressed in the Manual. Parties aggrieved by the Zoning Administrator’s assignment of appropriate classification based on the above reference may appeal said decision to the Board of Zoning Appeals.

5. Off-Site Parking.

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

For public assembly uses of 1,000 seats or greater (such as civic centers, sports venues, religious sanctuaries and performing arts theaters) in the CC-MU District, this provision may be applied when the off-premise parking is located within 1,500 feet of the subject property. Also, see the parking study provisions permitted in the CC-MU Zoning District. Sufficiency of such parking proposed pursuant to this provision shall be determined by the Planning Commission through review and approval of a site plan.

6. Handicapped Parking.

Handicapped parking shall be in conformance with the “*Maryland Accessibility Code*,” COMAR 05.02.02., as administered by the Chief Code Official.

This page intentionally left blank.

P. Reserved.

This page intentionally left blank.

Q. Wireless Communications Facilities (WCF).**1. Purpose.**

It is the purpose of this Article to facilitate the provision of wireless communications services in our community, while at the same time protecting the City's residential neighborhoods and historic districts from unsightly and incompatible intrusions. To achieve this purpose, this Article identifies sites, structures, and zoning districts where the location of wireless communication facilities are preferred and delineates uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in the City of Hagerstown. These provisions shall only apply to wireless communication facilities located outside of the public right-of-way. For facilities proposed for location within the public right-of-way, contact the City Engineer.

2. Requirements and Standards for Wireless Communications Facilities.

The following regulations shall apply to all Wireless Communication Facilities, except those operated by a federally licensed amateur radio operator:

- a. **Standard of Care.** All wireless communication facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the Maryland Building Performance Standards and National Electrical Code. Wireless communication facilities shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the City.
- b. **Permitted in all zoning districts with priority given to certain locations and zoning districts.** Wireless communication facilities are permitted pursuant to this zoning ordinance in all zoning districts throughout the City, so long as they comply with all of the terms and conditions of this ordinance and other pertinent ordinances of the City Code.
- c. **Wind.** Wireless communication facilities shall be designed to withstand the effects of wind gusts to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended)
- d. **Aviation safety.** Wireless communication facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- e. **Public safety communications and other communication services.** Wireless communication facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- f. **Radio frequency emissions.** A wireless communication antenna shall not, by itself or in conjunction with other antennas and/or communication towers, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office or Engineering Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.

-
- g. **Removal.** In the event that use of a Wireless Communications Facility is discontinued, the owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned wireless communication antennas or structures shall be removed as follows:
1. All abandoned or unused wireless communication antennas and related equipment and structures shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the City.
 2. If the wireless communications antenna or related equipment and structures is not removed within two (2) months of the cessation at a site, or within any longer period approved by the City, the antenna or related equipment and structures may be removed by the City. As security, the City reserves the right to the salvage value of any removed antenna or related equipment and structures, if such facilities are not removed by the owner within the specific timeframe enumerated in this ordinance.
- h. **Indemnification.** Each person that owns or operates a WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the communication antenna. Each person that owns or operates a WCF shall submit a Certificate of Insurance with the building permit naming the City as an additional insured and certificate holder. Each person that owns or operates a WCF shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgements, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- i. **Maintenance.** To the extent permitted by law, the following maintenance requirements shall apply:
1. The communication antenna shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 2. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the City's residents.
 3. All maintenance activities shall utilize nothing less than the best available technology for preventing failure and accidents.
- j. **Removal, replacement and modification.**
1. To the extent permitted by law, the removal and replacement of communication antennas and/or related equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not substantially change the overall size of the wireless support structure.

2. To the extent permitted by law, any material modification to a WCF shall require notice to be provided to the City, and possible supplemental permit approval to the original permit or authorization as specified in 3.b.9 below.

3. Development Standards.

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

- a. **Location Standards.** Prioritized locations for wireless communication facilities in the city include the following in order of priority with one (1) being the highest priority and four (4) being the lowest priority:

1. Co-located on existing wireless communication facilities;
2. On properties owned by an agency of local, State or Federal government or located in the INST Zoning District;
3. On properties located in the IR, IG, I-MU, and AT Zoning Districts;
4. On properties located in the POM, CG, and CR Zoning Districts;

If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why all sites of higher priority were not selected. If the proposed site is not proposed for any of the identified priorities listed above, special exception approval is required from the Board of Zoning Appeals. The applicant seeking such exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred if the special exception was not granted for the proposed site.

- b. **Design Standards.** The following design standards shall apply for new WCF installations and modification to existing installations.

1. **Co-location of Antenna Arrays on Existing Wireless Communications Support Structures in Any Zoning District.**

- (a) **Application Procedures.** If equipment facilities and/or sheds are located on the ground, a minor site plan is required unless the new equipment is proposed to be located in an existing fenced compound. A building permit must be obtained for all WCFs and attached WCFs.
- (b) **Height and Setback.** There are no height and setback restrictions.
- (c) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view. In cases where equipment is proposed to be added to an existing compound where the fenced area is not screened with

landscaping, the Zoning Administrator may require installation of that landscaping consistent with current standards, but a site plan will not be required if they only improvement outside of an existing compound is the addition of landscaping.

(d) **Timing of Approval.** Per the FCC's 2009 and 2014 rulings, review shall be expedited to ensure:

(1) The applicant is notified within 30 days of submittal of any required additional information; and

(2) The City makes its final decision on whether to approve the application within 90 days of a complete application being submitted by the applicant.

2. **Small Wireless Communication Facility in Any Zoning District.**

(a) **Application Procedures.** If the small wireless communication antenna is attached to an existing structure, but new equipment facilities and/or sheds are located on the ground, a minor site plan will not be required unless located within an existing fenced compound. If a small wireless communication facility is located in a historic district, the application must be approved by the Historic District Commission in the Certificate of Appropriateness process. If a new structure is constructed to support a small wireless communication antenna which is not located in an existing wireless communication compound, a site plan must be approved by the Planning Commission. When all support structures and lines are located within an existing compound, but the compound is not landscaped in accordance with the requirements of this Section, a minor site plan is not required but accurate drawings showing the addition of landscaping to bring the compound into compliance with this Section will be required at the building permit stage. A building permit must be obtained for all WCFs and attached WCFs.

(b) **Height.** There are no height restrictions for antenna arrays attached to publicly used or owned structures. Antenna arrays attached to any other existing building or structure shall not project more than fifteen (15) feet above the highest point of the building or structure. Per FCC ruling, any structure constructed to support small wireless communication antennas shall be subject to the following height maximums:

(1) No taller than 50 feet in height, or

(2) No more than 10 percent taller than other adjacent structures.

(c) **Setback.** For attached antenna, the setback requirement is the same as for the underlying zoning district. For a stealth structure, the setback is as specified

in 3(c) below. For any other structure, it shall be setback a minimum distance from any property line equal to 125% of the proposed tower height.

- (d) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view. When located in an historic district, it is recommended that the micro antenna and any necessary support devices be painted and/or positioned to minimize its visual impact and to protect the historic character of the affected building and neighboring buildings.
 - (e) **Timing of Approval.** Per the FCC's 2019 ruling, review shall be expedited to ensure:
 - (1) The applicant is notified within 10 days of submittal of any required additional information; and
 - (2) The City makes its final decision on whether to approve the application within 60 days of a complete application being submitted by the applicant for collocation or 90 days of a complete application being submitted by the applicant for a new structure.
3. **WCF, Attached or With Support Structure, of Stealth Design in Any Zoning District.**
- (a) **Application Procedures.** If equipment facilities and/or sheds are located on the ground, a minor site plan is required. A building permit must be obtained for all WCFs and attached WCFs.
 - (b) **Height.** A wireless communications facility constructed in a stealth application in accordance with this section shall be subject to the same height limitation as would apply to the building or structure if it were not being used to contain a telecommunications facility, unless a variance is approved by the Board of Zoning Appeals. However, a stealth structure marquee concealment shall comply with the WCF height limitations found in Subsection 6(c) below.
 - (c) **Setback.** The setback requirement is the same as for the underlying zoning district, unless the stealth structure is a disguised tower or pole, camouflaged as something such as a tree, flagpole or other item not subject to a height or setback limitation imposed by this Ordinance, or a marquee concealment in which case the tower shall be setback a minimum distance from any property line equal to 125% of the proposed tower height.
 - (d) **Screening.** The antenna array and any necessary support devices must be hidden from view through some form of stealth design. This may include location inside a steeple, clock tower, smoke stack, chimney, etc., or disguised as a tree, monument, clock tower, flagpole, field light pole, utility pole, or other object which might reasonably be expected to be found in the underlying zoning

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

- (e) **Limitations on Marquee Concealment.** Marquee Concealment, using graphics at the top of a tower to approximate a sign in order to disguise the intent of the structure as a WCF, shall be permitted only on properties owned and used by an agency of local, State or Federal government, or on property used for institutional purposes. Since the primary purpose of such a structure is the underlying communication facility and the graphics mounted thereon are almost entirely intended only for the purpose of concealment and stealth of the WCF, the graphics affixed to such a facility shall not be otherwise subject to the requirements of this Article governing signs. Such graphics shall serve only to identify the principal use of the property and shall not be used as an off-premise sign as regulated by Chapter 204 of the City Code.
- (f) **Timing of Approval.** Per the FCC's 2009 and 2014 rulings, review shall be expedited to ensure:
 - (1) The applicant is notified within 30 days of submittal of any required additional information; and
 - (2) The City makes its final decision on whether to approve the application within 90 days of a complete application being submitted by the applicant for collocation or 150 days of a complete application being submitted by the applicant for a new structure.

4. **Attached WCF in All Districts With The Exception of Historic Districts.**

- (a) **Application Procedures.** If equipment facilities and/or sheds are located on the ground, a minor site plan is required. A building permit must be obtained for all WCFs and attached WCFs.
- (b) **Height.** There are no height restrictions for antenna arrays attached to publicly used or owned structures. Antenna arrays attached to any other existing building or structure shall not project more than 15 feet above the highest point of the building or structure.
- (c) **Setback.** The setback requirement is the same as for the underlying zoning district.
- (d) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view. In the CC-MU, CL, RMOD, RMED, RH (residential uses), RO, and AT District, the antenna array and any necessary support devices shall be painted and/or positioned to minimize the visual impact to the surrounding uses.
- (e) **Timing of Approval.** Per the FCC's 2009 and 2014 rulings, review shall be expedited to ensure:

- (1) The applicant is notified within 30 days of submittal of any required additional information; and
- (2) The City makes its final decision on whether to approve the application within 90 days of a complete application being submitted by the applicant.

5. **Attached WCF in Historic Districts.**

- (a) **Application Procedures.** This is a two-step application process. First, the application must be approved by the Historic District Commission in the Certificate of Appropriateness process. Following approval, a building permit is required.

If equipment facilities and/or sheds are located on the ground a minor site plan is also required.

- (b) **Height.** There are no height restrictions for antenna arrays attached to publicly used or owned structures. Antenna arrays attached to any other existing building or structure shall not project more than 15 feet above the highest point of the building or structure.
- (c) **Setback.** The setback requirement is the same as for the underlying zoning district.
- (d) **Screening.** The antenna array and any necessary support devices shall be painted and/or positioned to minimize its visual impact and to protect the historic character of the affected building and neighboring buildings. Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.
- (e) **Timing of Approval.** Per the FCC’s 2009 and 2014 rulings, review shall be expedited to ensure:
 - (1) The applicant is notified within 30 days of submittal of any required additional information; and
 - (2) The City makes its final decision on whether to approve the application within 90 days of a complete application being submitted by the applicant.

6. **WCF in Any Zoning District.**

- (a) **Application Procedures.** This is a two-step application. First, the application must be approved by the Planning Commission in the site plan review process.

Following approval, a building permit is required. The site plan will show all future co-location pad sites within the compound in order to eliminate the necessity of new site plans each time a cabinet is added.

(b) **Submittal Requirements.**

- (1) A Co-location Study to demonstrate that co-location of the antenna array is not possible on any existing WCF support structures or other structures, including documentation from WCF tower owners refusing co-location stating reason for refusal;
- (2) A feasibility study is required if proposed for a non-priority zoning district to demonstrate that locations in the AT, POM, INST, I-MU, IR, IG, CG and CR zoning districts were explored as preferred siting alternatives;
 - (i) A Visual Simulation to demonstrate the impact of the WCF on surrounding neighborhoods and historic districts; and
 - (ii) Any other support materials deemed necessary by the Planning Commission (and by the Board of Zoning Appeals, when applicable).

(c) **Height.** Maximum height shall be as shown in the following chart:

Zoning District	Maximum Height (feet)
RMOD, RMED, RH (residential principal uses), RO, and N-MU	50
RH (non-residential principal uses) and CC-MU	100
INST, POM, CG and CR	140
AT, I-MU, IR and IG	199

Any wireless communication facility not meeting the above maximum height for the zoning district must receive special exception approval of the Board of Zoning Appeals.

- (d) **Setback.** The setback requirement is the same as for the underlying zoning district, with the following addition: WCFs must be setback a minimum distance from any property line equal to one hundred twenty-five percent (125%) of the proposed tower height.
- (e) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.
- (f) **Lighting and Fencing.** The top of the WCF shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable authority. If lighting is required, the Planning Commission shall review the

available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Security fencing shall be erected around the WCF support structure and equipment facility as a means of preventing non-authorized access to the WCF.

- (g) **Timing of Approval.** Per the FCC's 2009 and 2014 rulings, review shall be expedited to ensure:
 - (1) The applicant is notified within 30 days of submittal of any required additional information; and
 - (2) The City makes its final decision on whether to approve the application within 150 days of a complete application being submitted by the applicant.

7. **Cell on Wheels (COW) in Any District.**

When a COW is used in any zoning district, it shall be permitted in accordance with the temporary use permit section of this Article (See Section R).

8. **Temporary WCF in any Zoning District.**

- (a) **Application Procedures.** A minor site plan is required, if the disturbance is less than 5000 square feet, with approval by staff. For projects involving more than 5000 square feet of disturbance, a site plan will be required and shall be reviewed and approved by the Planning Commission. Following approval by the Planning Commission, a building permit is required.
- (b) **Height.** The height restriction shall be determined by the Chief Code Official, based on intended positioning and/or construction method.
- (c) **Setback.** The setback requirement is the same as for the underlying zoning district.
- (d) **Screening.** The WCF shall be positioned to minimize the visual impact to the surrounding uses. Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.

9. **Modification to an existing WCF installation.**

- (a) **Application Procedures.** If an existing tower is to be replaced or new equipment facilities and/or sheds are located on the ground, a minor site plan is required. A building permit must be obtained for all WCFs and attached WCFs.
- (b) **Height and Setback.** The same height and setback restrictions apply as granted with the original approval for the WCF installation. If additional height is required then permitted for the type of WCF installation specified above, a special exception approval is required by the Board of Zoning Appeals.

- (c) **Screening.** Landscaping and privacy screening shall be employed to screen outdoor equipment facilities from view.
- (d) **Timing of Approval.** If proposed changes do not substantially change the dimensions of the existing wireless support structure or the proposal otherwise falls under the pertinent provisions of the FCC's 2012 and 2014 Rulings, review shall be expedited to ensure:
 - (1) The applicant is notified within 30 days of submittal of any required additional information; and
 - (2) The City makes its final decision on whether to approve the application within 60 days of a complete application being submitted by the Applicant.

4. Exemption.

City residents and businesses utilizing micro wireless antenna and satellite dishes for the purpose of maintaining television, telephone, radio and/or internet connections at their respective residences or businesses, as well as amateur radio, are exempt from the provisions of this Article. A building permit must be obtained for all WCF's and attached WCF's.

R. Temporary Uses.**1. Authorization of Temporary Uses.**

The Zoning Administrator shall have the authority to authorize a temporary use of land, in any district, for a period not exceeding 30 days, provided the land shall be entirely cleared of such use within five days after such temporary authority expires. Up to three extensions of the temporary uses may be granted by the Zoning Administrator for periods not exceeding 30 days each, up to a maximum limit of 120 days. The extension may be approved upon written request if there are no modifications of the use and no complaints regarding the temporary use have been received. Requests for extension of a temporary use that involve any use modification or that is the subject of a complaint will be processed in accordance with the procedures for the original temporary use approval.

2. Criteria for Approval.

A temporary use may be approved if the Zoning Administrator determines that:

- a. The use will not adversely affect adjacent properties.
- b. The use does not require significant or permanent changes to the existing topography, vegetation, structures or other features of the site, and will be returned to the same or better condition upon expiration of the use.

3. Procedures.

The Zoning Administrator shall provide written notice of the request for a temporary use to all adjacent properties a minimum of 15 days prior to issuing a temporary use zoning certificate and allow adjoining property owners and occupants the opportunity to comment on the proposal. The Zoning Administrator shall approve, approve with conditions or deny the application for a temporary use. Appeals from the decision of the Zoning Administrator shall be to the Board of Zoning Appeals and shall be heard by the Board on original jurisdiction, as if the Zoning Administrator's process never occurred. Appeals must be filed within 30 days of the date of the Decision and Order per Article 8.B.

4. Limitations and Samples.

- a. **Limitations.** The temporary use process shall not be used to advance the occupancy of a use that is otherwise permitted by this Article by right or special exception and intended for ongoing occupancy, but has not yet secured necessary planning, zoning and building permit approvals or is intended to engage in trade without securing a fixed and enclosed place of business.
- b. **Sample Uses That Warrant a Temporary Use Permit.** Some uses that would warrant a temporary use permit would include, but not be limited to, sets for movie production companies, special events, fund raising carnivals, Christmas tree sales and similar seasonal temporary uses, decorator show houses held as a fund raiser for a not-for-profit organization, off-site construction staging areas and location of mobile sales and management offices on a construction site in advance of final approval of site plans and building permits. Temporary Use Permits for the sale of fireworks are specifically prohibited.

This page intentionally left blank.

S. Zoning Permit and Site Plan Requirements.**1. Zoning Permits.****a. Zoning Permits Required.**

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

b. Pending Applications for Building Permits.

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

c. Information Required.

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

d. Effect of Approval.

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

e. **Filing Fees.**

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

f. **Expiration of Zoning Permit.**

- (1) **Zoning Certificate.** When zoning approval for a use or activity is issued for a use that does not involve development (reoccupying existing buildings and spaces), a zoning certificate shall expire when the use or activity is no longer conducted by the party to which it was issued. It is not transferrable. A new zoning certificate shall be required when the activity or uses is transferred to a new owner, tenant or operator.
- (2) **Zoning Approval Through Site Plan Approval.** If the work described in any zoning permit has not begun within six months from the date of issuance thereof, said permit shall automatically expire; it shall be canceled by the Zoning Administrator, and written notice by certified mail thereof shall be given to the persons affected. However, failure to send such notice shall not be a prerequisite to the automatic expiration of said permit. If the work described in any zoning permit has not been completed within two years of the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected together with notice that further work as described in the canceled permit shall not proceed unless and until a new zoning permit has been obtained.

g. **Zoning Permit Revocation.**

A zoning certificate (including zoning approval of a building permit) may be revoked by the Zoning Administrator if the recipient of the certificate fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Chapter, the list of permitted uses as found in Section Z of this Article, an approved site plan, or any other requirement lawfully

imposed in connection with the issuance of the zoning certificate or zoning approval of the building permit.

The Zoning Administrator shall provide the recipient of the zoning certificate or other zoning approval ten (10) days of notice of intent to revoke the certificate and shall inform the recipient of the alleged reasons for the revocation. Such notice is not required if, in the opinion of the Zoning Administrator, the violation is an immediate threat to property or public safety. If the certificate is revoked, the Zoning Administrator shall provide the holder of the zoning certificate a written statement of the decision and the reason therefore. The holder may appeal such decision to the Board of Zoning Appeals in accordance with the procedures for administrative appeal.

2. Site Plan Requirements and Duration.

a. Requirements.

- (1) Prerequisite to the issuance of a zoning permit, a site plan shall be submitted to the Zoning Administrator for approval by the Planning Commission for all new construction greater than 5,000 square feet, including disturbed area, or involving multiple-family dwellings, townhouses, churches and other places of worship, schools and other educational facilities, hospitals and health care facilities, parking lots and all commercial and industrial structures, or additions there to.
- (2) Prerequisite to the issuance of a zoning permit, a minor site plan shall be submitted to the Zoning Administrator for his or her approval for all new construction greater than 500 and less than 5,000 square feet, including disturbed area, involving apartment dwellings, townhouses, churches and other places of worship, schools and other educational facilities, hospitals and health care facilities, parking lots and all commercial and industrial structures, or additions there to.

The minor site plan shall meet all those requirements made of plans submitted under Subsections (1) and (2) above for Planning Commission review, unless specific plan requirements are waived by the Zoning Administrator, given the simplicity of the proposal or plan. The Zoning Administrator or the applicant may require Planning Commission site plan review as provided for in Subsection (1) above.

- (3) All new construction involving multiple-family dwellings, churches and other places of worship, schools and other educational facilities, hospitals and health care facilities, parking lots and all commercial and industrial structures, less than 500 square feet including disturbed area shall be subject to approval by the Zoning Administrator during the Building Permit review process. The plan shall be drawn to scale and accurately and correctly represent the existing conditions and proposed improvements to the degree that the Zoning Administrator deems necessary for sufficient review of the proposal for zoning compliance. The Zoning Administrator may require a minor site plan in accordance with Subsection (2) above, when in his or her judgment the proposal is of such extent or complexity to warrant more detailed review and plans, or when the

submission of successive plans under this subsection serves to circumvent the intent and need for site plans for significant construction.

- (4) Where the submission of a site plan or minor site plan is required under this section, approval of the site plan shall be based upon design principles and standards and required improvements set forth in the City of Hagerstown Subdivision and Land Development Ordinance (Article 5, Sections E and I of this Chapter), and other ordinances, regulations and policies established by the City.
 - (5) The provisions of this section shall not apply to the construction of single-family detached dwellings, two-family dwellings and single-family semi-detached dwellings and associated accessory structures thereof.
- b. **Submission Procedure.**
- (1) Site plans and minor site plans shall be prepared by a registered professional engineer, registered architect, registered landscape architect, registered land surveyor or professional planner (A.I.C.P.).
 - (2) A preliminary consultation may be held with the Planning Commission to discuss the general concept, use and design of the proposal. If consultation is desired, a generalized sketch or plat of the proposed site plan shall be submitted with five copies at least one week prior to the scheduled consultation and shall consist of location map, boundary, topography, and general proposed land uses drawn to scale.
 - (3) The site plan administrative review procedures shall be the same as those required for development plan review and approval pursuant to the Subdivision and Land Development Ordinance, (Article 5), including a sketch plan submittal and Planning Commission approval when necessary.
 - (4) The number and format of copies required shall be set by a policy adopted by the Planning and Code Administration Department, however additional copies shall be submitted as determined by the Planning and Code Administration Department in unusual situations. The Planning Commission shall notify the Zoning Administrator of its approval or disapproval of the site plan within 30 days from the date of formal submission to the Commission. However, failure to approve or disapprove a site plan within 30 days shall not constitute approval.
 - (5) Site plan submission is not required for single-family or two-family dwelling units unless planned as part of a Planned Unit Development, or specifically required elsewhere in this chapter.

c. **Duration.**

The purpose of a site plan or minor site plan is to set the final approved development of the site until such later time that new or revised plans are submitted for additions or redevelopment of a site. All improvements, including but not limited to conditions of approval, site configuration, parking space, and landscaping required in accordance with this Article shall be maintained on an ongoing basis. Failure to maintain features and improvements shown on an approved site plan constitutes a violation of this Chapter.

d. **Expiration.**

A site plan shall be considered void if the required permits are not secured and substantial construction accomplished within two years of the date the site plan is approved. A site plan shall expire in three years, unless re-approved by the Planning Commission and relevant agencies.

This page intentionally left blank.

T. Historic District Review.**1. Application.**

Before the construction, alteration, reconstruction, relocation, or demolition of any landmark or site or structure within an historic district, if any exterior work is involved which would change the exterior appearance of the site or structure, the person, individual, firm, or corporation proposing to make the construction or change shall file an application with the City for a Certificate of Appropriateness or a Certificate of Hardship. The application of paint to previously painted surfaces and the changing of paint colors is exempt from this review process. Any window sign, as defined in Article 3, whether located on the interior or exterior of the window, shall be subject to this provision. Any window sign legally installed prior to October 30, 2015 shall be nonconforming, but once removed, shall not be reinstalled unless done so in accordance with the provisions of this Section.

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

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

2. Application Review.

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

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

The Historic District Commission shall review all proposed changes to structures and site features, however it shall evaluate leniently any change to sites that are not visible or not intended to be visible from a public right-of-way. Through its adopted Design Guidelines or an adopted policy, the Historic District Commission may adopt a list of types of work that it delegates authority to Staff for review based on the limited nature of the work.

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

- b. **Evaluation and Level of Significance.** The Historic District Commission shall be strict in its judgment of plans for sites or structures determined by research to be of historical, archaeological, or architectural significance and all work visible, or intended to be visible from a public street and public parks and public spaces. This provision does not extend to visibility from public alleys. The Historic District Commission shall be lenient in its judgment of plans for sites or structures of little historical, archaeological, or architectural significance, and for plans involving work that is not visible, or intended to be visible from public streets, public parks and public spaces, or for plans involving new construction, unless such plans would seriously impair the historical, archaeological, or architectural significance of the surrounding sites, structures, or districts. The Historic District Commission is not required to limit construction, reconstruction, or alteration to the architectural style of any one period.

3. Certificate of Appropriateness.

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

4. Certificate of Hardship.

When it is possible that the issuance of a Certificate of Appropriateness will render use of this provision unnecessary, the applicant shall first proceed with that application as described in Subsection 3 of this Section.

If a Certificate of Appropriateness is denied, or if the Zoning Administrator determines that the HDC, in the reasonable application of the standards in its Design Guidelines duly adopted by the Mayor and City Council, will likely be required to reject the application for a Certificate of Appropriateness, the applicant may apply directly for a Certificate of Hardship.

- a. **Application.** The property owner may apply for a Certificate of Hardship if he can show that a modification or denial of their proposal:
 - (1) Will cause undue financial hardship to the owner; or
 - (2) Will be a deterrent to a major improvement program which will be of substantial benefit to the city; or
 - (3) Will not be in the best interests of a majority of the persons in the community due to its obstruction or serious complication of a bona fide Major Economic Development Opportunity, or due to other reasons.

- b. **Burden of Proof on Applicant.** The burden of proof is on the property owner to prove to the Historic District Commission that its failure to approve a Certificate of Appropriateness will cause undue financial hardship to the owner, will be a deterrent to a major improvement program which will be of substantial benefit to the city, or will not be in the best interests of a majority of the persons in the community.

- c. **Submittal Requirements.** The Historic District Commission shall prescribe uniform submittal requirements, necessary for determining whether the following hardship standards have been met.
 - (1) Standard for determining that preservation of a site or structure would cause undue financial hardship:
 - (a) The site or structure is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
 - (b) The site or structure cannot be adapted for any other use, whether by the current owner or by a purchaser, which will meet reasonable investment-backed expectations; and
 - (c) Documented efforts to find a purchaser interested in acquiring the site or structure and preserving it have failed.

 - (2) Standard for determining that preservation of a site or structure will be a deterrent to a major improvement program which will be of substantial benefit to the city or will not be in the best interests of the majority of the persons in the community:
 - (a) The project is funded in the Capital Improvement Plan and Budget of the City of Hagerstown, the County Commissioners of Washington County (including the

- Washington County Free Library), the Washington County Board of Education (educational and administrative facilities only), the State of Maryland or the federal government, and the government agency has complete designs for the capital project; or
- (b) The site or structure is incompatible with the Comprehensive Plan's goals for the enhancement of that neighborhood and the community in general; or
 - (c) The HDC receives what it determines to be a satisfactory and detailed recommendation from the City Administrator or his or her designee in support of a project that is a bona fide Major Economic Development Opportunity, approved as such by the City Administrator or his or her designee after application of the then-current standards established by the City.
- (3) If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure, or for the relocation or demolition of a structure, the preservation of which the Historic District Commission considers to be of unusual importance to the city or unusual importance to the entire state or nation, the Historic District Commission shall attempt with the owner of the structure to formulate an economically feasible plan for the preservation of the site or structure.
- d. **Approval.** If an application is submitted for construction, reconstruction, alteration, relocation, or demolition affecting a site or the exterior of a structure and the Historic District Commission in reviewing the application finds that denial of the proposal will cause undue financial hardship to the owner, will be a deterrent to a major improvement program which will be of substantial benefit to the city, or will not be in the best interests of a majority of the persons in the community, then the Historic District Commission shall file a Certificate of Hardship with the City and a permit can be issued provided any conditions of approval are met.
 - e. **Documentation and Salvage of Buildings to be Demolished.** If a site or structure is to be demolished and the Historic District Commission has determined that it contains special historical, archaeological, or architectural components that can be removed before or during the demolition process, then these components or materials should be salvaged in a manner agreed to between the property owner and the Historic District Commission. The Historic District Commission shall be permitted to record the site or structure prior to demolition. This should include photographs, measured drawings, written architectural descriptions and historical data or additional on-site documentation by some other method within a time period of 60 days. When the building is being demolished in accordance with a Certificate of Hardship issued for a public works project, the HDC may require documentation of the existing building meeting current professional historic preservation standards be completed by the developer at the developer's expense.
 - f. **Denial.** In the event that the Historic District Commission denies a Certificate of Hardship or if a property owner does not have sufficient funds to properly maintain a site or structure and the City or other interested parties feel that preservation of the site or structure is worthy of future

consideration, then all means toward a Preservation Reserve status should be considered. The Historic District Commission shall have 90 days from the time it concludes that no economically feasible plan can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the site or structure.

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

5. Approval Time.

The Historic District Commission shall file with the City a certificate of its approval, modification, or rejection of all applications and plans submitted to it for review. Work shall not be commenced on any such project until such a Certificate of Appropriateness or a Certificate of Hardship has been filed, and the City shall not issue a building permit for such change or construction unless and until it has received such a Certificate of Appropriateness or a Certificate of Hardship. The failure of the Historic District Commission to act upon a completed application within 45 days from the date the completed application was filed shall be deemed to constitute automatic approval of the proposed changes unless an extension of this 45 day period is agreed upon mutually by the applicant and the Historic District Commission, or the application has been withdrawn.

6. Demolition of Potential Landmarks.

- a. **Consideration by Historic District Commission.** Whenever a permit for demolition is applied for in the City for a site or structure which is listed as a potential landmark in the Comprehensive Plan, but which is not designated as a landmark by the Mayor and City Council at the time of permit application, such application shall be forwarded to the Historic District Commission. No permit for demolition may be granted until the Historic District Commission has acted thereon as hereinafter provided.
- b. **Determination by the Historic District Commission.** Upon receipt of such application, the Historic District Commission shall make a finding as to the significance of the site or structure, under the criteria established in Subsection J.4.b, and recommend whether it should be designated a landmark.
 - (1) Where the Historic District Commission recommends that the site or structure be designated a landmark, it shall be forwarded as a Zoning Map amendment to the Planning Commission and Mayor and City Council. In the interim, the Chief Code Official shall withhold issuance of the permit until the Zoning Map amendment becomes effective, at which time the application shall be governed by the procedures established in Subsection T.1.

- (2) Where the Historic District Commission or the Mayor and City Council determines that the site or structure shall not be designated a landmark, it shall be removed from the Comprehensive Plan as a potential landmark and the Chief Code Official may forthwith issue the permit for demolition.
- (3) Time limits for Historic District Commission action. Within 45 days after the filing of a permit for demolition, the Historic District Commission shall render its findings and determinations with respect to an application. Failure to adhere to this time limit shall allow the permit to issue by operation of law.

7. Demolition by Neglect.

- a. **Record of Demolition by Neglect, Notice.** When, in the opinion of the Zoning Administrator, there is significant deterioration of a landmark, site, and/or structure located within a historic district as a result of willful neglect in the maintenance and/or repair of said landmark, site and/or structure, which deterioration threatens the imminent demolition of the landmark, site and/or structure, the Zoning Administrator shall provide written notice to the owner(s), the occupant(s) or any other person(s) responsible for the maintenance of the property, of the determination that the landmark, site and/or structure is being demolished by neglect, and specifying the deteriorated conditions found. The Notice shall provide that corrective action of the deteriorated condition(s) shall commence within 30 days of the receipt of said notice and shall be completed within a reasonable time thereafter, as specified by the Zoning Administrator. The notice shall also advise the recipient(s) that a hearing may be requested within 20 days after the receipt of said notice appealing the determination, the deteriorated condition(s) described in the notice, and/or the necessity of corrective action.

Demolition by neglect shall include, but is not limited to the following conditions:

- (1) The deterioration of exterior walls or other vertical supports.
- (2) The deterioration of roofs or other horizontal members.
- (3) The deterioration of exterior chimneys.
- (4) The deterioration or crumbling of exterior plaster, mortar or masonry.
- (5) The ineffective waterproofing of exterior walls, roofs and foundations, including broken windows and doors.
- (6) Deterioration resulting from damage due to weathering.
- (7) The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition.

- b. **Time for Corrective Action and Provision for Public Hearing.** Upon a timely request for hearing, an appeal hearing shall be held by the Historic District Commission (the “Commission”) no sooner than 30 days after written notice is provided to all interested parties. Within 30 days after conclusion of the hearing, unless such time is extended by the Commission at the request of the parties or upon the initiative of the Commission, the Commission shall issue a written opinion, affirming or reversing the decision of the Zoning Administrator, and containing its findings of fact and conclusions of law.

If the opinion of the Zoning Administrator is affirmed by the Commission, the owner or other interested party shall institute the corrective action within 30 days of the receipt of the written decision, with said work to be completed within a reasonable time thereafter.

- c. **Failure, Neglect or Refusal to Act; City Authority.** If the owner(s) or other interested person(s) receiving notice to take corrective action fails to do so within 30 days of receipt of the notice of the Zoning Administrator or receipt of the written decision of the Commission affirming the Zoning Administrator, the Zoning Administrator may employ the necessary labor, equipment and materials to perform the corrective action as expeditiously as possible. Any costs incurred in the performance of this corrective action will be the responsibility of the owner(s), or other interested person(s), and said amount shall be billed to that party. The actual costs of the corrective action and necessary remedial work required hereunder, if not paid by the owner(s) or other interested person(s), shall be charged to the owner(s) of record of such property on the next regular tax bill pursuant to Chapter 223-11 of the City Code.
- d. **Additional Remedies.** In addition to the remedial measures permitted in Subsection c. hereof, any owner(s) or interested person(s) failing to comply with a notice to take corrective action shall be guilty of a municipal infraction and subject to a fine of up to 500 dollars. Each day that a violation exists shall constitute a separate violation.

8. Demolitions Ordered by the Chief Code Official.

HDC review of a demolition of a structure shall not be required when the structure has been determined by the Chief Code Official to be an imminent threat to public safety and its immediate demolition or alteration is required. In such cases, the property owner shall be required to file an application with the HDC proposing how the site will be stabilized and improved (if necessary) in order for the vacant land area and any affected or newly created building facades to be consistent with the applicable Design Guidelines for the district in which it is located.

9. Human Burial Sites Preservation Advisory Board.

The Historic District Commission shall serve as a human burial sites preservation advisory board and provide advice and guidance to the Planning and Code Administration Department and the Planning Commission on human burial sites preservation issues as may be required by Article 5, Section K of this Chapter. The decisions of the Historic District Commission on such matters shall be advisory only, except where the property is located in an historic district and the proposed work would have otherwise come under the jurisdiction of the Historic District Commission set forth in Subsection T.1 of this Article.

10. Appeal Process.

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

11. Violations.

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

U. Board of Zoning Appeals - Applications, Notice, Powers and Duties.**1. Application and Notice for Interpretations, Special Exceptions and Variances.**

- a. Applications shall be filed with the Board of Zoning Appeals by the applicant at least 21 days in advance of the public hearing.
- b. The Board of Zoning Appeals shall advertise the hearing in accordance with the Land Use Article of the Annotated Code of Maryland in at least one newspaper of general circulation in the city once each week for two successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.
- c. Notice of said advertised hearings shall be posted on the property at least ten days prior to the public hearing at a location where the sign is readable from curbside, or a sidewalk in front of the property.
- d. The owner of the property or his or her agent shall be notified at the time of advertisement by mail of the date, time and place of the public hearing.

2. Appeals; Transmission of Records; Time Limitations.

Appeals to the Board of Zoning Appeals may be taken by any person who may have the right to appeal or by any department, board or bureau of the City affected by any decision of the Zoning Administrator. Such appeal shall be heard by the Board of Zoning Appeals at their next available meeting. The Zoning Administrator from whom the appeal is taken shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

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

3. Stay of Proceedings on Appeal.

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

4. Hearing An Appeal.

- a. **Notice of Hearing; Time Limit for Decision.** The Board of Zoning Appeals shall give public notice thereof by advertising in at least one newspaper of general circulation in the city once each week for two consecutive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing, as well as due notice to the parties in interest, and decide the same within 45 days of the hearing. Upon the hearing, any party may appear in person or by agent or by attorney. Failure to comply with this subsection by the Board of Zoning Appeals shall be construed as approval of a requested variance, special exception, or confirmation, expansion or change of a nonconforming use, and shall vacate a notice of violation appealed to the Board.
- b. **Continuances.** Upon request of the applicant or upon its own motion, the Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session.
- c. **Postponement of Hearing.** Upon request of the applicant or upon its own motion, the Board may postpone a scheduled hearing. Requests for postponement of a scheduled hearing shall be filed in writing with the Board not less than five working days prior to the date of the hearing. The granting of such requests shall be at the discretion of the Board.

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

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

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

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

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

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

7. Interpretations, Special Exceptions and Variances.

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

8. Criteria for Approval of Special Exceptions and Variances.

- a. **Special Exceptions.**

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

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

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

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

-
- (6) **Use Variances or Special Exceptions for Uses Not Enumerated As Such are Prohibited.** Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this article in the zone involved or any use expressly or by implication prohibited by the terms of this article in such zone.
- (7) **Specific Special Exception Criteria for Certain Uses.** The following special exception uses shall be subject to the following specific use standards. The Board of Zoning Appeals shall not approve a special exception unless the use complies with these requirements, and shall not grant a variance to the following standards.
- (a) Fitness & Recreational Sports Centers (71394), provided that:
- (i) The nature of the use will not materially or adversely conflict with the character of the neighborhood.
 - (ii) A pool shall not be located nearer than 75 feet from any property line nor nearer than 125 feet from any existing dwelling.
- (b) Bed and breakfast inns in an existing structure (721191):
- (i) There shall be no exterior evidence that a building is being used for any purpose other than a residence, except for one permitted sign of no more than two square feet.
 - (ii) Off-street parking shall be provided; one space per guest room. In no case shall parking be provided in a front yard. See Article 5, Section I.4.h(10)(a) for parking buffer requirements.
 - (iii) A site plan shall be submitted and approved by the Planning Commission prior to the issuance of the zoning certificate.
- (c) Uses permitted by right in the CL District of a type to serve the particular high-density residential development provided for in the RH District, as well as nearby residents, so long as located geographically on the same tract of land as the proposed new residential development:
- (i) The commercial use shall occupy no more than 10% of the tract area.
 - (ii) There shall be a phasing requirement which ensures that:
 - [a] The residential development will precede the commercial development; and
 - [b] The commercial development will never exceed the 10% ratio for the ultimate build-out of the residential development.
- (d) Mixed-Use Building of commercial and multi-family residential units in the RH District:

- (i) A mixed-use building shall be a multi-story structure with a minimum of three floors.
- (ii) The first floor of the structure may be occupied by commercial uses allowed by right in the CL District.
- (iii) At least 15% and no more than 33% of the structure shall be occupied by commercial uses.
- (iv) A mixed-use building shall have direct access to an arterial or major collector street as classified by the City Engineer.
- (v) A concept plan for the project shall be submitted for review by the Planning Commission which shall include at a minimum:
 - [a] Proposed development layout.
 - [b] Proposed architectural elevations.
 - [c] A tabulation of the square footage proposed for commercial and for residential uses.
 - [d] Proposed landscape beautification and buffering plans.
- (e) Hair, nail and skin care stores and dog grooming establishments in the RO Zoning District:
 - (i) Business use shall not exceed 1,000 square feet of floor area.
 - (ii) The property shall be located on a Collector Street (or higher) as shown on the Transportation Map of the Comprehensive Plan.
 - (iii) Shall be permitted only in a multi-family, mixed-use or non-residential building.
 - (iv) A plan for signs shall be submitted to the Board and made part of its review, and that (as may be modified) shall be approved as part of the special exception.
- (f) For specific requirements of Wireless Communications Facilities, see Section Q of this Article.

b. **Variances.**

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

- (1) **Unique Condition of Property.** Whereby due to exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property, or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property; and
- (2) **Minimum Necessary to Afford Relief.** The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property; and

- (3) **Compliance Would Preclude Common Use.** That the literal interpretation of the provisions of this Article would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Article; and
- (4) **No Special Privilege.** That granting the variance will not confer on the applicant any special privilege that is denied by this Article to other lands or structures with the same zoning; and
- (5) **Self-Created Hardship.** No variance shall be granted in any case where the applicant, owner or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Article; and
- (6) **Consistent With the Intent of the Ordinance.** That the granting of the variance will be in harmony with the general purpose and intent of this Article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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

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

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

Setback Variances in Cluster Subdivisions Prohibited. The Board of Zoning Appeals shall not grant a variance to the required building setbacks for residential uses and accessory buildings on residential properties where the lot for which the variance is sought was created at less than the minimum lot area requirement for the zoning district in which it is located through the cluster subdivision process. Creating lots that do not comply with minimum lot area requirements for the district is a self-created hardship which is a prohibition against granting relief through the variance process.

9. Decisions of the Board of Zoning Appeals.

In exercising the above-mentioned powers, the Board of Zoning Appeals may, so long as such action is in conformity with the terms of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made and issue a written opinion and orders to be enforced by the

Zoning Administrator as herein set forth. Decisions of the Board of Zoning Appeals shall be by the majority.

Except as provided in the next paragraph, if an application is disapproved by the Board of Zoning Appeals, the Board shall take no further action on another application for the same or substantially the same proposal on the same premises until after 12 months from the date of the last disapproval.

A subsequent application for the same or substantially the same proposal on the same premises may be filed if accompanied by an affidavit setting forth new and different grounds, which the applicant believes would be sufficient for the approval of the proposal contained in the application. After having considered the said application and the facts alleged in the accompanying affidavit, the Board may grant another hearing with the requisite legal notice, provided it is satisfied that new and different grounds or conditions exist which would have a bearing on the consideration of said proposal and would justify another hearing.

10. Variance Exception for Public Improvements.

There are occasions where the City of Hagerstown, Washington County Board of County Commissioners or the State of Maryland may enter into an arrangement to purchase part of a property in the furtherance of public interest (street right-of-way, park land, public building, etc.). When the land remaining to the owner is less than minimum lot standards for the district in which it is located, or a building is left closer to a property line than would otherwise be permitted by setback requirements, reduction of parking spaces below current minimum standards, or the development would no longer comply with other bulk requirements of this Article (or be driven further into noncompliance), neither the property owner nor the City, County or State shall be required to apply for and obtain variances for the proposed subdivision of that land.

V. Reserved.

W. Reserved.

X. Reserved.

Y. Reserved.

This page intentionally left blank.

Z. Chart of Permitted and Special Exception Uses.

Uses shall be principal permitted uses, special exception uses, or prohibited in each zoning district in accordance with the matrix found on the following pages. Some uses are permitted subject to performance and locational standards within a district, and the reader shall review the chart closely to determine whether locational or performance standards apply to a proposed use.

Blank	Not permitted.
P	Permitted-Principal Use.
P*	Permitted-Principal use in accordance with parking requirements (Section O).
P#	Permitted-Principal use in the POM district, subject to certain limitations enumerated in Subsection F.2.b(5).
P@	Permitted-Principal use in the N-MU and CC-MU districts, subject to certain enumerated requirements in Subsection E.7.
P**	Permitted-Principal use in the I-MU district, subject to certain enumerated requirements in Subsection H.8.
SE	Special Exception Use.

In interpreting the appropriateness of proposed uses, the North American Industry Classification System (U.S. 2002) (NAICS) will be considered along with other factors to determine similarity to delineated uses in the zoning districts. It is to be used as a guide, and not a default interpretation of the intent and purpose of this Article and is non-binding upon the Zoning Administrator.

USE CHART ORGANIZATION

Category	Residential Districts Chart	All Other Districts Chart
	Page	Page
Residential Uses	4-145	4-148
Public and Institutional Uses	4-146	4-150
Office and Professional Uses	4-146	4-152
Entertainment and Hospitality Uses	4-147	4-153
Broadcast and Production	-----	4-155
Service and Sales Industries	4-147	4-155
Automobile- and Transportation-Related Uses	-----	4-159
Industrial, Manufacturing and Heavy Land Uses	4-147	4-160
Temporary Uses	4-147	4-163

This page intentionally left blank.

1. USE CHART - AGRICULTURAL TRANSITION AND RESIDENTIAL ZONING DISTRICTS.

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.					
Use	Zoning District				
	AT	RMOD	RMED	RH	RO
Residential Uses					
One single-family dwelling per unit of land existing as of January 1, 2012.	P				
One dwelling, single-family, detached, per lot, subject to minimum lot requirements.		P	P	P	P
One dwelling, two-family, per lot, subject to minimum lot requirements.		P	P	P	P
One dwelling, single-family semi-detached, per lot, subject to minimum lot requirements.		P	P	P	P
One dwelling, townhouse, per lot, subject to minimum lot requirements.			P	P	P
Dwelling, quadraplex, in cluster developments only, subject to minimum lot requirements.			P	P	P
Dwelling, triplex, in cluster developments only, subject to minimum lot requirements.			P	P	P
Dwelling, new construction mansion house apartment, subject to minimum lot area requirements.				SE	P
Dwelling, stacked apartment, subject to minimum lot area requirements.				P	
Dwelling, courtyard apartment, subject to minimum lot requirements.				P	
Dwelling, mansion house apartment, in an existing building, subject to performance requirements cited in Subsection D.5.g.			P*		P*
Dwelling, multi-family, constructed for that purpose prior to October 1, 1956. Such use shall not have been expanded or enlarged to add additional units beyond that which was in existence prior to March 7, 1977. This does not include large homes converted to apartment use.		P	P		
Dwelling, Mansion House Over-Under Flats, subject to the requirements of Section D.5.g(2)			P		P
Rooming house in existing buildings, subject to conditions in Section K.19.				P	P
Alternative living units, small group homes and small halfway houses.		P	P	P	P
Large group homes and large halfway houses.				P	
Large group homes and large halfway houses, only in pre-1956 apartment buildings.		P			
Large group homes and large halfway houses, only in mansion house apartment buildings.			P		P
Continuing care retirement community (623311) on a minimum tract size of 20 acres.				P	
Model home sales office in dwellings or trailers in new home developments for use within the development, provided the type and location are shown on the approved site plan or development plan.		P	P	P	P

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.					
Use	Zoning District				
	AT	RMOD	RMED	RH	RO
Mobile Home Parks, subject to the design requirements found in Subsection D.5.h.				P	
One garage per lot that does not front a public street, subject to provisions of Subsection D.5.i.		P	P	P	P
Public and Institutional Uses					
Ambulance services (621910), fire protection (922160) and police protection (922120).		SE	SE	SE	SE
Adult day-care services (624120).		SE	SE	SE	SE
Cemetery, columbarium and mausoleum for humans (not pet cemeteries) and crematoriums.		SE	SE	SE	SE
Child day-care services (624410).		SE	SE	SE	SE
Commercial and private membership outdoor swimming pools, provided the pool meets distance requirements cited in Subsection D.5.j.		P*	P*	P*	
Community centers, including but not limited to cultural, civic and educational centers.		SE	SE	SE	SE
Country clubs, golf courses and summer camps.	P				
Fitness and recreational sports centers.		SE	SE	SE	SE
Municipal parking lots and decks.		P	P	P	P
Museums (712), except zoological parks.		SE	SE	SE	SE
Primary and secondary schools, public and private, provided all setback, parking and other regulations are met without variance.		P	P	P	P
Primary and secondary schools, public and private, for which setback, parking or other regulations cannot be met without variance.		SE	SE	SE	SE
Private parks, playgrounds and community gardens.		SE	SE	SE	SE
Public administration (92), except correctional institutions publicly-managed (922140) and privately-managed (561210).					P
Public parks.		P	P	P	P
Religious sanctuaries (8131) (church, synagogue, mosque, wedding chapel, etc.) with traditional accessory uses, provided all setback, parking and other regulations are met without variance or waiver and reuse of existing structures comply with setbacks.		P	P	P	P
Religious sanctuaries (8131) other than those described in the previous line, or not meeting all site design requirements.		SE	SE	SE	SE
Office and Professional Uses					
Administrative support services (561).					P*
Ambulatory health care services, with exception of outpatient substance abuse centers (621420).					P*
Colleges, universities, trade and commercial schools, except primary and secondary schools (611).		SE	SE	SE	SE
Finance and insurance (52), monetary authorities – central bank, credit intermediation and related activities (521-522), except pawn shops (522298).					P*

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.					
Use	Zoning District				
	AT	RMOD	RMED	RH	RO
Funeral homes (81221) including accessory crematories.		SE	SE	SE	P*
Hospitals, including psychiatric, substance abuse and specialty hospitals (622).				SE	
Nursing homes, assisted living facilities and rehabilitation centers				P	
Offices, business and professional (55 and 56), except waste management and remediation services (562).					P
Professional, scientific & technical services (54), except veterinary services.					P*
Entertainment and Hospitality Uses					
Agri-tourism.	P				
Bed & breakfast inns (721191).		SE	SE		SE
Camping and Campgrounds (7212)	SE				
Service and Sales Industries					
Farms in existence on the date of the adoption of this ordinance, or at the time of annexation into the city, may continue in use. Commercial farming operations may not be expanded with respect to area or intensity of usage, nor may the type of commercial agricultural use be altered.	P				
Hair, nail and skin care stores (81211) and dog grooming establishments.					SE
Kennels (812910).	P				
Mixed use building of commercial and residential units.				SE	P
Nurseries and greenhouses - the raising of plants for sale with attached commercial outlet (444220).	P				
Uses permitted by right in the CL District in a location to serve the needs of surrounding residential uses.				SE	
Wineries and vineyards (312130).	P				
Industrial, Manufacturing, and Heavy Land Uses					
Blacksmithing and farriers services.	P				
Temporary Uses					
Temporary Contractor Staging Facility, subject to provisions in Subsection K.13.	P	P	P	P	P
Temporary Uses, subject to provisions in Section R.	P	P	P	P	P

2. USE CHART – MIXED-USE, COMMERCIAL, INDUSTRIAL AND OVERLAY DISTRICTS.

This chart begins on the next page and contains the complete list of uses addressed by this ordinance. When a use is not permitted in the AT, RMOD, RMED, RH and RO Districts, that line was omitted from Chart 1.

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Residential Uses														
One single-family dwelling per unit of land existing as of January 1, 2012.														
One dwelling, single-family, detached, per lot, subject to minimum lot requirements.	P@	P@	P										P	P
One dwelling, two-family, per lot, subject to minimum lot requirements.	P@	P@	P										P	P
One dwelling, single-family semi-detached, per lot, subject to minimum lot requirements.	P@	P@	P								P	P	P	P
One dwelling, townhouse, per lot, subject to minimum lot requirements.	P@	P@									P		P	P
Dwelling, quadraplex, in cluster developments only, subject to minimum lot requirements.														
Dwelling, triplex, in cluster developments only, subject to minimum lot requirements.														
Dwelling, new construction mansion house apartment, subject to minimum lot area requirements.	P@	P@	P										P	P
Dwelling, stacked apartment, subject to minimum lot area requirements.	P@	P@									P	P		P
Dwelling, courtyard apartment, subject to minimum lot requirements.	P@													P
Dwelling, mansion house apartment, in an existing building, subject to performance requirements cited in Subsection D.5.g.		P*												
Dwelling, multi-family, constructed for that purpose prior to October 1, 1956. Such use shall not have been expanded or enlarged to add additional units beyond that which was in existence prior to March 7, 1977. This does not include large homes converted to apartment use.														

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Dwelling, mansion house apartment and stacked apartments, both new construction and conversion of existing buildings, subject to minimum lot area requirements and criteria in Subsection F.5.b.			P											
Dwelling, Mansion House Over-Under Flats, subject to the requirements of Section D.5.g(2)		P												
Dormitories for secondary and post-secondary educational institutions.		P												
Rooming house in existing buildings, subject to conditions in Section K.19.				P										
Rooming house in existing buildings outside the Smart Growth A&E District, subject to conditions in Section K.19.		P												
Rooming house in existing buildings, over 16 rooming units, subject to conditions in Section K.19.				SE										
Alternative living units, small group homes and small halfway houses.	P	P	P								P	P	P	P
Large group homes and large halfway houses.	P	P	P								P	P		
Large group homes and large halfway houses – in a PUD if the PUD development contains multi-family dwelling units.													P	P
Large group homes and large halfway houses, only in pre-1956 apartment buildings.														
Large group homes and large halfway houses, only in mansion house apartment buildings.														
Artist Live-Work Space in large former commercial, industrial or institutional buildings.	P	P						P	P		P			
Artist Live-Work Space in buildings approved for a Local Conversion District Overlay, without regulation on the size and composition of the resident household.												P		

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Up to two dwelling units in a building that previously contained no dwelling units or one dwelling unit, provided that commercial uses as outlined in the LC District are included within the building.												P		
Apartment dwellings legally in existence as a permitted, special exception or non-conforming use, where there is no increase in the number of dwelling units in a building that contains commercial uses, or will contain commercial units (Local Conversion only).												P		
Continuing care retirement community (6323111) on a minimum tract size of 20 acres.					P		P							P
Model home sales office in dwellings or trailers in new home developments for use within the development, provided the type and location are shown on the approved site plan or development plan.	P	P	P								P	P	P	P
Mobile Home Parks, subject to the design requirements found in Subsection D.5.h.														
One garage per lot that does not front a public street, subject to provisions of Subsection D.5.i.	P	P												
Public and Institutional Uses														
Ambulance services (621910), fire protection (922160) and police protection (922120).	SE	SE	SE	P	P	P	P	P	P	P				
Adult day-care services (624120).	P	P	SE	P	P	P	P	P			P		P	P
Cemetery, columbarium and mausoleum for humans (not pet cemeteries) and crematoriums.		SE					P		P	P				
Child day-care services (624410).	P	P	SE	P	P	P		P			P		P	P
Civic and social organizations (8134).	SE	P	SE	P	P				P		P	P	P	P

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Commercial parking lots and decks.	P	P		P										P
Commercial and private membership outdoor swimming pools, provided the pool meets distance requirements cited in Subsection D.5.j.				P			P						P	P
Community centers, including but not limited to cultural, civic and educational centers.	P	P	SE	P	P		P		P		P	P	P	P
Country clubs, golf courses and summer camps.													P	P
Fitness and recreational sports centers.	P	P	SE	P	P	P#	P	P**	P	P	P		P	P
Libraries.	P	P		P	P		P							P
Municipal parking lots and decks.	P	P		P										P
Museums (712), except zoological parks.	P	P		P	P		P		P	P	P	P		
Primary and secondary schools, public and private, provided all setback, parking and other regulations are met without variance.	P	P	P	P	P	P	P	P			P	P	P	
Primary and secondary schools, public and private, for which setback, parking or other regulations cannot be met without variance.	SE	P		SE		SE	SE	P						
Private parks, playgrounds and community gardens.	P	P					P						P	P
Public administration (92), except correctional institutions publicly-managed (922140) and privately-managed (561210).	P	P	SE	P	P	P	P	P	P	P	P			P
Public parks.	P	P	P	P	P	P	P	P	P	P	P	P	P	P

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Religious sanctuaries (8131) (church, synagogue, mosque, wedding chapel, etc.) with traditional accessory uses, provided all setback, parking and other regulations are met without variance or waiver and reuse of existing structures comply with setbacks.	P	P	SE	P			P						P	P
Religious sanctuaries (8131) other than those described in the previous line, or not meeting all site design requirements.	P	P	SE	P			P				P			
Office and Professional Uses														
Administrative support services (561).	P	P	SE	P	P	P		P	P	P	P	P		P
Ambulatory health care services, with exception of outpatient substance abuse centers (621420).	P	P	SE	P	P	P	P	P	P	P	P	P	P	P
Artist Studios	P	P	P	P	P			P	P	P	P	P	P	P
Banks, savings institutions & credit unions (521-522), except pawn shops (522298).	P	P	P	P	P	P		P			P	P	P	P
Business Service Centers (56143) and Quick Printing Services (323114).	P	P	P	P	P	P		P**			P	P	P	P
Colleges, universities, trade and commercial schools, except primary and secondary schools (611).	P	P	SE	P	P	P	P	P	P	P	P			P
Finance and insurance (52), monetary authorities – central bank, credit intermediation and related activities (521-522), except pawn shops (522298).	P	P	SE	P	P	P		P	P	P	P		P	P
Funeral homes (81221) including accessory crematories.		P	SE	P	P									
Hospitals, including psychiatric, substance abuse and specialty hospitals (622).				P	P	P	P	P						
Large animal veterinary clinic (541940).										P				

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Medical and diagnostic laboratories (6215).		P		P	P	P		P						P
Nursing homes, assisted living facilities and rehabilitation centers				P	P	P	P	P			P			P
Offices, business and professional (55 and 56), except waste management and remediation services (562).	P	P	SE	P	P	P		P	P	P	P	P	P	P
Offices for bonding, probation and parole of defendants in the criminal justice system, not within 500 feet of Public Square or within 250 feet of another such use.		P		P		P		P	P	P				
Outdoor Automated Teller Machines (ATM), not accessory to a banking institution.	P	P	P	P	P			P					P	P
Outpatient substance abuse centers, including disbursement of addiction treatment drugs.				P	P	P	P	P						P
Photography Studios.	P	P	P	P	P	P		P	P	P	P	P	P	P
Professional, scientific & technical services (54), except veterinary services.	P	P	SE	P	P	P		P	P	P	P	P	P	P
Veterinary services (54194), completely enclosed.	SE	SE	SE	P	P	P		P			P		P	P
Veterinary services (54194), with outdoor runs, not kennels (as defined in Article 3 and permitted in other districts).				SE	SE				P	P				
Entertainment and Hospitality Uses														
Adult entertainment business uses, subject to the provisions of Subsection F.2.b.(4).				P										
Agri-tourism.														
Amusement and recreation establishments (713120, 71395 and 713990).	P	P		P	P						P		P	P

**Land Management Code v3.7
Article 4: Zoning Ordinance**

City of Hagerstown, Maryland

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Banquet and reception facilities (722320).		P		P	P						P			
Bed & breakfast inns (721191).	P	P	P	P							P	P	P	P
Camping and Campgrounds (7212)														
Catering kitchens, for preparation of food for off-site delivery and associated office and storage use (722320).	P	P	P	P	P						P	P		P
Convention and Conference Centers.		P												
Convention and conference centers and banquet and reception facilities when part of a bona-fide hotel use on the same property.					P			P						P
Drinking places (722410) and brewpubs, distillery pubs and wine pubs within the Smart Growth A&E District.		P												
Drinking places (722410) and brewpubs, distillery pubs and wine pubs outside the Smart Growth A&E District.	SE	SE	SE	P	P						P		P	P
Entertainment club.	SE	SE		SE	P									P
Hotels and motels (72111).		P		P	P	P		P			P			P
Multi-purpose arenas for sporting events, entertainment and other assembly events.		P		P	P		P							P
Night clubs.	SE	P		P	P				P	P				P
Performing arts companies (7111).		P		P										P
Restaurants (7221 and 7222), no limit on size.	P	P		P	P	P#				P**	P		P	P

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Restaurants (7221 and 7222) not to exceed 3,000 square feet per establishment.			P								P	P		
Satellite Simulcast (off track) Betting Facilities.		P		P										P
Theater, movie (512131).		P		P	P									P
Theater, performing arts (711310).		P												
Tobacco stores and vapor and hookah lounges, located at least 500 feet from any existing tobacco store or vapor or hookah lounge.				P	P								P	P
Visitor Welcome Center.		P												
Visual and performing arts studios.		P		P	P				P		P	P	P	P
Broadcast and Production														
Broadcasting (515).		P						P	P	P	P			P
Broadcasting (515) except transmission points.				P	P	P								
Motion picture and sound recording industries (512).		P		P	P	P		P	P	P	P			P
Telecommunications (517).		P				P		P	P	P				P
Service and Sales Industries														
Check cashing services (522390).				P	P									P

**Land Management Code v3.7
Article 4: Zoning Ordinance**

City of Hagerstown, Maryland

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Convenience store without fuel pumps (445120).	P	P											P	P
Dry cleaning and laundry services (8123).	P	P	P	P	P	P#		P**	P	P	P	P	P	P
Electric vehicle charging station as a principal use of property.			SE	P	P			P	P	P	P			
Farms in existence on the date of the adoption of this ordinance, or at the time of annexation into the city, may continue in use. Commercial farming operations may not be expanded with respect to area or intensity of usage, nor may the type of commercial agricultural use be altered.														
Farm equipment and supply stores (444220).				P	P									
Flea Markets, subject to performance criteria found in Subsection F.2.b(10) or Subsection H.2.c, as applicable.				P					P	P				
Gasoline and diesel fuel, sale to the public.				P	P								P	P
Hair, nail and skin care stores (81211) and dog grooming establishments.									P					
Hair, nail and skin care stores, ear piercing services, hair replacement services, permanent makeup salons (81211) and dog grooming establishments.	P	P	P	P	P	P#		P**			P	P	P	P
Kennels (812910).														
Kennels, day boarding and over- night boarding, subject to conditions enumerated in Subsection F.2.b(7) (812910).				P	P									
Kennels, day boarding and over- night boarding, subject to conditions in I-MU enumerated in Subsection H.2.b (812910).								P	P	P				

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Internet publishing and broadcasting (516).	P	P		P	P	P		P	P	P	P		P	P
Internet service providers web search portals and data processing services (518).	P	P		P	P	P		P	P	P	P		P	P
Mixed use building of commercial and residential units.	P@	P@									P	P	P	P
Mixed-use building of Commercial and Residential Units, subject to criteria in Subsection F.5.b.			P											
Mixed use building(s) (new construction) of commercial and residential units, on a lot or parcel of 15 acres or less existing as of April 23, 2020, subject to criteria in Section F.2.b(9), and performance standards as found in Article 5, Section I.11.				P	P									
Newspaper publishers (511110).		P		P	P	P		P			P			
Nurseries and greenhouses - the raising of plants for sale with attached commercial outlet (444220).				P				SE	SE	P				
Outdoor vending machines entirely on private property in active use and not in a public street right-of-way, provided that the vending machines(s) comply with building setbacks unless abutting a building.	P	P	P	P	P			P						
Pawn shops (522298), provided a 500 foot separation is maintained from any other pawn shop (also see next page).				P										P
Personal and household goods repair and maintenance (8114).	P	P	P	P	P			P	P	P	P	P	P	P
Photo finishing (81292).	P	P		P	P	P		P					P	P
Produce stands (812910).	P	P	P	P	P	P		P	P	P	P	P	P	P

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Retail and wholesale sale of home improvement materials and supplies, with a minimum floor area of 25,000 square feet and a maximum of 75,000 square feet (444110).									P	P				
Retail and wholesale trade (44-45) excluding auto and other motor vehicle dealers unless all vehicle storage is indoors and excluding adult entertainment businesses – up to 5,000 square feet in net floor area per business. This provision shall also include retail bakeries (311811) and retail confectioneries (311320). Regulation of specific trade uses that are found elsewhere in this chart shall prevail. (Ed. Note: See Page 4-146 regarding gasoline sales)			P								P	P		
Same as above, up to 15,000 square feet in net floor area per business.	P					P#		P**						
Same as above, up to 75,000 square feet in net floor area per business.		P		P									P	
Same as above, no limit in floor area.					P									P
Retail and wholesale trade (44-45), and pawn shops (522298), up to 25% of the total gross square footage of floor area of the buildings on a single property or of the buildings in a unified development under common ownership spanning more than one property. A pawn shop is only permitted if 500 foot separation is maintained from any other pawn shop.									SE	SE				
Sale of fireworks only from single-user, freestanding buildings, not to exceed 5,000 square feet of floor area (453998).									P	P				
Tanning and depilatory salons (812199).	P	P	P	P	P	P#		P**			P	P	P	P
Tattoo parlors and massage parlors, steam baths and saunas (812199).		P		P									P	P

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Uses permitted by right in the CL District in a location to serve the needs of surrounding residential uses.											P			
Wineries and vineyards (312130).														
Automobile and Transportation Related Uses														
Automotive Repair & Maintenance (8111).			SE	P	P				P	P				P
Automotive Repair and Maintenance (8111) in buildings constructed prior to 2010 with outdoor storage and service areas screened with opaque fencing and landscaping in accordance with Article 5.								P						
Automobile and truck sales, subject to performance standards found in Subsection F.2.b(8) (4411 & 4412), including motor vehicle rental or leasing when a principal use. Storage of for-sale inventory and rental fleets shall be calculated separate from requirements for customer and employee parking.			P	P	P									
Commercial Bus Stops and Terminals, provided indoor waiting areas and restroom facilities are provided at all times buses may stop at the facility and buses pull entirely off of public streets to pick up and discharge passengers.		P		P					P	P				
Motor Vehicle Impound and Storage Lots, provided that a six-foot opaque fence encloses the storage yard and landscaped buffers are provided as required by Article 5, Subsection I.4.j when adjacent to residential, commercial or mixed-use zoning districts.									P	P				
Parking Lots & Garages (81293), private, commercial and municipal, including offsite parking lots maintained by and designated for a permitted or special exception use on a lot located within 500 feet.	P	P		P	P	P		P	P	P				

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Transit and Ground Transportation (485) provided area for parking vehicle fleets be enclosed with an opaque fence at least six feet in height (eight feet for buses and large trucks), maintained in good repair, with landscaping outside of the fence in accordance with the requirements of Article 5, and not including bus stations or terminals.									P	P				
Industrial, Manufacturing, and Heavy Land Uses														
Adult day care with vocational centers.		SE		P		SE		SE	P	P	P			P
Blacksmithing and farriers services.									P	P				
Breweries, wineries and distilleries.										P				
Breweries, wineries and distilleries, with interior space of 25,000 square feet of gross floor area or less.											P			P
Brewery, Distillery, Winery – Small Scale; 15,000 gross square feet or less in building area, with or without outdoor tables and no outdoor speaker system.		P									P			
Brewery, Distillery, Winery – Small Scale; 15,000 gross square feet or less in building area, in industrial buildings built before October 1, 1956, with or without outdoor tables and no outdoor speaker systems.				SE		SE			SE	SE				
Butchering.				P				P	P	P				
Carpet and upholstery cleaning services (56174).				P				P	P	P				P
Construction and landscaping contractors with storage yards.									P	P				
Fossil fuel electric power generation (221112).									P	P				

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Foundries (3315).										SE				
Indoor plant cultivation and processing facilities, when interior space is 25,000 square feet or less in gross floor area.		P				SE		P	P	P				P
Indoor plant cultivation and processing facilities, when interior space is over 25,000 square feet in gross floor area.		SE				SE		SE	P	P				
Landfills and rubble fills (562212).										SE				
Livestock auction facilities.										SE				
Manufacturing, Light, when interior space is 25,000 square feet or less in gross floor area.		P				SE		P	P	P	P			P
Manufacturing, Light, when interior space exceeds 25,000 square feet in gross floor area.		SE				SE		SE	P	P				
Manufacturing, General.								SE	P	P				
Manufacturing, Heavy.										P				
Motor vehicle supplies and new parts wholesalers (42112).									P	P				
Natural gas distribution (2212).										SE				
Other support activity for road transportation (48849).									P	P				
Petroleum and petroleum products wholesalers (4247).									SE	SE				
Rail transportation facilities with outdoor storage but without on- site processing.									P	P				

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Recycling Operation, with all sorting and separating activity occurring indoors.									P	P				
Remediation Service (562910).									SE	SE				
Research and development offices and laboratories, including physical, chemical and biological subjects.		SE			P	P		P	P	P				P
Self-Storage Mini-Warehouse Facilities (531130).									P	P				
Septic Tank and Related Service (562991).									SE	SE				
Social Service Industries (624).									P	P				
Solid waste collection (562111).										SE				
Specialty Trade Contractors (238).								P	P	P				
Specialty Trade Contractors (238), with storage and preparation confined to interior of building.				P										P
Vocational Rehabilitation Services (624310).						P		P	P	P	P		P	P
Warehousing and storage (493).								P	P	P				
Warehousing & Storage (493) in buildings erected prior to October 1, 1956.		P												
Warehouse/Flex space, provided warehouse space does not exceed more than 50% of the total gross floor area of the building.						SE		P						P
Wastewater treatment facilities (22132).									P	P				

The key to the symbols used below is found on page 4-133. Refer to page 4-6 for explanation of district name abbreviations.														
Use	Zoning District										Overlay Zoning			
	N-MU	CC-MU	CL	CG	CR	POM	INST	I-MU	IR	IG	C	LC	PUD-V	PUD-R
Wholesale and retail sales of products manufactured or stored on the premises in conjunction with any other principal permitted use.								P	P	P				P
Temporary Uses														
Temporary Contractor Staging Facility, subject to provisions in Subsection K.13.	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Temporary Uses, subject to provisions in Section R.	P	P	P	P	P	P	P	P	P	P	P	P	P	P

End of Article.

ARTICLE 5
Subdivision and Land Development Ordinance
Table of Contents

Section	Page
A. General Provisions	5 - 3
B. Reserved	5 - 7
C. Subdivision of Land Procedure	5 - 9
D. Reserved	5 - 19
E. Subdivision Design Principles and Standards	5 - 21
F. Subdivision and Site Plan Data Requirements	5 - 27
G. Required Improvements in Subdivisions	5 - 35
H. Required Dedication of Expanded and Planned Street Rights-of-Way	5 – 41
I. Site Plan Standards	5 – 43
J. Reserved	5 – 69
K. Land Development Protection of Human Burial Sites	5 – 71
Appendix: Certifications	5 - 75

This page intentionally left blank.

ARTICLE 5
Subdivision and Land Development Ordinance

A. General Provisions.

1. Title.

This Article shall be known and cited as the Subdivision and Land Development Ordinance, Hagerstown, Maryland, as amended.

2. Administration of Ordinance.

This Subdivision and Land Development Ordinance shall be administered by the Hagerstown Planning Commission. All applications, fees, maps, and documents relative to subdivision approval shall be submitted to the City of Hagerstown Planning and Code Administration Department for review and formal action by the Hagerstown Planning Commission, hereinafter referred to as the Commission.

3. Application and Interpretation.

No land within the incorporated area of Hagerstown, Maryland, shall be subdivided, nor shall any lot be sold or building erected in a subdivision as herein defined, until a plat of the subdivision is approved by the Commission and the plat properly filed and recorded by the Clerk of the Circuit Court for Washington County, Maryland.

Pursuant to the Land Use Article of the *Annotated Code of Maryland*, a Clerk of the Circuit Court shall not record a plat of a subdivision unless the plat has been approved by the Commission as required by law. Any subdivision plat recorded without Commission approval has only the legal effect of an unrecorded plat.

In their interpretation and application, the provisions of these Regulations shall be held to be minimum requirements to meet the stated purpose and intent of these Regulations. Where the provisions of these Regulations impose greater restrictions than those of any statute, other regulations, or ordinance, the provisions of these Regulations shall prevail. Where the provisions of any federal, state, or City statute, ordinance, or regulation impose greater restrictions than these Regulations, the provisions of such federal, state, or City statute, regulation, or ordinance shall prevail.

The transfer, whether by gift, purchase, or otherwise, of a portion of a lot, tract, or parcel of land, to the City of Hagerstown, or to any agency thereof, for the purpose of acquisition of a road right-of-way, may not be subject to these Regulations. However, prior to the exchange of title, the proposed acquisition shall be approved by the Hagerstown Planning Commission.

a. Mergers.

The divisions or mergers of residentially zoned land that involve conveyance between adjoining and contiguous parcels, may not be subject to these Regulations, provided that:

- (1) Neither the parcel being divided nor the parcel being enlarged are in a previously recorded subdivision.
- (2) The land conveyed shall be merged into the adjoining parcel, and common property line eliminated so as to form one lot.
- (3) The division shall not create a violation of the zoning regulations, except that conveyances are permitted between parcels which do not comply with current zoning bulk regulations if neither parcel becomes less complying. Merger of a noncomplying parcel into a larger parcel is also permitted.

b. Minor Subdivisions.

- (1) Exempt from Sketch and Development Plan. A Minor Subdivision as defined herein is exempt from the Sketch Plan and Development Plan. Initial submissions of Minor Subdivisions may be at the Final Plat stage.
- (2) Such subdivisions shall affect the entire parcel or tract.
- (3) The Zoning Administrator may permit Minor Subdivisions which are not in accordance with the minimum lot size requirements of the zoning regulations if:
 - (a) The Minor Subdivision improves the compliance of existing lots that do not meet current zoning bulk regulations by bringing the noncomplying lots as close to zoning compliance as possible; and
 - (b) The remainder of the parcel after the Minor Subdivision is in accordance with the zoning regulations.
 - (c) The subdivision of an existing duplex into two separate lots with a common wall.

c. Re-Subdivision or Boundary Line Adjustment.

Re-Subdivision plan approval is required in order to modify a previously recorded plat by adding or deleting lots or modifying lot lines. Provided there are no public road or private access place improvements required and no addition to the area previously recorded, a re-subdivision or boundary line adjustment is exempt from the Sketch Plan and Preliminary Plan procedures of this subtitle. Initial submissions may be at the Final Plat stage.

d. Adjustments to Recorded Plats.

- (1) The combination or recombination of a portion of previously subdivided and recorded lots may be approved by the Zoning Administrator if the total number of lots is not increased, and the resultant lots are equal to or exceed the standards of this Article.
- (2) However, where a tract, consisting of two or more parcels or lots of record is subdivided or re-subdivided by simplified or minor plat for the purpose of placing on their own lots existing townhouse units in zoning districts that do not permit townhouse units and/or if the new resultant lots do not comply with current lot area and width requirements for

townhouse development on individual lots in districts that permit townhouses, the owner may, when under common ownership, re-plat the property to abandon the townhouse lots and re-establish interior parcel or lot lines that existed at the time the simplified or minor plat was approved. When the tract is re-platted to abandon the interior townhouse lines and re-establish previous existing interior lot lines, the owner shall regain all rights thereto, as if the simplified or minor subdivision had never occurred. The townhouse structure shall be demolished prior to entering the re-platting process. Variances to bulk area requirements will not be required to abandon the simplified plat and re-establish those interior lot lines that existed when the simplified plat was created. No increase in the number of lots above existing shall be permitted.

4. Subdivision of Record.

Any plat or subdivision approved by the Zoning Administrator and/or the Planning Commission under the auspices of this Article and recorded among the Land Records of Washington County prior to the effective date of this Article shall be accepted as valid and no further approval by the Commission shall be required for the conveyance of lots so shown.

5. Definitions.

Article 3 of the Land Management Code shall govern all definitions as they apply to this Article.

6. Modification.

Where the Commission finds that unnecessary hardships may result from strict compliance with these Regulations, or where the Commission finds that modification of these standards is in the public interest or in the interest in achieving the best quality of development design, or protects environmentally sensitive features worthy of preservation that will otherwise be damaged or destroyed, it may vary the provisions found in Sections E and G of this Article, so that substantial justice may be done and the public interest secured, provided that such modification will not have the effect of nullifying the intent and purpose of these Regulations.

The applicant must establish that the request will meet one or more of the following conditions:

- a. Avoid an undue hardship that was not self-created and that results from the peculiar and uncommon conditions of the property;
- b. Avoid a clearly unreasonable requirement that would not serve any valid public purpose;
- c. Allow an alternative standard that is clearly proven by the applicant to provide equal or better results;
- d. Allow a layout or improvements that would clearly be more in the public interest than what would occur if the modification were not granted;
- e. Remove a requirement that is not appropriate, especially because of the small size of the proposed subdivision; or

- f. A modification may also be granted where necessary for preservation of environmentally sensitive features.

Where a modification is granted, the Commission may attach such conditions and safeguards as are deemed necessary to protect general public interest or the character of the neighborhood, and may require a guarantee or bond to assure compliance.

7. Assessment of Lots in a Subdivision.

The filing of plans with the Commission shall not constitute a basis for a change of tax assessment. When the final subdivision plat is filed with the Clerk of the Circuit Court for recording, it becomes public information, and a print of the plat so recorded is forwarded to the County Assessor office.

8. Appeals.

Appeals from the provisions of this Article shall be in accordance with the procedures set forth in Article 8 of this Code.

9. Amendments.

The Commission may recommend and the Mayor and City Council may adopt amendments to the provisions of these Regulations if it is determined, after public hearing and advance public notice of said hearing, that any such amendment will better the public interest and the general purpose of these Regulations, as defined in the Land Use Article of the *Annotated Code of Maryland*.

10. Repeal.

All other Ordinances, regulations, or statutes in conflict with the provisions of these Regulations or inconsistent with the provisions of these Regulations are hereby repealed to the extent necessary to give these Regulations full force and effect.

11. Severability and Separability.

Should any Article, Section, Subsection, or provision of these Regulations be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Subdivision Regulations as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

12. Effective Date.

This Ordinance was first adopted and became effective on March 1, 1976. It has been amended and revised on several occasions over time, including substantive amendments effective January 20, 2007, and inclusion within this larger Land Management Code effective September 26, 2008.

13. Violations and Penalties.

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

B. Reserved.

This page intentionally left blank.

C. Subdivision of Land Procedure.**1. Introduction.**

The procedure for obtaining approval of a Major subdivision consists of the following four steps:

- a. Sketch Plan/Preliminary Consultation and Approvals;
- b. Final erosion and sediment control/stormwater management review and approvals; and
- c. Development Plan Review and Approvals; and
- d. Final Plat Review and Approval.

With respect to the Planned Unit Development Process as outlined in the Zoning Ordinance, the Concept Plan and Exhibit approved by the Mayor and Council shall serve as the Sketch Plan for the purposes of this Article.

2. Sketch Plan Review and Preliminary Consultation.

The Sketch Plan/Preliminary Consultation process is intended to provide the applicant with an opportunity to resolve problems with respect to a subdivision early in the proceedings and to make necessary modifications and revisions prior to incurring the expense of preparing formal development plans. By definition, a Minor Subdivision is exempted from this process. In addition, in certain cases where the size and complexity of the proposed development is minimal, the Planning and Code Administration Department may advise the applicant to proceed to the Development Plan stage at the applicant's discretion.

- a. **Pre-Application Meeting with Staff.** A pre-application meeting or preliminary consultation is designed to introduce the applicant to the City's zoning and subdivision regulations and procedures, to discuss the applicant's objectives, and if needed or desired, to schedule a site inspection.
- b. **Site Inspection.** After the pre-application meeting, a site inspection of the property may be arranged. Appropriate parties may include members of the Planning Staff, other appropriate City officials, and the Planning Commission.

The purpose of the visit is to familiarize local officials with the property's existing conditions and special features, to identify potential site design issues, and to provide an informal opportunity to discuss site design concepts; potential locations for proposed buildings and street alignments, also including the general layout of designated greenway lands and open space (if applicable).

Comments made by municipal officials and staff or consultants shall be interpreted as being only suggestive. It shall be understood by all parties that no formal recommendations can be offered and no official decisions can be made at the Site Inspection. However, it is anticipated that observations will be utilized to develop a mutual understanding on the general approach for subdividing and developing the property.

- c. **Sketch Plan Submission.** The Sketch Plan diagrammatically illustrates a conceptual layout for lots, greenway lands, open space, building sites, and street alignments. It does not include hard

engineering data necessary for construction. However, the sketch plan must include the site environmental features, preliminary estimates of storm water management requirements, and design narrative required by the City's Storm water Management Ordinance. Submission of a Sketch Plan does not constitute formal filing of a plan with the City, and shall not commence the statutory review period. The Planning Commission shall review the Sketch Plan for consistency with the Policies and Goals of the Comprehensive Plan, with the criteria contained in the Zoning Ordinance, Forest Conservation Ordinance, and with other applicable City ordinances. Their review should advise the applicant of the extent to which the proposed subdivision or land development conforms to the relevant standards of this Article, and may suggest possible plan modifications that would increase its degree of conformance.

- d. **Review Elements.** The Planning Commission's review may include, but is not limited to:
- (1) The location of all areas proposed for land disturbance (streets, foundations, yards, storm water management areas, etc.) with respect to notable features of natural or cultural significance;
 - (2) The potential for street connections with existing streets, other proposed streets, or potential developments on adjoining parcels;
 - (3) The location of proposed access points along the existing road or street network;
 - (4) The proposed building density and impervious coverage.
 - (5) The availability and capacity of water and sewer.
 - (6) Proposed public improvements; highways or other major improvements planned by public authorities for future construction on or near the tract to the extent known to developer.
 - (7) Consideration of Forest Conservation and other environmentally sensitive areas, including but not limited to slopes of 15% percent or greater.
 - (8) Open space.
 - (9) Parking considerations.
 - (10) The extent to which the environmental site design (ESD) techniques have been incorporated into the design.

3. Sketch Plan Data Requirements and Planning Commission Review.

a. **Data Requirements.**

The required sketch plan shall contain, at a minimum, the data listed in Article 5, Subsection F.1, of this Article.

b. Planning Commission Review.

The Planning Commission shall review the Sketch Plan and the findings and recommendations and any other reports pertaining to the Plan, and provide comments, recommendations, and requirements as appropriate. The Planning Commission shall approve, approve with conditions, or disapprove the Sketch Plan.

- (1) If the Planning Commission grants the conditional approval of a Sketch Plan, the conditions and reasons thereof shall be stated in writing.
- (2) If the Planning Commission disapproves the Sketch Plan, the reasons for disapproval shall be stated in writing and reference shall be made to the specific sections of this Article and/or the Comprehensive Plan.
- (3) If the Planning Commission approves the Sketch Plan, the applicant is authorized to proceed with the preparation of a Development Plan. Approval of a Sketch Plan shall not incur any vesting rights.

4. Development Plan Review.

The Development Plan is intended to provide detailed information sufficient for a formal review by the various municipal reviewing agencies and other authorities and is to be used as a basis for construction. Final approval of the Development Plan is determined by the Planning Commission. This Plan shall conform to the Sketch Plan. The City shall review the Plan to assess its accuracy, conformance with municipal ordinances, and likely impact upon the surrounding neighborhood, upon the natural and cultural resources on the property, and the City as a whole.

5. Development Plan Data Requirements.

The developer shall file with the submission of the Development Plan all of the construction drawings and documents to complete construction of streets, utilities, engineering data, storm drains, and storm water management facilities, together with all necessary appurtenances thereto in accordance with procedures and criteria contained in the City of Hagerstown's, *Public Ways Construction Standards & Engineering Guidelines*. The developer shall prepare and submit copies as required to the Planning and Code Administration Department.

The required development plan shall contain, at a minimum, the data listed in Article 5, Subsection F.1 of this Article. The development plan shall also include a preliminary version of the final subdivision plat, showing the proposed location of lot lines and easements.

6. Development Plan Approval.

The Planning Commission shall review the Development Plan and the findings and recommendations and any other reports pertaining to the Plan, and shall approve, approve with conditions, or disapprove the Development Plan.

a. **Formal Notice of Approval.**

If the Planning Commission grants the conditional approval of the Development Plan, the conditions and reasons thereof shall be stated in writing.

b. **Formal Notice of Rejection.**

If the Planning Commission disapproves of the Development Plan, the reasons for disapproval shall be stated in writing and reference shall be made to the specific sections of this Article and/or the Comprehensive Plan.

c. **Signature and Effective Period of Plan.**

If the Planning Commission approves the Development Plan, approval of the Development Plan shall be noted by the Zoning Administrator signing and retaining as many copies as he or she may determine to be necessary for public use and record after any outstanding issues or conditions of approval are resolved by the applicant. The Zoning Administrator shall distribute signed copies to relevant agencies as set forth by Office policy. The Zoning Administrator may sign as many copies as the applicant deems necessary for their purposes. Approval of a Development Plan shall in no way constitute approval of the Final Plat. Development Plan approval shall be effective for a period of three years, and such additional three year periods as may be specifically approved in writing by the Commission.

d. **All Applicable Permits Required.**

Approval of the Development Plan by the Commission does not constitute permission to construct Required Improvements. Final storm water management plan approval must be obtained from the City Engineer and the Washington County Conservation District, and all required permits must be obtained from all applicable City agencies and state and federal agencies before construction may commence.

e. **Digital Submittal Before Construction.**

The digital submittal of the Development Plan and/or final storm water management plan as required by Subsection F.1 must be received prior to the issuance of construction permits. This is necessary for final house number addresses and integration into the utility infrastructure in the City's Geographic Information System (GIS).

f. **Field Modification of Approved Improvements.**

When changes or alterations of an approved Development Plan and/or final storm water management plan become necessary during construction, written approval of the changes shall be secured before execution of such changes. Implementing improvements that are not approved is a violation of the Ordinance, subject to enforcement and penalties. Requests for approval of changes must be submitted to the Planning and Code Administration Department, illustrating the proposed changes in red-line mark-ups of the approved plans. A digital submittal in accordance with Subsection F.1, is also required. Changes or alterations that are not shown as such, noted and illustrated, shall not be considered approved. Submittals shall be in accordance with policies

adopted by the Planning and Code Administration Department for required numbers of copies necessary for routing plans to affected agencies.

g. Administrative Approval of Minor Changes.

Changes that have little substantive impact on the overall Development Plan and/or final storm water management plan may be approved administratively by the Zoning Administrator. Substantial revisions must be reviewed by the Planning Commission. The Zoning Administrator reserves the right to require an applicant to obtain Planning Commission approval of any proposed amendment to the Development Plan and/or final storm water management plan.

7. Withdrawal.

A Development Plan, upon written request of the applicant, shall be withdrawn from consideration by the Commission.

8. Final Storm Water Management Plan Review.

The final storm water management plan is intended to provide detailed information on the engineering design of all proposed storm water management practices and erosion and sediment control techniques for the project. The final storm water management plan shall incorporate or address all comments received during the Sketch Plan and Development Review Plan processes.

9. Final Storm Water Management Plan Data Requirements.

The developer shall submit detailed construction drawings, reports, calculations, and other supporting documentation in accordance with the requirements of the City's Storm Water Management Ordinance.

10. Final Storm Water Management Plan Approval.

The City Engineer and the Washington County Conservation District shall review the Final Storm Water Management Plan and the findings and recommendations and any other reports pertaining to the Plan, and shall approve, approve with conditions, or disapprove the Final Storm Water Management Plan.

If the City Engineer approves the Final Storm Water Management Plan, approval by the City Engineer shall be noted by signing the said Plan.

11. Final Plat Review.

The purpose of the Final Plat is to require formal approval by the Commission before plats for subdivisions are recorded as required by these Regulations. The Final Plat shall conform to the approved Development Plan and shall reflect all changes required by the Commission pursuant to the Development Plan review procedure.

The Final Plat may constitute only that portion of a particular development phase of the approved Development Plan, which the developer proposes to construct and record at that time, provided that such portion conforms with all the requirements and standards of these Regulations.

a. **Wastewater Capacity Required.**

A Final Plat shall be approved only when the Planning Commission has determined that wastewater facilities will be adequate to support and service the proposed subdivision as regulated under the City's Sewer Capacity Allocation Program, as amended from time to time.

b. **Digital Submission and Standards.**

A digital submission of the Final Plat in a format utilizing commonly accepted engineering practices and one accepted and approved by the City Engineer shall be submitted, accompanying the final mylar. Existing, vacated, and proposed property line must be on unique layers for identification in the City's digital tax mapping system. All property line work shall be accessible on a separate layer.

c. **City Grid and Monument System.**

The work shall be tied to the City Grid and monument system (MD State Plane Coordinates NAD 83-epoch 1996). At a minimum, two field-identified property corners shall have City Grid coordinates identified, preferably along an exterior line or along a city right of way, at least 300 feet apart, if feasible.

12. Final Plat Data Requirements.

The required final plat shall contain, at a minimum, the data listed in Article 5, Subsection F.2, of this Article.

13. Final Plat Certification.

The following certifications and related information shall appear on the Final Plat:

- a. **Certification of Ownership and Dedication** signed and acknowledged by all parties having any record title interest in the land subdivided consenting to the preparation and recording of said Final Plat, establishing minimum building restriction lines and dedicating the following public uses: roads, streets, alleys, walks, utility and storm drainage rights-of-way, open space, and other areas approved for dedication to public use by the Commission.
- b. **Certification of Accuracy** signed by a registered land surveyor or property line surveyor responsible for the survey and Final Plat with seal.
- c. **Certification of the Maryland Department of Health and Mental Hygiene** signed by the Washington County Health Officer regarding the installation of water supply and wastewater systems.
- d. **Certification signed by the City Engineer** approving the installation of streets and other improvements as defined herein in accordance with City Standards where these improvements have been completed, dedicated and accepted by the City prior to Final Plat approval.
- e. **Certification signed by the City Clerk of the City of Hagerstown** acknowledging that a performance security in the amount determined by the appropriate City official(s) has been posted

with the City of Hagerstown guaranteeing completion of all improvements as defined herein in accordance with City Standards where these improvements have not been completed, dedicated and accepted by the City prior to Final Plat approval.

- f. **Certificate of Approval signed by the Chairman of the Commission** certifying that the subdivision shown on the Final Plat is in compliance with the Subdivision Regulations, Hagerstown, Maryland, and approving the Final Plat for recording with the Clerk of the Circuit Court of Washington County.
- g. **Additional Restrictions.** Any other restrictions or requirements relating to land use, height, area or bulk regulations or restrictions designed to promote the purposes of the Zoning Ordinance or Comprehensive Plan as determined by the Commission.
- h. **Covenants and Easements.** Protective covenants and easements, if any, in form for recording.

14. Final Plat Approval.

The Commission shall approve or disapprove the Final Plat, if all requirements of this Article have been complied with (including approval of any waivers thereto by the Planning Commission) within 30 days after the submission thereof by the Planning and Code Administration Department to the Commission. Otherwise such Final Plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Commission upon demand.

The applicant may waive the 30-day limitation and consent to an extension of such period.

- a. Approval of the Final Plat shall be noted by the signing of the Certificate of Approval by the Chairman of the Commission.
- b. If the Commission disapproves the Final Plat, it shall set forth the reasons for disapproval in its records and provide the applicant with written notification of such reasons.

Every Final Plat approved by the Commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the Comprehensive Plan and a part thereof.

15. Acceptance of Required Improvements.

Approval of the Final Plat shall not be deemed to constitute or effect an acceptance by the City of any Required Improvement shown upon the Final Plat. Acceptance of such Required Improvement shall be made only by the Mayor and City Council in accordance with these Regulations and other applicable ordinances, statutes and regulations.

16. Recordation.

The Final Record Plat shall be recorded with the Land Records Division, Clerk of the Circuit Court of Washington County, and shall be a clear and legible black line print on mylar. This print shall be an exact copy of the approved Final Plat as certified by the Chairman of the Commission. The Applicant/ Developer shall record the Final Plat.

a. **Six Months to Record.**

The Record Plat must be recorded with the Clerk of the Circuit Court of Washington County within six months of Planning Commission approval; if not, approval of the Final Plat by the Planning Commission shall be void.

b. **Recorded Copies.**

Within five working days of the date of recordation, the applicant shall submit to the Planning and Code Administration Department a reproducible and two black line prints of the Final Plat with proof of recordation affixed thereto. Failure to provide the Department with the appropriate documentation of recording within the time period specified shall constitute a violation of this Article and the applicant shall be subject to penalties as provided in Article 8, (Violations and Penalties).

17. Withdrawal.

A Final Plat, upon written request of the applicant, shall be withdrawn from consideration by the Commission.

18. Simplified Plat Procedure.

Where a Subdivision, as defined herein, is submitted, but the intent of the Subdivision is not for development purposes, a Simplified Plat may be submitted for approval by the Zoning Administrator, without the necessity of the applicant going before the Planning Commission.

Examples of Subdivisions not for development purposes are as follows: acquisition of additional acreage solely for property enlargement, a conveyance for acquisition purposes only, readjustment of property lines and/or correction of deed discrepancies, and conveyance of an existing structure for residential purposes only. Also, the creation of a plat for the purpose of implementing a condominium regime for existing structures and/or uses (including minor improvements thereto) that do not create additional dwelling units or habitable commercial or industrial space may be processed as a simplified plat.

The Planning Commission, Planning Director, Zoning Administrator or the applicant may require Commission approval as provided for in Subsection C.14.

a. **Data Requirements.**

The required simplified plat shall contain, at a minimum, the data listed in Subsection F.2 of this Article.

b. **Certifications and Documents.**

Each Simplified Plat submitted to the Commission for approval shall contain or be accompanied by such certificates, affidavits, endorsements or documents as may be required by the Commission in enforcement of these Regulations.

c. **Simplified Plat Approval.**

- (1) The Zoning Administrator shall approve or disapprove a Simplified Plat, if all Subdivision Regulations have been complied with, within 30 days after submission of the completed Plat. Otherwise such plat shall be deemed to have been approved and the certificate to that effect shall be issued by the Commission on demand. The grounds of disapproval of said Plat shall be stated upon the records of the Commission and the Applicant so notified in writing.
- (2) Approval of the Simplified Plat shall be noted by the signing of a certificate of approval by the Chairman of the Commission.

19. Condominium Plats.

No plat for the creation of condominium units within existing buildings or land condominium units shall be recorded in the Land Records of Washington County unless and until the plat is submitted to the Zoning Administrator for review and signature.

The review conducted by the Zoning Administrator shall be limited to verifying that there are no proposals, conditions or plans within the plat that would be a violation of the Zoning and Subdivision and Land Development Ordinances. Also, this review shall be for the purpose of verifying that the proposed use is permitted by the Zoning Ordinance, or if the existing use is illegal or nonconforming.

In the event that the condominium plat is for a use that is nonconforming to the Zoning Ordinance, confirmation of that use shall be secured by the applicant in accordance with the requirements of Article 4 prior to recording the condominium plat.

Condominium plats will be treated as a simplified plat for processing.

20. Plat Fees.

According to the fee schedule adopted by the Mayor and Council and amended from time to time.

21. Properties in Violation at Time of Application or Processing.

When a property with an open violation case or known violation of this Land Management Code is submitted into the subdivision process, the Zoning Administrator may suspend review and processing of the application pending resolution of the violation. Such suspension also suspends any review timing standards as set forth in this Chapter.

This page intentionally left blank.

D. Reserved.

This page intentionally left blank.

E. Subdivision Design Principles and Standards.**1. Application.****a. Design Principles.**

The subdivision plat shall conform to the principles which are generally exhibited in the Comprehensive Plan and Zoning Ordinance, and any other applicable ordinances, statutes or regulations included but not limited to the transportation element of the Comprehensive Plan and the City's Stormwater Management Ordinance.

b. Minimum Standards.

The standards and requirements outlined herein shall be considered minimum standards and requirements for the promotion of the public health, safety, and general welfare.

c. Remnants.

All portions of a tract being subdivided shall be taken up in lots, streets, public lands, stormwater management area, open space or other proposed uses, so that remnants and landlocked area shall not be created.

No land shall be subdivided unless there exists adequate access to the land over approved streets or roads as defined herein, or unless such access will be provided by the developer, or if such land is considered by the Commission to be unsuitable for such use by reason of flooding or improper drainage, geological structure, topography or any other feature harmful to the health, safety and general welfare of present and future residents of the City of Hagerstown.

2. Street Layout and Subdivision Design.**a. Standards.**

Arrangement, character, extent, width, grade and location of all streets shall conform to the transportation element of the Comprehensive Plan and the *Public Ways Construction Standards and Engineering Guidelines*; and shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and appropriate relation to the proposed uses of land to be served by such streets. Any proposed intersection with a state highway will be subject to the review and approval of the State Highway Administration.

b. Consideration of Existing Natural Features.

Street layout should consider natural and topographic features such as tree lines, hedgerows, stone walls, fence lines, and watercourses. Alteration of natural, cultural, or historic site features should be kept to the minimum necessary. Any prominent natural vistas should be emphasized.

c. Pedestrian, Transit, and other Transportation.

Many streets have purposes in addition to vehicular traffic and should be designed to incorporate bicycle, pedestrian, and public transit routes.

d. Connection to Existing Neighborhoods.

All development shall be reviewed for potential connections to new and existing neighborhoods. The overall street plan for any subdivision must provide access to the subdivision by a public street(s) connected to the existing road system. Multiple points of egress (two or more) are recommended. Developments of 51 to 100 units may be acceptable with one public street point of egress if an emergency access point is provided. Two or more public street access points are required where the number of dwelling units exceeds 100. Streets within new subdivisions, where possible, shall align with and connect to those of adjacent subdivisions. New streets shall interconnect within a development and with adjoining development. The overall layout shall provide for continuation or appropriate projection of existing roads or streets (constructed, recorded, or planned) in the surrounding area.

e. When Connectivity Cannot be Accomplished.

Where topography or other significant conditions make continuance or projection of existing streets impossible or substantially impracticable, they shall still accomplish the transportation element of the Comprehensive Plan or to any specific area transportation plan, as approved by the Commission.

f. Access May Be Limited to Arterial Streets.

Where subdivision abuts or contains an existing or proposed arterial street or other streets with expected arterial traffic volumes as defined by the *Public Ways Construction Standards and Engineering Guidelines*, the Commission may limit access from individual lots and may require local access streets, deep lots with rear service alleys, or such other treatment. All lots shall front on a public street right-of-way.

g. Traditional Street Design Preferred.

Preferred designs are rectilinear street layouts, with occasional diagonal elements to enhance visual interest, and appropriate traffic calming measures as necessary; and curvilinear street layouts, in response to topography. Terminal vistas of protected open space or prominent structures should be incorporated into the design layout.

h. Future Connection to Undeveloped Land.

Street stubs shall be constructed adjacent to undeveloped land to provide for future connections. Temporary easements for turnarounds shall be provided at the boundary lines and appropriate arrangements shall be made for those parts of temporary turnarounds outside of street right-of-way to revert to abutting owners at such time as the street shall be extended.

i. Cul-de-Sacs.

Cul-de-sacs are discouraged and shall be allowed only where topographical considerations offer no practicable alternatives for connections or through traffic. Where a cul-de-sac is unavoidable, variations to standard cul-de-sac design shall be considered, including loop lanes, crescent design, or by incorporating a planting island at the terminus. Cul-de-sac streets shall not be longer than 600 feet from the nearest intersecting street.

j. Railroad Crossings.

A subdivision involving new or existing streets crossing railroad tracks shall provide adequate right-of-way and slope easements, for construction of an underpass or overpass.

k. Limit on Number of Approaches to an Intersection.

No street intersection shall include more than four street approaches.

l. Sidewalks.

Streets shall be bordered by sidewalks on both sides, excepting circumstances where a sidewalk on one side may be deemed sufficient, as recommended by the City Engineer and/or Planning and Code Administration Department, and approved by the Planning Commission.

m. Street Focus.

Streets shall be the focus of buildings. All buildings will front on public streets. Reverse frontage lots are discouraged unless unique conditions exist and the Planning Commission approves an adequate landscape plan to shield the rear yards of the lots.

n. Street Trees.

Street trees shall be provided in accordance with Subsection I.4.i of this Article.

o. Development and Use of Alleys Encouraged.

Alleys are a predominant Hagerstown feature and the use of alleys is encouraged in new subdivisions to allow for vehicle parking to the rear of properties, to provide additional connectivity, and to improve the pedestrian orientation of primary streets by reducing or eliminating curb cuts. Alleys may be either public or private, depending upon function. Private alleys shall be constructed to City standards.

p. Gated Neighborhoods Prohibited.

Gated neighborhoods isolate parts of the community from others, interfere with traffic flow, create maintenance conflicts with respect to snow removal, trash pickup and other service requirements, and are, therefore, prohibited.

q. Private Streets.

Private streets are prohibited.

r. Panhandle or Pipestem Lots.

Panhandle lots are discouraged and shall be allowed only where topographical considerations and/or existing conditions offer no practicable alternatives. The following requirements shall apply:

- (1) Shall contain only one single-family dwelling unit and its uninhabited accessory structures.
- (2) The maximum panhandle length shall be 150 feet.
- (3) The minimum panhandle width shall be 25 feet.

Administration of these requirements may be modified in cases where there is a second frontage on another public street right-of-way, that meets minimum lot width standards, and the house constructed orients its front yard to the second frontage.

s. **One Dwelling Structure Per Lot.**

The Zoning Ordinance, in most cases, limits lots to containing no more than one dwelling structure per lot. This shall not preclude condominium subdivision when applicable. Consult the applicable sections of Article 4.

t. **Open space.**

Every residential subdivision of a density of ten units per acre or greater shall dedicate a portion of such land for the purpose of open space and recreational equipment to serve the recreational needs of the residents of the subdivision. Such open space may also be made available to the general public through dedication to and acceptance by the City. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land which provide for the preservation of significant natural features, and/or provide recreational amenities. A minimum of 20% of the gross acreage of the subdivision must be open space. This open space shall be in accordance with the standards specified in Section D, Subsection 7.c of Article 4 (Zoning Ordinance) - Cluster Development - Site Design Criteria. The following criteria shall be used to determine open space requirements within a subdivision:

**Maximum Percentage of Total Land Required
Gross Residential Density for Open Space***

20 units/acre and greater	25%
10 units/acre – 19 units/acre	20%

*For cluster development and Planned Unit Developments, the minimum percentage of land required for open space shall be in accordance with the respective provisions of the Zoning Ordinance.

u. **Rear Yards of Townhomes.**

For all townhouse lots hereafter created, where the unit shall be attached on both sides to other buildings or dwellings, the rear yard shall abut an alley or an open space area. This requirement is for the purpose of providing access to the rear yard of interior lots that does not require passing through the dwelling.

v. **Applicable Use of Site Plan Standards.**

When a subdivision development plan serves as a site plan for improvements to lots, the applicable provisions of Section I shall be applied to the design of such improvements and incorporated into the development plan.

This page intentionally left blank.

F. Subdivision and Site Plan Data Requirements.

The following data is the minimum necessary to affect complete review and consideration of proposed development, and shall be shown on the relevant plan. If a particular data requirement may not be present or relevant, a notation shall be made on the plan that such element is not present or relevant, so that it is clear that the issue has been addressed. Additional or unique conditions or circumstances may necessitate the Planning and Code Administration Department to require additional data in order for the plan to be complete so thorough review of site conditions and proposed development can be made.

There are two charts; one in Subsection F.1 and one in Subsection F.2. Each of these two charts occupies several pages. Each chart is a single document although spread across several pages.

1. Sketch Plans, Development Plans, Site Plans, and Minor Site Plans.

Plan Requirement	Sketch Plan	Development Plan	Site Plan	Minor Site Plan
Scale (at least one page showing entire development on one sheet)	1" = 10 feet to 1" = 100 feet	1" = 10 feet to 1" = 100 feet, depending on size of development	<i>Under 3 acres:</i> 1" = 20 feet <i>Over 3 acres:</i> 1" = 50 feet or 1" = 100 feet	1" = 10 feet
Text size at least one-eighth (1/8) inch in height		X	X	
Each sheet shall be numbered and shall show its relationship to the total number of sheets.		X	X	X
Boundary of project shown as follows: -----		X	X	X
Legend clearly indicating which features are existing and which are proposed.	X	X	X	X
Vicinity map, showing the approximate relationship of the development to its general surroundings, including existing or mapped streets and all municipal boundaries within 1,000 feet of the development.		1" = 1,000 feet or greater	1" = 1,000 feet or greater	
Dimensions shall be in feet and decimal parts thereof.		X	X	X
Approximate proposed layout, (location, alignment, width), and tentative names of streets, lots and other elements basic to the proposed use in relationship to site conditions.	X			
Streets on and adjacent to the tract (both existing and proposed).	X			
One hundred year floodplain limits and approximate location of wetlands, if any.	X	X	X	X
Significant topographic, physical, and cultural features including fields, pastures, meadows, wooded areas, significant trees, significant vegetation, steep slopes, ponds, streams, existing rights-of-way, easements, and any	X	X	X	

Plan Requirement	Sketch Plan	Development Plan	Site Plan	Minor Site Plan
significant historical resources, including known and suspected human burial sites.				
The limit of disturbance line in relation to the retention of existing trees proposed to be saved.	X			
The approximate location and general description of proposed methods for sewage collection, storm drainage, water supply, storm water management and other utilities.	X			
Show and label the City/County boundary line if appropriate.	X	X	X	X
Forest Stand Delineation and Preliminary Forest Conservation Plan.	X			
Open Space areas, as required by and of such design standards as are required by this Article.	X	X		
Calculations demonstrating that the proposed development complies with the parking requirements of the Zoning Ordinance.	X	X	X	X
Where any revision is made, or when the Plan is a resubdivision of a previously approved Plan, dotted lines shall be used to show features or locations to be abandoned and solid lines to show the presently proposed features.		X		
A notation stating the zoning district in which the proposed development is located, including overlays.	X	X	X	X
Location by City tax map, block and parcel numbers (City Unique ID number).		X	X	X
Name of subdivision or development. The name shall not duplicate, be the same spelling or alike in pronunciation to any recorded subdivision.		X	X	
Names and addresses of the developer and owner(s) if other than the developer.		X	X	X
Certificate signed and sealed by a registered land surveyor or registered professional engineer, responsible for the survey and/or engineering computations of the Plan.		X	X	X
Owner's certifications and statements.		X	X	X
Date of drawing, and revision schedule.		X	X	X
North arrow.		X	X	X
A boundary survey or survey of record of the property to be subdivided, and all remaining lands, including map book and page reference, locating and identifying adjacent or abutting streets (existing or platted), subdivisions, unsubdivided parcels, easements, water areas, and the like, and all visible monuments, showing all courses, distances, and area, and tie-ins to all adjacent street intersections. At a minimum, show the entire parent tract or original parcel on an index map.		X	X	X

Plan Requirement	Sketch Plan	Development Plan	Site Plan	Minor Site Plan
Existing contours with intervals not more than five feet where the slope is 10% or greater and not more than two feet where the slope is less than 10%. Elevations based on United States Geological Survey or equivalent adjusted datum. (Source of contour data referenced on site plan; include a benchmark with elevation and location on the plan.)	X	X	X	
Slopes of 15% or greater, including a written justification for need in cases where the developer proposes to develop or disturb such slopes.	X	X	X	
Location, width and names of all existing or prior platted streets or other public streets, railroad and utility rights-of-way, parks and other public open spaces, and municipal corporation lines within or adjoining the tract.		X	X	
Other conditions on the tract being subdivided including, but not necessarily limited to, watercourses, wetlands, floodplains, rock out crop areas, wooded areas and other environmentally sensitive areas and significant features.	X	X	X	
Utilities on and adjacent to the tract: location, size and invert elevation of existing sanitary sewerage facilities and storm drains; location and size of water mains; location of fire hydrants, utility lines and street lights.		X	X	X In work area
Proposed public improvements; highways or other major improvements planned by public authorities for future construction on or near the tract to the extent known to developer.		X	X	
Location and design of all required sidewalks and crosswalks.		X	X	
If water mains, sanitary sewers, and storm drains are not on or adjoining the tract, indicate the direction, distance to, and size of nearest water mains and sewers showing invert elevation of sewers to extent known to developer.		X	X	
Other conditions on adjoining land within 100 feet; approximate direction and gradient of ground slope, including any embankments or retaining walls, character, location and ownership of private sewerage systems within 100 feet of the development boundary, railroads, utility lines, towers and other nearby nonresidential land uses or adverse influences; owners of adjoining un-platted land; for adjoining platted land refer to subdivision Plat by name recorded.		X	X	
Street Plan containing the following: (a) Location of all proposed streets. (b) Widths of all proposed rights-of-way and proposed paving widths. (c) Proposed street names. (d) Plan and centerline profile of all proposed streets.		X		
Indicate location of any on-street parking. Also include calculation of parking requirements, both on and off site.		X	X	

Plan Requirement	Sketch Plan	Development Plan	Site Plan	Minor Site Plan
Layout and dimension of proposed lots, including lot lines, lot numbers, and block letters. Provide calculations of the density of residential development.	X Generally depicted	X	X Density for single lot development	
If applicable, include the number and types of units proposed, for multi-family dwellings, shopping centers, churches, industry or other non-public uses, including parking spaces, exclusive of single-family and two-family dwellings. Show the building footprints for all structures. Provide tabulated data for parking requirements.	X General location of structures only	X	X	
Building setback lines.		X	X	X
Notation explaining all associated planning and zoning files (BZA, FC, NCU, annexation, HDC, past subdivisions or site plans).		X	X	X
Note stating that for work along street rights of way, developer is responsible to obtain a Roadside Tree Permit from the Department of Natural Resources.		X	X	X
Location and dimension of all parcels proposed to be dedicated or reserved for school sites, parks, open space used by occupants of the development, and for other public uses.		X		
Identification including plan and profile of all utilities proposed within the development, including the location, grade, and size of storm drains, catch basins, drainage ways and channels, sanitary sewerage facilities, pumping stations, water mains, street lights, fire hydrants, and other required public facilities and improvements.				X Within work area
Copy of current deed of ownership, and copy of homeowner association documents (if applicable).		X	X	X
Rights-of-way proposed to be created for all access, storm drainage, and utilities purposes.		X	X	
A Forest Conservation Plan, including the locations and means for forest retention, reforestation or afforestation.		X	X	
A Landscape Plan, including locations and specifications for required street trees, drawn in accordance with all requirements of Subsection I.4.				X Within work area
A final storm drainage plan and final storm water management plan, with calculations.		X	X	
A final grading plan, showing grading for all subdivision improvements, and, where applicable, mass grading.		X	X	
Location of all existing and proposed buildings, lighting, fencing, structures, parking facilities and other improvements, and means of trash collection. Include a scale dimension from the property line to proposed buildings. All parking facilities shall be designed in accordance with Subsection I.4 of this Article.		X (Not for proposed single-family, duplex, or semi-detached dwellings)	X	X Within work area
If alterations are to be made to existing buildings structures or other improvements, dotted lines to show			X	X

Plan Requirement	Sketch Plan	Development Plan	Site Plan	Minor Site Plan
features or locations to be abandoned and solid lines to show proposed features.				Within work area
Zoning district, including overlays, City Unique ID number, and County tax map and parcel number, and election district.	X	X	X	X
For cluster subdivisions, notation stating that setback variances for dwellings and accessory buildings are prohibited, since the creation of a lot via the cluster regulations is a self-created hardship.		X		
A final sediment control plan, if required by Soil Conservation District regulations, for the entire project area to be recorded and for any adjacent area affected by the area to be recorded, including: (a) The location of forest protection measures, temporary and permanent sediment control measures and vegetative stabilization. (b) The construction sequence for providing forest protection measures and adequate sediment control measures to prevent off site drainage.		X	X	
A digital submittal of the Plan is required. It shall be in a format utilizing commonly accepted engineering practices and one accepted and approved by the City Engineer. It shall show all proposed improvements, including but not limited to, proposed grading, streets, utility lines, service locations, storm drains, building footprints, setbacks, curb locations, sidewalks, the exterior boundary of the subdivision, and all new interior lot lines. It shall be tied to the City Grid and monuments system (MD State Plane Coordinates NAD 83-epoch 1996).		X	X	
Photometric Plan.			X	

2. Plats: Final, Simplified, Minor, Condominium, and Other.

a. Drafting Standards.

Plan Requirement	Simplified	Minor	Final	Condo
Dimensions shall be in feet and decimal parts thereof, and bearings in degrees, minutes and seconds.	X	X	X	X
An appropriate scale no less than 1" = 10 feet nor greater than 1" = 100 feet, in multiples of ten feet.	X	X	X	X
When more than one sheet is required, an index sheet of the same size shall be submitted showing the entire subdivision drawn to scale.	X	X	X	X
Where the Plat is a resubdivision of a previously approved Plat, dotted lines shall be used to show features or locations to be abandoned or vacated and solid lines to show the presently proposed features.	X	X	X	

Plan Requirement	Simplified	Minor	Final	Condo
The Plat shall contain an adequate legend so as to clearly indicate which features are existing and which are proposed.	X	X	X	X
The boundary line of the subdivision shall be shown as a heavy line.	X	X	X	X
The plat shall be prepared by a registered land surveyor on a sheet 18 x 22 3/4 inches with a 1½-inch margin for binding along the left edge and a ½-inch margin along the remaining edges, or the current requirements of the Office of Land Records at the Washington County Courthouse.	X	X	X	X
All linear and angular dimensions for locating the boundaries of the subdivision, lots, streets, alleys, public and private easements, shall be expressed in feet and hundredths of a foot. Angular measurements shall be expressed by bearings. All curve data shall be expressed by a curve table on the face of the Plat, each curve being tabulated and numbered to correspond with the respective numbered curves shown throughout the Plat. Dimensions, both linear and angular, shall be determined by an accurate control survey in the field which shall be checked for closure and must balance and close within an accuracy of one to 10,000. Horizontal control shall be based on the Maryland Coordinate Grid System (NAD 83 - epoch 1996) in a coordinate table located on the face of the Plat.	X	X	X	X

b. Existing Information.

Plan Requirement	Simplified	Minor	Final	Condo
Name of the subdivision.	X	X	X	X
Date of drawing, north point and scale.	X	X	X	X
Name and address of the owner of the land being subdivided and name and address of the developer if different from that of the owner.	X	X	X	X
Name, address, and professional seal of the engineer or surveyor, licensed in the state of Maryland.	X	X	X	X
Location of subdivision by tax map number, election district, city and state.	X Add street address	X	X	X
Vicinity map showing the relation of the tract to adjoining property and to all streets and municipal boundaries existing within 1,000 feet of any part of the property.	X Not less than 1" = 2,000 feet	X	X Not less than 1" = 1,000 feet	
Complete outline survey of the property to be subdivided, showing all courses, distances, and area, and tie-ins to all adjacent street intersections. The entire parent tract must be shown and/or described on the plan or the index sheet.	X	X	X	
Owners of adjoining land.	X	X	X	

Plan Requirement	Simplified	Minor	Final	Condo
The location, name, and right-of-way of each street and the locations and width of all other rights-of-way and pavement widths.	X	X	X	
The location and angles of departure of adjoining property and street right-of-way lines, the names of abutting subdivisions, and the names of adjoining property owners, including deed reference. The abutting subdivisions shall be identified by lot and block numbers, subdivision name, place of record or other proper designation.			X	
The location, size and ownership of all existing easements as defined herein, both within the subdivision and within 100 feet of the subdivision’s boundaries.			X	
The location of any existing forest conservation easements.	X	X	X	
The location of any designated 100-year floodplain and floodway.	X (Approximate)	X	X	
Show and label all existing property monumentation found.	X	X	X	
Required building setback lines.		X	X	
The zoning designations of the site, including overlays.	X	X	X	
Notation explaining all associated planning and zoning files (BZA, FC, NCU, annexation, HDC, past subdivisions and site plans)	X	X	X	X
Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way.	X	X	X	
Condominium Review Signature Block				X
All existing buildings and improvements as defined herein located within the boundaries of the subdivision. The distance between any existing structure to the new property line shall be determined and labeled.	X			

c. Proposed Layout.

Plan Requirement	Simplified	Minor	Final	Condo
Lot layout with lots numbered in numerical order. In tracts containing more than one block, the blocks shall be lettered in alphabetical order.	X	X	X	
Area of each lot, parcel, site or other unit shown on the Plat.	X	X	X	X
The names, right-of-way widths and cartway or pavement widths of all proposed streets.			X	
Sufficient data to determine readily the location, bearing, and length of every street, lot, and boundary line, with new lines of division shown and labeled as such.	X	X	X	

Plan Requirement	Simplified	Minor	Final	Condo
Building setback line for each street and property line.		X	X	
Location and dimensions of all parcels proposed to be dedicated or reserved for open space use as defined herein or for other public uses with the purposes indicated thereon.			X	
The location, width, and purpose of all existing or proposed easements or rights-of-way and boundaries by bearings and dimensions.	X	X	X	
The location and description of all markers, monuments, or other evidence found or established to determine the boundaries of the subdivision.	X	X	X	X
Private restrictions, if any, proposed to be included in deeds.	X	X	X	X
Location and description of all proposed afforestation and reforestation areas.		X	X	
Clearly note or graphically show building setback lines.		X	X	
Show any limited access vehicular restrictions required by the appropriate governing jurisdiction.			X	
Maintenance responsibilities.		X	X	X
Parking restrictions.		X	X	X
For cluster subdivisions, notation stating that setback variances for dwellings and accessory buildings are prohibited, since the creation of a lot via the cluster regulations is a self-created hardship.			X	

G. Required Improvements in Subdivisions.

1. Purpose and Applicability.

- a. The purpose of this Article is to delineate the Required Improvements as defined herein which shall be required of the applicant as condition for final approval.
- b. All construction shall be completed in accordance with Specifications as defined in the City Engineer’s *Public Ways Construction Standards and Engineering Guidelines* or successor documents, the City of Hagerstown Zoning Ordinance, and constructed in a manner acceptable to the Commission and other applicable City departments and agencies.
- c. All Required Improvements delineated in these Regulations shall be installed and constructed by the developer who shall pay all costs involved in installation, construction, inspection, and testing.
- d. Approval of the Final Plat by the Commission does not constitute permission to construct Required Improvements. Appropriate permits must be obtained from the City Engineer and other applicable departments and agencies before construction may commence.

2. Streets and Alleys and Attached Dwellings Located at Intersections.

Streets and alleys shall be graded and surfaced in accordance with the design standards in the City Engineer’s *Public Ways: Construction Standards and Engineering Guidelines*, and with Chapter 216 of the Code of the City of Hagerstown, or successor documents.

In the case of a subdivision containing lots fronting on an existing State, County, or City maintained road, the developer shall provide required right-of-way as necessary to serve the needs of such subdivision for access and traffic.

When the end unit of a townhouse building is located at the intersection of two public streets, or a public street and a non- public driveway in a development, the end unit shall be architecturally designed to present a front facade to the side street. (See illustration).



3. Street Signs and Traffic Control Devices.

Street signs and all other traffic control signs and devices shall be installed at the developer’s expense in accordance with the City Engineer’s *Public Ways Construction Standards and Engineering Guidelines* and with Chapter 216 of the Code of the City of Hagerstown. All street intersections on County and state roads and signage shall comply with County and state policies and ordinances, as applicable.

4. Street Lights.

Street lights shall be installed in all subdivisions. The Hagerstown Department of Utilities, Electric Division, or its designee, will design and/or approve the street light system.

The developer is responsible for the purchase and installation, to approved Hagerstown Department of Utilities, Electric Division specifications, of the street light system. The Hagerstown Electric Division shall furnish or contract to furnish electrical power during this time, at no charge to the developer, and shall assume all operation and maintenance costs of the entire installed system, one year after the City of Hagerstown assumes ownership of all streets and rights-of-way within the development. Until that ownership transpires, the developer will be responsible for all aspects of the street light system.

5. Storm Drainage Facilities.

a. When Required.

The developer shall provide in every subdivision, storm drains, culverts, drainage ways, or other works adequate to collect and dispose of all water originating on or flowing across the property without inundating or damaging neighboring streets, roads, lots, or other properties. All systems shall be designed in accordance with specifications and comply with adopted City and state policies and ordinances, where applicable.

b. Standards and Cost.

Storm drainage facilities shall be installed at the developer's expense in accordance with the City Engineer's *Public Ways Construction Standards and Engineering Guidelines* and with Chapter 216 of the Code of the City of Hagerstown.

c. Location and Design Conditions.

See Section I (Site Plan Standards) for locational and design limitation regarding stormwater management facilities.

6. Curbs and Gutters.

Curbs and gutters shall be built in accordance with the City Engineer's *Public Ways Construction Standards and Engineering Guidelines* or successor documents.

7. Driveway Entrances, Sidewalks and Off-Street Yard Parking.

Sidewalks and driveway entrances shall be constructed in accordance with the City Engineer's *Public Ways Construction Standards and Engineering Guidelines* and with Chapter 216 of the Code of the City of Hagerstown. Sidewalks shall be provided on all streets. Pedestrian sidewalks and crosswalks shall be required to provide interior circulation and access to nearby schools, parks, and other community facilities in accordance with the design standards enumerated in Section E of these Regulations.

Where the Planning Commission finds that sidewalks, in addition to those required parallel to streets, would provide safe, logical and convenient routing of pedestrian traffic, such sidewalks constructed in a manner appropriate to their purpose, may be required. Sidewalk handicapped ramps shall be provided at all intersections in accordance with adopted City State, and Federal ADA standards, as applicable.

For all subdivided residential lots, the following off-street parking design requirements shall apply:

- a. Parking areas shall be solid paved surfaces or permeable pavers;
- b. Rear yard parking garages or parking pads are the preferred off-street parking system;
- c. Driveways accessing the lot from a front or side street shall be one vehicle in width;
- d. Driveways serving front-loaded garages from front and/or side streets shall be permitted to be as wide as the garage;
- e. For lots without garages and without the ability to provide rear yard parking, front yard parking pads or turn-arounds of single-vehicle-width driveways shall be permissible provided the parking area does not exceed 50% of the front yard area.

8. Wastewater System.

Each subdivided lot, parcel, or site being created shall be connected and served by a separate wastewater line to the City's wastewater system (unless alternative arrangements are made by the City for the subdivision to be served by County Wastewater System). This connection shall be located at or near the right-of-way line. However, townhouses, cluster-style development, condominium units, apartments, or commercial/industrial sites with greater than two units may be served by a single line with approval of the Department of Utilities. Homeowner association or commercial customer documents, showing method of cost sharing, shall accompany all requests. All wastewater systems shall be designed, constructed, inspected, and tested in accordance with City standards and any other appropriate governmental regulations. Allocation of capacity at the City Wastewater Treatment Plant to the subdivision shall be made in accordance with the currently adopted Sewer Capacity Allocation Program or such successor documents or practices in accordance with City Policy.

9. Water Supply System.

Every subdivision shall be provided with a public water supply system adequate for the type of development proposed and so related to existing or potential surrounding development as to form a logical part of a coordinated system minimizing potential water supply problems for the general area.

Each subdivided lot, parcel, or site being created shall be connected and served by a separate metered connection to the municipal water system. This connection shall be located at or near the right-of-way line. However, townhouses, cluster-style development, condominium units, apartments, or commercial/industrial sites with greater than two units may be served by a single line with approval of the Department of Utilities. Homeowner association or commercial customer documents, showing method of cost sharing, shall accompany all requests. All water supply systems shall be designed and constructed in accordance with City Standards and any other appropriate governmental regulations. Fire hydrants shall be installed in accordance with appropriate governmental regulations.

10. Open Space.

Ownership, maintenance, and control of open space shall be the responsibility of a Homeowners Association, a private conservation organization, or the City of Hagerstown, upon its acceptance of the same. The Planning and Code Administration Department shall review and approve any documents deemed necessary to ensure that ownership and maintenance of such open space land by a responsible homeowners association is guaranteed prior to recording of the final plat. The date of acceptance and approval of the articles of incorporation of such property owners by the state Department of Assessments and Taxation shall be noted on the final plat prior to recording.

11. Permanent Monuments.

All monuments shall be installed in accordance with Maryland State Law (Real Property, Title 3, Section 108 of the Annotated Code) and shall be of concrete or stone and not less than six inches in diameter or four inches square and 36 inches long. The center shall be marked on the top by either a copper dowel, set flush with the top, 3/8 inch in diameter and 2½ inches long or by crossed scores at least ½-inch deep. Monuments shall be set so that the top is level with the adjoining established grade.

The corners of all lots shall be marked by galvanized or wrought iron pipe, or steel bars at least two feet in length and not less than 5/8 inch in diameter, the top of the pipe or bar to be set level with the established grade adjoining it.

12. Assurances and Guarantees.

Before the Commission shall approve the Final Plat for any subdivision, they shall ascertain that one of the two following requirements have been adequately met by the developer:

- a. All Required Improvements have been completed, inspected, and accepted by the Mayor and City Council in accordance with these Regulations and other applicable ordinances, statutes and regulations; or
- b. Where Required Improvements have not been completed, that acceptable assurances have been made to the City of Hagerstown guaranteeing completion of all required improvements in accordance with all appropriate regulations.

13. Performance Security.

A performance surety, as referred to in these Regulations shall be a performance bond, irrevocable letter of credit, certified check, or any other similar collateral as approved by the City Attorney and/or City Engineer or their representative. Such surety agreement shall be required by the Planning Commission as acceptable guarantee for the installation and construction of required improvements where they have not been completed prior to Final Plat approval. The amount shall be sufficient as determined by the appropriate City official(s).

The developer shall post such agreement with the City Clerk in the amount specified by the City Engineer or his or her representative, as may be necessary, providing acceptable guarantee to the City of Hagerstown that all Required Improvements shall be constructed in accordance with all appropriate regulations, necessary permits, and approved plans.

Specifically, the developer shall be required in posting the Performance Security to cover the following items:

- a. To construct and install or cause to be constructed and installed at his or her own expense, all streets, curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and wastewater facilities, street lights and other Required Improvements in strict accordance with the Development Plan, as approved, and in strict accordance with design standards and applicable regulations.
- b. To maintain at his or her own cost said streets, curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and sewerage facilities, and other Required Improvements, until the same are accepted by the Mayor and City Council.
- c. To post an acceptable Performance Surety to remain in effect until acceptance of Required Improvements by the Mayor and City Council for the purpose of assuring satisfactory construction.
- d. Upon installation of the required improvements, as provided in the developer agreement, the developer may request the City to inspect the improvements prior to the release of surety. The developer's agreement regarding the installation of improvements may provide that the developer may be partially released from the requirements of the developer's agreement upon partial completion of the work upon satisfactory inspection.

14. Public Acceptance of Required Improvements and Dedications.

The installation of Required Improvements, in accordance with the terms of these Subdivision Regulations, shall in no way be construed as acceptance by the City or an acceptance of an offer of dedication. Same shall be considered only as an offer of dedication until formally accepted by the Mayor and City Council.

All offers of dedication of rights-of-way, streets, alleys, open spaces, public area, or any other matter of whatsoever nature or kind shall be considered only an offer to dedicate and shall in no way be considered accepted by the City until action is taken in the manner prescribed by law.

a. Manner of Acceptance of Dedication.

All offers of dedication to the City of any Required Improvements, as set forth herein, shall only be considered accepted after all the following procedures have been completed:

- (1) Upon completion of all construction within the existing and proposed rights-of-way and on the Developer's request, the City Engineer's Office shall make a final inspection.
- (2) The developer shall prepare and submit as-built plans based on the direction and policies of the City Engineer's Office. As-built plans shall consist of the original construction plans modified to show all differences between designed and constructed grades, dimensions and other features. The as-built plans shall also be accompanied with an AutoCAD file in the version specified by the City Engineer.

- (3) Upon notification that the project has passed final inspection, the Developer shall cause the following documents to be delivered to the City Engineer: deeds to the streets, including the rights-of-way in fee simple, maintenance security, payment of signs, and proof of recordation of the associated subdivision plats.
- (4) An offer of dedication has been made on the appropriate plat;
- (5) Acceptance of same by a formal resolution of the Mayor and City Council;
- (6) Conveyance to the City of the interest in question by applicable deed, or other instrument in writing with proper designation and description of same, and of specific reference to the formal acceptance;
- (7) The signature of the Mayor affixed thereon showing formal acceptance; and
- (8) The resale and deed of dedication or other applicable instructions be received and recorded among the Land Records of the Clerk of Circuit Court for Washington County, Maryland.

After the date of adoption, under no circumstances shall implied acceptance of an offer of dedication be recognized by the City except as set forth herein.

- b. The City will endeavor to act upon dedication within 60 days of said formal offer, provided the applicant furnishes the necessary dedication, in the proper form, subject to approval by the City Attorney.
- c. A rejection of an offer of dedication shall not preclude re-application or re-offer to dedication either immediately or at any later date.
- d. The maintenance guarantee, amounting to 20% of the Performance Security previously established, shall be, but not limited to performance bonds, surety agreement, escrow agreements, irrevocable letter of credit, or any other similar collateral or surety agreements. The maintenance security shall remain in effect for a maintenance period of one year following acceptance of Required Improvements by the Mayor and City Council for the purpose of assuring satisfactory construction.

15. Release of Performance Security.

The Performance Security or other sureties established in accordance with the provisions of these Regulations shall be released by the City of Hagerstown when the City Engineer certifies that the requirements set forth therein have been met and when the Required Improvements and offers to dedicate have been accepted by the City in accordance with Subsection 14.a. above.

H. Required Dedication of Expanded and Planned Street Rights-of-Way.**1. Required Dedication of Right-of-Way Along Existing Streets and Roads.**

When a proposed subdivision or site plan for the development of land fronts a public street right-of-way (improved or unimproved), the developer shall offer for dedication those additional lands necessary to widen existing rights-of-way to the current standards required by the City Engineer via the *Public Ways Construction Standards and Engineering Guidelines* maintained by his or her office. In the event of this requirement being made of a site plan, a separate plat of dedication may be necessary to complete the dedication.

2. Required Dedication of Right-of-Way For Comprehensive Plan Street Rights-of-Way.

When a proposed subdivision or site plan for the development of land involves land that is adjacent to, abuts, is bisected by, or otherwise is impacted by planned road alignments as delineated in the Comprehensive Plan of the City of Hagerstown, as may be amended and updated, the subdivision or land development will incorporate the right-of-way of that planned road into their design and that right-of-way shall be offered for dedication to the City of Hagerstown. In the event of this requirement being made of a site plan, a separate plat specifically for the purpose of right-of-way dedication may be necessary. The City may require such road to be constructed to City standards at the developer's expense.

This page intentionally left blank.

I. Site Plan Standards.**1. Thresholds of Site Plan Requirements and Exceptions.****a. Construction – Less than 500 Square Feet in Area.**

All new construction involving 500 square feet or less of disturbed area shall be subject to approval by the Zoning Administrator during the Building Permit review process.

The building permit plan shall be drawn to scale and accurately and correctly represent the existing conditions and proposed improvements to the degree that the Zoning Administrator deems necessary for sufficient review of the proposal for zoning compliance. The Zoning Administrator may require a minor site plan in accordance with Subsection (b) below, when in his or her judgment the proposal is of such extent or complexity to warrant more detailed review and plans, or when the submission of successive plans under this subsection serves to circumvent the intent and need for site plans for significant construction.

b. Construction – 501 Square Feet in Area to 5,000 Square Feet in Area.

A minor site plan shall be submitted to the Zoning Administrator for his or her approval for all new construction greater than 500 and less than 5,000 square feet, including disturbed area, involving all construction and land development, except for new single-family, two-family and semi-detached dwellings, additions thereto, and additions to townhouses.

The minor site plan shall meet all those requirements made of site plans submitted under Subsections I.1.c and I.3 below for Planning Commission review, unless specific plan requirements are waived by the Zoning Administrator, given the simplicity of the proposal or plan. The Zoning Administrator or the applicant may require Planning Commission site plan review and approval as provided for in this Chapter.

c. Construction – Greater than 5,000 Square Feet in Area.

A site plan shall be submitted to the Zoning Administrator for approval by the Planning Commission for all new construction greater than 5,000 square feet, including disturbed area, involving all construction and land development, except for new single-family, two-family and semi-detached dwellings and additions thereto, and additions to townhouses.

d. Design Principles and Standards.

Where the submission of a site plan is required under this section, approval of the site plan shall be based upon design principles and standards and required improvements set forth in the City of Hagerstown Subdivision and Land Development Ordinance (Article 5, Sections E and I of this Chapter), and other ordinances, regulations and policies established by the City.

e. Exception for Certain Types of Dwellings.

The provisions of this section shall not apply to the construction of single-family detached dwellings, two-family dwellings and single-family semi-detached dwellings and associated accessory structures thereof.

2. Site Plan Submission Procedure.

a. Preparation.

Site Plans shall be prepared by a registered professional engineer, registered architect, registered landscape architect, registered land surveyor or professional planner (A.I.C.P.).

Minor Site Plans may be prepared by a competent layperson, provided that all required information and materials are provided and the drawing is completed in a competent and understandable manner. The Zoning Administrator may waive information standards he or she deems unnecessary for a complete and competent review of the proposal.

Building permit drawings for projects of less than 500 square feet may be completed by a competent layperson, however the Zoning Administrator shall require all such information as is necessary for a complete and competent review of the proposal.

b. Preliminary Consultation.

A preliminary consultation may be held with the Planning Commission to discuss the general concept, use and design of the proposal. If consultation is desired, a generalized sketch or plat of the proposed site plan shall be submitted with five copies at least one week prior to the scheduled consultation and shall consist of location map, boundary, topography, and general proposed land uses drawn to scale.

c. Administrative Review Procedures.

The site plan administrative review procedures shall be the same as those required for development plan review and approval pursuant to the Subdivision and Land Development Ordinance (Article 5), including a sketch plan submittal and Planning Commission approval when necessary.

d. Form and Number of Copies Required.

The number and format of copies required shall be set by a policy adopted by the Planning and Code Administration Department, however additional copies shall be submitted as determined by the Planning and Code Administration Department in unusual situations. The Planning Commission shall notify the Zoning Administrator of its approval or disapproval of the site plan within 30 days from the date of formal submission to the Commission. However, failure to approve or disapprove a site plan within thirty (30) days shall not constitute approval.

e. Exception.

Site plan submission is not required for single-family or two-family dwelling units unless planned as part of a Planned Unit Development, or specifically required elsewhere in this chapter.

f. Duration.

The purpose of a site plan is to set the final approved development of the site until such later time that new or revised plans are submitted for additions or redevelopment of a site. All

improvements, including but not limited to conditions of approval, site configuration, parking space, and landscaping required in accordance with this Article shall be maintained on an ongoing basis. Failure to maintain features and improvements shown on an approved site plan constitutes a violation of this Chapter.

g. **Expiration.**

Site plan approval shall be effective for a period of three years, and such additional three year periods as may be specifically approved in writing by the Commission.

h. **PDFs of Plans Required.**

The developer shall provide to the City electronic PDF copies (or other format acceptable to the City) of the plans as approved by the Planning Commission, and upon completion of the project, such copies of as built conditions as may be required by the City.

i. **Properties in Violation at Time of Application or Processing.**

When a property with an open violation case or known violation of this Land Management Code is submitted into the site plan process, the Zoning Administrator may suspend review and processing of the application pending resolution of the violation. Such suspension also suspends any review timing standards as set forth in this Chapter.

3. Site Plan Information Requirements.

The required site plan shall contain, at a minimum, the data listed in Article 5, Subsection F.1 of this Land Management Code. The developer or engineer shall furnish the City Engineer with “As Built” Mylar reproducible drawings at the completion of the project, if required. The City Engineer may also require electronic copies of the approved plans in a format set forth by the City Engineer by policy.

4. Landscaping Plan and Parking Area Design Requirements.

a. **Intent.**

The applicant shall submit as part of the site plan, a comprehensive landscape master plan, identifying the location and size of both existing vegetation to be retained and proposed new vegetation, typical planting materials, the phasing of landscape installation, and planting methods.

These regulations are established to protect and enhance the landscape of the City of Hagerstown and to ensure the appropriate use of plant material in new construction. It is the intent of these regulations to preserve natural tree cover where practicable and to include new landscape plantings with development in order to:

- (1) Reinforce community identity
- (2) Enhance scenic views
- (3) Increase building and property values

- (4) Reduce stormwater runoff and prevent soil erosion
- (5) Create shade and reduce radiant heat
- (6) Provide a visual buffer and separation of space, and
- (7) Reduce noise and shield glare, and
- (8) Enhance the beautification of the City.

b. Applicability.

These standards shall apply to any development or redevelopment proposals requiring approval by the Planning Commission (or by staff in the case of administrative approvals). Improvements associated with single-family residences, simplified plats, and minor subdivisions are exempt.

c. Preservation of Existing Vegetation.

Trees and other public landscaping shall be protected by means of suitable temporary barriers during construction. The Planning Commission, upon reviewing a site plan, shall have the authority to require existing landscaping and screening which meet the minimum standards of this Article to be preserved. In locations where healthy and mature shade trees currently exist, the requirements for new trees may be waived or modified, after review by the appropriate agencies, and approval by the Planning Commission. Where practicable and feasible, developers are encouraged to leave existing trees.

d. Reforestation and Afforestation.

Landscaping requirements, may at the review of the Planning Commission, be counted towards reforestation or afforestation requirements of the forest conservation program. The amount of the landscaped area to be credited for forest obligations shall be in accordance with Article 7.

Landscaping used to fulfill forest conservation requirements shall be included in the required construction and post construction protection and management agreements. Areas shall be protected by binding, long-term protective agreements under the same terms that apply to other reforestation or afforestation areas.

e. Modification of Landscape Standards.

Alternative plans may be approved when unusual topographic constraints, sight restrictions, siting requirements, preservation of existing stands of trees, preservation of specimen trees, or when similar conditions prevent strict compliance with the landscape standards. Modifications to the tree cover, site landscaping, and parking lot landscaping standards contained in this section may be approved when the following conditions are met to the satisfaction of the Planning Commission:

- (1) The landscape plan meets the stated intent of this section.

- (2) The landscape plan provides plantings of similar character, density and screening impact to those required by the standards contained in this section.
- (3) Topography, soil, vegetation or other unique site conditions make full compliance impossible or impractical and warrant some relief from the strict adherence to the standards contained in this section.
- (4) Space limitations, unusually shaped lots, and existing conditions on adjacent properties may justify alternative compliance for infill sites, and for improvements or redevelopment of sites, particularly in the older, established sections of the city.

f. Performance Criteria.

- (1) The Planning and Code Administration Department shall require, as a condition of site plan approval, a guarantee of installation of landscaping and screening as required by this Article.
- (2) In order for any landscaping to fulfill the purpose for which it was established, it must be properly maintained. The owner of the property where the landscaping is required will be responsible for the maintenance of all required landscaping materials. Maintenance includes actions necessary to keep screening materials healthy, neat and orderly in appearance and free of litter and debris. All landscaped areas must be protected from damage by motor vehicles or pedestrians, which could reduce the effectiveness of the landscaping. The Planning and Code Administration Department shall require the replacement of trees or the repair of buffers within six months if such trees or buffers die or are destroyed.
- (3) It is also recognized that land development occurs continuously and that vegetation used in landscaping or screening should be planted at certain times of the year to ensure the best chance of survival. In order to ensure compliance with this Article and reduce the potential expense of replacing landscaping or screening materials that were installed in an untimely or improper fashion, the developer may provide, an adequately secured performance bond, cash bond, surety bond, or letter of credit or other security equal to 100% of the cost of materials and installation. Sample forms are found in Section 17 of the City of Hagerstown's *Public Ways, Construction Standards & Engineering Guidelines*. However, all required landscaping and screening shall be installed within six months after the issuance of an occupancy certificate. Release of surety or bond will not be granted until all landscaping shown on the approved site plan has been completed. A qualified professional, as defined in Article 4, Subsection S.2.b. (1) must submit written certification to the Planning and Code Administration Department that healthy plant materials were properly installed in accordance with the approved landscape plan.

g. Redevelopment.

Landscape plans for redevelopment shall be consistent with the requirements of this section. The existing site shall be considered to be either the disturbed area of the new construction as shown on the proposed site plan, the area contained within a newly created subdivision related to the redevelopment, or the original parcel.

h. Parking Design and Landscape Standards.

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

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

The diagram illustrates a parking bay layout with two rows of stalls. Dimension A is the angle between the stall lines. Dimension B is the width of a single stall. Dimension C is the width of the aisle between two rows of stalls. Dimension D is the length of a stall. Dimension E is the total width of the bay, which includes two rows of stalls and the aisle between them.

- (2) If the parking stall provides an overhang not encroaching on a walkway, property line, or buffer area, as required in Article 5, the length of the stall may be reduced two feet.
- (3) No off-street parking area shall be designed to permit direct parking space ingress and egress to a public road, except by way of a driveway.
- (4) All off-street parking areas must be physically separated from property lines and public street rights of way by a landscaped buffer as specified in Article 5, Subsections I.4 and I.5.
- (5) The use of employee, occupant, or similar numbers to determine parking space requirements shall be used only where the use of square footage or other measurement factors are not feasible. Employees shall mean the regular working staff (paid, volunteer, or

otherwise) at maximum strength and in full-time equivalent numbers necessary to operate, maintain or service any given facility or use under normal levels of service.

- (6) All off-street parking spaces in the CC-MU District must be located in the rear of the principal building or otherwise screened with landscaping to minimize the visual impact on adjacent public streets or residential zoning districts.
- (7) All surface parking facilities, greater than seven spaces shall be landscaped to the minimum requirements as outlined as follows. Requirements shall be rounded up to the nearest whole planting. Trees shall be planted by the developer as part of the Conditions of Approval, for aesthetic reasons and for summer cooling.

Minimum width of planting islands	8 feet
Minimum number of trees per 8 parking spaces	One canopy or 2 understory
Maximum number of contiguous spaces in a row	15
Maximum number of contiguous spaces in a row for employee parking in the IR, IG, and I-MU	25
Maximum number of rows without medians	3
Minimum width of medians	8 feet
Number of trees required per 45 feet of median	One canopy or 2 understory

Each row shall begin and end with a landscaped island.

- (8) A perimeter roadside buffer yard abutting a parking lot (between the street and parking lot) shall be required as follows:

Minimum width of buffer (public right-of-way)	10 feet
Minimum width of buffer (adjoining properties)	10 feet
Minimum number of trees per 40 feet of road frontage	One canopy or 2 understory
Shrubs required in buffer, planted on center (per 10 feet)	One

All portions of the roadside buffer yard not planted with trees or shrubs or covered by a wall or other barrier shall be planted with grass and/or flower beds. Landscaping and screening materials shall not obstruct the view of motorists using any road, driveway, or parking aisle.

- (9) Parking facilities abutting a structure, unless located on or within a structure, shall be separated from the exterior wall of a structure, exclusive of paved pedestrian walks or vehicular loading areas, by a planting strip at least six (6) feet in width. The width may be adjusted by the Planning Commission based on unique site constraints and the nature of the business in relationship to the parking. Composition of the planting strip shall be either:
 - (a) A combination of flower beds and shrubs where the shrubs cover a minimum of 40% of the planting areas; or

- (b) A combination of trees and flower beds so that there is a minimum of one tree per 25 linear feet of building wall abutting the planting area. A combination of shrubs, trees, and flower beds is also permissible.
- (10) Every off-street parking area shall be developed and maintained in accordance with the following requirements:
 - (a) All off-street parking areas shall be paved with a stable, dust-free surface conforming to City standards or other method approved by the City Engineer. Any new commercial or residential driveway and/or parking area shall be improved with Asphalt, concrete, or similar solid (non- gravel) method approved by the City Engineer, when:
 - (i) Located to the front or side of an existing or proposed use;
 - (ii) Adjacent to a public street right of way, or
 - (iii) The parking area is intended for the use of the public visiting such location; or
 - (iv) The parking area is intended for a bed and breakfast inn in a residential zoning district per special exception approved by the Board of Zoning Appeals, in which case the parking shall be adequately screened with a minimum five foot landscaped buffer.

Asphalt paving and concrete paving of such areas shall be of sufficient thickness and composition to provide a durable, long-lasting surface. When proposing to pave areas as part of a site or subdivision plan, the developer shall propose an appropriate depth and composition of paving and provide a geotechnical report identifying the nature of the soils on which the paving will be installed and an evaluation of the appropriateness of the depth and composition proposed. This shall be subject to approval by the City Engineer through the site plan or subdivision plan process.

- (b) Lighting shall be provided for all parking areas which will receive night use. Such lighting shall be directed to the parking area and be shielded to prevent adverse glare on adjacent public streets and properties. Where proposed lighted parking areas are located adjacent to a residential district or residential use, lighting shall be of minimum intensity to assure safety and security and shall be well shielded from the adjacent property. However, security lighting within the aforementioned pedestrian areas used at night shall be illuminated at a level not less than 0.5 candle power. Upon review of the area to be illuminated, if it is classified as a Special Security area by the City, an increased level of illumination may be considered and studied.
- (c) All off-street parking areas shall be so arranged and marked as to provide for orderly, safe loading, unloading and parking of vehicles with individual parking spaces clearly defined, and directional arrows and traffic signs provided as necessary for traffic control.
- (d) Pedestrian walkways and sidewalks shall be provided to and from all paved parking areas and shall be designed to serve on-site principally permitted uses and accessory uses for which there is pedestrian demand. Such walkways and sidewalks shall be

protected from vehicular overhang and movement by curbs or other method approved by the City Engineer. Security lighting within the aforementioned pedestrian areas used at night shall be illuminated at a level not less than 0.5 candle power. Upon review of the area to be illuminated, if it is classified as a Special Security area by the City, an increased level of illumination may be considered and studied.

- (e) Pedestrian walkways and sidewalks shall be provided between public sidewalks along public streets and the main pedestrian entrance of buildings or units of buildings.
- (f) In order to allow for the passing of handicapped pedestrians and wheelchairs, pedestrian walkways shall be five feet in width.

i. Street Trees.

- (1) All commercial, industrial, institutional, and residential development shall be required to have street trees along all public rights-of-way. This requirement does not apply to rear access lanes or alleys. Street trees shall conform to the requirements of the City of Hagerstown. See Plates M-010 through M-016 for construction standards and a street tree list, and also see Section 216-10, Trees, Code of the City of Hagerstown, for the conditions applying to the installation of street trees, located and detailed in the City Engineer’s *Public Ways Construction Standards & Engineering Guidelines*.
- (2) Street trees shall be planted by the developer as part of the Conditions of Approval. They shall be placed along each side of all streets and shall be spaced at intervals no greater than 40 feet along both sides of each street.
- (3) Street trees are required to be within a minimum five-foot planting strip located between the curb of the street and the sidewalk. Should there be an instance where no sidewalk is required, street trees shall still be required, within a defined street yard of at least five feet in width.
- (4) Street trees shall be credited against buffering requirements as appropriate and may be credited toward compliance with the requirements of Article 7 (Forest Conservation) when within public street rights-of-way or protected by easement.
- (5) Understory trees may be substituted for canopy trees if, upon review with the appropriate agencies, a conflict or potential exists with overhead utility lines.

j. Buffer Landscape Standards.

Landscaped buffer yards shall be provided and perpetually maintained along all property lines (not street rights-of-way) in accordance with the following table, when applicable:

Proposed Use/Zoning	Adjacent Zoning **:				
	All “R”	CL & CG	CC-MU	CR	IR & IG
Multi-family, two-family, semi-detached, mansion house or townhouse development*	10 feet	10 feet	10 feet	10 feet	25 feet

Proposed Use/Zoning	Adjacent Zoning **:				
	All "R"	CL & CG	CC-MU	CR	IR & IG
CL, CG, POM, INST, CC-MU and N-MU	10 feet				
CR	35 feet				
IR, IG, and I-MU	60 feet	25 feet	25 feet	25 feet	
* Optional at the discretion of the Planning Commission **When adjacent to the municipal boundary, apply the City's zoning district that is comparable to the adjacent zoning outside of the municipal boundary.					

(1) **Residential Buffers.**

Whenever multi-family, mansion house, two-family, semi-detached or townhouse residential dwelling units are proposed, the Planning Commission may require screening in accordance with the following standards:

Trees per 100 feet of buffer yard	2 canopy and 3 evergreen and/or understory
Shrubs per 100 feet of buffer yard	10 shrubs

If more than 20 trees are required, no more than 60% shall be of any one type.

When developing a mobile home park, a heavy landscape buffer, as required by Article 4, Section D.5.h(4) shall be installed along all project boundaries and street rights of way. This buffer shall be dominated by evergreen plantings and shall be installed in an area not less than 20 feet in width.

(2) **Commercial and Mixed-Use Buffers.**

Within the City's commercial zoning districts, the CC-MU and N-MU Districts, and within residential districts when a proposed development is a commercial or institutional use, the following shall be required:

Trees per 100 linear feet of buffer yard (except in the CR District)	3 canopy and 5 evergreen and/or understory
Trees per 100 linear feet of buffer yard in the CR District	6 canopy and 10 evergreen and/or understory
Shrubs per 100 linear feet of buffer yard	25 shrubs

If more than four trees are required, no more than 60% shall be of any one type.

(3) **Industrial Buffers.**

Within the City's industrial zoning districts, the use or development shall provide screening in accordance with the following standards, whenever bordering a commercial or residential zone:

Trees per 100 linear feet of buffer yard	6 canopy and 10 evergreen and/or understory
Shrubs per 100 linear feet of buffer yard	15 shrubs

If more than 20 trees are required, no more than 60% shall be of any one type.

(4) Ground Cover to be Planted in Landscaping Buffers.

All portions of the buffer yards required in Subsections j(1) through j(3) above not planted with trees or shrubs or covered by a wall or other barrier shall be planted with grass, ground cover, and/or flower beds.

(5) Adjacent Vacant Lots.

Where vacant zoning lots are adjacent, the first zoning lot to be developed shall provide the buffer and screening required next to vacant land. At the time it is developed, if applicable, the second zoning lot shall also provide the buffer and screening required between the developed land uses. As long as the required buffer and screening is provided and maintained, a buffer may contain sidewalks, pedestrian and bicycle paths, and similar passive uses compatible with the general separation of land uses.

(6) Buffers to be Located within Setbacks.

Where possible the landscaped buffer area should be planted within the required building setback area. In such districts where zoning setbacks permit principal structures in closer proximity to property lines, the Planning Commission may approve a narrower landscaped buffer or a relocation of landscaping elsewhere on site.

(7) Buffers To Be Kept Out of Rights-of-Way and Easements.

Required buffers shall be located along the front, side, or rear lot lines nearest the adjacent streets, land uses, or zoning designations except where such lot lines are intersected by streets, access ways, or utility easements. Buffers shall not be located on any portion of an existing or proposed street right-of-way. Buffers shall be permitted to intersect utility easements or run parallel with them, but utility easements shall not be permitted to run laterally within the buffer.

(8) Exceptions.

Where connectivity between subdivisions is appropriate for high-quality neighborhood design, the Planning Commission may reduce or waive the required buffer yard. Buffers are not required for internal property boundaries of a planned community with mixed uses but will be required to be placed at the perimeter of the project.

(9) Reverse Frontage Lots.

Reverse frontage lots, where the rear of the structure faces the public street, are discouraged. However, in the instance where the developer chooses to face the rear of the

structure towards the street, the appropriate residential buffer requirements shall apply along the right-of-way, in addition to the requirements for street trees.

(10) **Substitution of Fences for Landscaping.**

In addition to the buffer screening required herein, and the landscaping required for off-street parking, all businesses' service, repair, processing, storage, or merchandise display conducted outside of an enclosed building shall be screened from adjacent streets and properties by means of an effective screening device of a height not more than six feet, unless a variance is granted by the Board of Zoning Appeals. Appropriate screening devices may include solid decorative brick walls, wood fences, berms, tight evergreen hedges which shall reach the necessary height within two years of planting, or a combination of the above. Dumpster enclosure requirements are outlined in *Public Ways Construction Standards and Engineering Guidelines*, Plate M-023.

k. **Materials Type.** Species shall be selected according to the following general criteria:

- (1) Cast moderate to dense shade in the summer.
- (2) Survive more than 60 years.
- (3) Tolerant of pollution and redirect or reflect heat.
- (4) Require little maintenance by being mechanically strong (not brittle) and insect and disease resistant.
- (5) Be able to survive two years with no irrigation after establishment.
- (6) Preference given to species of native origin.
- (7) Not drop fruit, etc., on sidewalks.
- (8) Recommended canopy trees include:

American Linden	Eastern Red Oak	Shingle Oak
Black Oak	European Beech	Silver Linden
Bur Oak	Little Leaf Linden	Sugar Maple
Chestnut Oak	Pin Oak	Sycamore
Chinese Scholar Tree	Red Maple	White Ash
Common Hackberry	Sawtooth Oak	White Oak
Crimean Linden	Scarlet Oak	Willow Oak

(9) Recommended understory and evergreen trees include:

American Hornbeam	Eastern Red Cedar	Norway Spruce
American Holly	Eastern White Pine	Paperbark Maple
Bark Dogwood	Flowering Dogwood	Washington Hawthorn
Crepe Myrtle	Leyland Cypress	Yoshino Cherry
Canada Hemlock		

Species specifically prohibited are Bradford Callery Pear and Female Ginkos.

(10) Recommended shrubs include:

Arborvitae	Japanese Greenleaf Barberry	Slender Deutzia
Burkwood Viburnum	Junipers	Southern Bush-Honeysuckle
California Privet	Leatherleaf Viburnum	Spirea
Edward Goucher Abelia	Northern Bayberry	Spring Glory Forsythia
Emerald Gaiety Euonymus	Old Fashioned Weigela	Winter Honeysuckle
Fosters American Holly	Olympic Fire Laurel	Wintergreen Barberry
Gnome Pyracantha	Rutgers Pyracantha	Yews

1. Storm Water Management Control Facilities.

Landscaping is a critical element to improve both the function and appearance of storm water management. Landscaping of storm water management facilities (ponds, retention, or detention basins), is required in all zoning districts, excepting projects in IR or IG districts where storm water management areas are not adjacent to residential zoning or a public road. *The Storm Water Design Manual, Volumes I & II* (Maryland Department of the Environment) shall be utilized during the design process.

The following trees, at a minimum, measured from the contour at the top of the berm, based on the perimeter length of the pond or detention area:

Canopy tree	One per every 50 linear feet
Evergreen tree	One per every 40 linear feet
Small understory tree	Two per every 50 linear feet

When adjoining a public right-of-way, such facilities shall be sited to allow for street trees and screening plantings, shall be aesthetically pleasing, and shall be designed to incorporate storm water best-management practices.

If a chain link fence is utilized for security purposes, it shall be sufficiently screened by plantings. Chain link shall not be permitted within the required building front yard setback for the district or development within which it is located.

It is recommended that planting around storm water management areas be native vegetation. Plants that are associated with stream, pond, or wetland habitat provide an attractive character for such facilities if suited to site conditions. The plant material selected should be appropriate to the specific environmental conditions created.

It is also recommend that Low Impact Development hydrologic design, utilizing integrated management practices (IMPs), be considered as an alternative to more conventional storm water management controls. This approach utilizes a more naturalized design the more typical “end of pipe” control, leaving as many undisturbed areas as practical to reduce runoff volume and runoff rates by maximizing infiltration capacity. The design goal is to create a hydrologically functional landscape, maintaining pre-development conditions with respect to storm water runoff while enhancing the aesthetic qualities of a site.

Also see locational and design standards for storm water management facilities in Subsection 5, below.

m. Sidewalks on Public Streets.

In all site plan applications for development of 5,000 square feet or larger, sidewalks, designed and installed per standards set by the City Engineer, shall be installed along all improved public streets where sidewalks do not currently exist. Existing sidewalks shall be assessed for condition and repaired and/or replaced as necessary. This provision shall not be applied when in conflict with Section B.3 of the Policy of the Mayor and City Council of Hagerstown, dated September 23, 2003 (as may be amended and revised) regarding locations where sidewalks are not recommended.

5. Stormwater Management Facilities Location and Design Standards.

No stormwater detention or retention structure shall be constructed to front on any public street right-of-way or in any required buffer areas. Exceptions may be allowed with approval of the Planning Commission if site constraints dictate location of the stormwater structure in one of these areas.

If a stormwater detention or retention structure is approved for location beside a public street right-of-way or within a required buffer area, the stormwater structure, including any required embankment protection zones, shall be set back from any public street right-of-way or property line by a ten-foot landscaped buffer, as prescribed in Article 5, Subsection I.4, and the stormwater structure shall be designed for an aesthetic outcome beyond a merely utilitarian function.

6. Commercial Development, Mixed-Use District and Multi-Family Design Standards.

a. Intent.

The following standards shall apply to any project or development hereinafter constructed or modified within the zoning districts described in this section. The intent of these design standards is to:

- (1) Establish design standards that create highly attractive developments with plentiful greenery and orderly outdoor spaces;
- (2) Design developments and buildings which are sustainable through tenant turnover;
- (3) Minimize the visual impact of large commercial and multi-family buildings and parking facilities, especially when adjacent to existing residential neighborhoods;
- (4) Improve the pedestrian experience moving within and through such developments; and
- (5) Minimize sprawl and concentrate development through the use of multi-story structures where possible, and interconnected street networks within the development and to adjacent developments. This subsection shall apply to all developments (including but not limited to stores, shopping centers, office buildings and complexes, restaurants, and multi-family or multi-family/mixed-use complexes).

b. Development, Design and Performance Standards.

Construction of new buildings, including reuse or modification or renovation of an existing building or buildings and site improvements shall comply with the following performance standards: **(X = Required in this District)**

- (1) **Location of Buildings on Site.** Principal use building(s) shall be oriented toward and located near the primary public street for the purpose of reducing the visual impact of an expansive parking area between the building and public streets.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X	X	X	X	X

- (2) **Parking.** It is preferred that off-street parking spaces be located towards the sides and rear of the lot, behind any buildings and structures. In cases where parking is provided beneath an elevated structure, either underground or in parking decks, the street side portion of the building shall be available for usable office/commercial space excluding driveway and lobby areas.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X	X	X	X	X

- (3) **Public Amenities in Shopping Centers, Office Parks, and Multi-Family Developments.** Projects containing groups of buildings shall incorporate amenity areas into the site design. Amenity areas include, but are not limited to, public plazas, courtyards, squares or small parks on the site. Design elements to be included in the amenity areas are seating walls,

benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas. Since the purpose of these amenity areas is to serve as pocket recreational areas and to help foster a sense of community, additional elements shall be considered, if the applicant shows the design meets the intent of this section.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X (CC-MU only)	X	X	X	X

(4) Architectural Design.

- (a) The facade of a building shall present a public view to the street or pedestrian corridor. For large buildings, modulation shall be incorporated in building designs to reduce overall bulk and mass, with planes of exterior walls not running in one continuous direction more than one-hundred (100) feet without an offset or setback. All rooftop equipment shall be shielded so that it is full screened from public view.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X	X	X	X	X

- (b) The commercial building or shopping center (including buildings located on out lots) shall be constructed of high-quality natural materials finished in low reflectance, earth tone colors and finishes. Materials may include brick, wood, stone, tinted textured concrete masonry units, architectural concrete block or other material approved by the Planning Commission. Brighter colors may be used sparingly to accent architectural features and for signage.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
			X	X	X

- (c) It is preferred that new multi-family buildings be architecturally compatible with the existing structures and that the exterior wall surfaces of each individual building be similar in architectural treatment and materials. For large new buildings, modulation should be incorporated in building designs to reduce overall bulk and mass. All rooftop equipment shall be located, screened or shielded so that its visibility is minimized from public view.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X				

- (d) Newly constructed multi-occupant commercial, institutional, and mixed-use buildings shall contain storefronts when located in the CC-MU zoning district.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
	X				

(e) Trash receptacle enclosures shall be architecturally compatible with the building(s) on site and constructed of the same building material. Non-enclosed areas for storage of pallets, recycling, temporary seasonal merchandise shall be permanently defined and screened with walls and/or fences and/or heavy evergreen landscaping consistent with materials and landscaping used throughout the project.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X		X	X	X

(5) **Outdoor Service and Storage.** Loading docks, truck parking, outdoor storage, utility meters, HVAC equipment, and other service functions shall be incorporated into the overall design of the building and landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets, using materials and landscaping consistent with the rest of the project.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X	X	X	X	X

(6) **Lighting.** Lights illuminating off-street parking or loading areas shall be arranged and installed so that no material glare or direct light shall spill over into adjacent parcels. Light standards shall not exceed 20 feet in height and shall be of a directional type capable of shielding the light source from direct view. Spotlighting of buildings shall be from fixtures along the top of the building, directed downward.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X	X	X	X	X

(7) **Vehicle Storage.** For businesses that involve the temporary storage of unregistered or damaged vehicles, an area shall be designated for such storage and screened from surrounding properties in a manner acceptable to the Planning Commission. This provision shall not apply to the storage and display of for-sale or rent motor vehicles.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
		X	X	X	

(8) **Additional Development Design Standards for Destination Retail Uses.** The following standards shall be applied to Destination Retail Use developments in the CR District in addition to the general standards found elsewhere in this chart.

- (a) **Height.** The preferred design of a destination retail use shall be no less than two complete stories. The Planning Commission may waive this requirement if the stock-in-trade of the retailer proposed to occupy the site is not conducive to a multi-story layout.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
				X	

- (b) **Location on Site.** For the purpose of reducing the visual impact of an expansive parking area between the building and public streets, the destination retail use building(s) shall:

- (i) Be located as to place destination retail uses near the primary public street; or
- (ii) To the rear of a “main street” shopping center design.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
				X	

- (c) **Architectural Design.** Public-oriented facades and the roof line of the destination retail use shopping center or building and any facade that is located within 300 feet of a residential zoning district shall be articulated and constructed with architectural elements so as to appear as a series of smaller buildings. *(Editor’s Note: See illustration below.)*

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
				X	



Sample of architectural articulation required of Destination Retail Use Buildings. The larger store on the left has architectural articulation as described. Compare this storefront with the smaller store on the right which is not articulated and appears proportionately larger.

- (d) **Main Street Design.** “Main Street” shopping center layouts are preferred. When the “main street” concept is not applied, shopping centers shall be designed so that the mass of a destination retail use is masked by the presence of smaller retail and service uses along the front of the building.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
				X	

(e) **Landscaping and Pedestrian Circulation.** For Destination Retail Uses, a landscaped plaza equal to 2.5% of the gross square foot area of the destination retail use shall be provided in front of that unit to serve as a visual focal point for the project. In no case shall the plaza be less than 2,000 square feet in area, and it may not be required to exceed 4,000 square feet in area. The plaza shall contain ornamental landscaping and paving, trees, benches and other amenities. The parking and circulation layout shall be designed to maximize pedestrian circulation throughout the site and to adjacent uses.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
				X	

(f) **Redevelopment and Sketch Plan Requirements.** For requirements for redevelopment and sketch plan requirements, see Subsection 8, below.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X	X			X	

(9) **Open Space.** Every multi-family development on a tract larger than 40,000 square feet in area and of a density of ten units per acre or greater shall dedicate a portion of such land for the purpose of open space and recreational equipment to serve the recreational needs of the residents of the development. Such open space may also be made available to the general public through dedication to and acceptance by the City. Such open space shall not be comprised of accumulations of leftover remnants of land on the site, but shall constitute meaningful contiguous areas of land which provide for the preservation of significant natural features, and/or provide recreational amenities. A minimum of 20% of the gross acreage of the development must be open space. No more than 25% of the required forest conservation area may be attributed towards this open space requirement. Stormwater management facilities which are not designed as natural features shall not be attributed towards this open space requirement. The following criteria shall be used to determine open space requirements within a subdivision:

Maximum Percentage of Total Land Required for Open Space*	
Residential Density	% of Gross Land Area
10-20 Units per Gross Acre	20%
20 Units per Gross Acre or Greater	25%

*For cluster development and Planned Unit Developments, the minimum percentage of land required for open space shall be in accordance with the respective provisions in Article 4.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
X					

- (10) **Design Standards for Mixed Use Buildings in CG and CR Districts.** For requirements for the construction of a building or buildings containing a mixture of residential and non-residential uses in the CG and CR Zoning Districts, See Subsection 11 below.

RH, RO, N-MU	CC-MU & PUD	CL	CG	CR	POM & INST
			X	X	

c. Development and Design Standards in the CC-MU and N-MU Zoning Districts.

- (1). **Facade Orientation.** The facade of a building shall present a public view to the street or pedestrian corridor. It is preferred that new buildings and additions be architecturally compatible with the existing structures and that the exterior wall surfaces of each individual building be similar in architectural treatment and materials. For large new buildings, modulation should be incorporated in building designs to reduce overall bulk and mass. All rooftop equipment shall be located, screened or shielded so that its visibility is minimized from public view.
- (2). **Amenity Areas.** Amenity areas are encouraged and should be considered as an integral component of site design. Amenity areas include, but are not limited to public plazas, courtyards, squares or small parks on the site. Examples of design elements that could be included in the amenity areas are seating walls, benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas.
- (3). **Pedestrian Orientation.** Building design concepts should respond to the site plan by forming street edges and by encouraging active, safe street life. Buildings should recognize site patterns and help define entries to interior courtyards, building entrances, and public spaces. In the CC-MU District, storefronts shall be retained on existing buildings – in full or to a minimum of 40 feet in depth. Window glazing openings on existing storefronts in the CC-MU District shall not be reduced in area but may be expanded in size with approval of the Historic District Commission.
- (4). **Traditional Neighborhood Design.** Use architectural styles that are associated with traditional neighborhood design and multi-family design that delineates separation of the units. Commercial architectural styles should mimic the Main Street concept and take architectural styles from the City’s traditional building designs.
- (5). **Parking and Pedestrian Lighting.** Lights illuminating off-street parking, pedestrian or loading areas shall be arranged and installed so that no material glare or direct light shall spill over into adjacent parcels or shine upwards. Light standards for off-street parking and loading areas shall not exceed 20 feet in height and shall be of a directional type capable of shielding the light source from direct view.
- (6). **Outside Storage.** There shall be no outside storage of any equipment, materials or supplies.
- (7). **Drive-Through Facilities.** Drive-through facilities and driveways for non-governmental activities are prohibited when directly accessed from public streets. No street curb cuts are allowed for lots that abut alleys.

- (8). **Parking Access.** The preferred access for parking facilities is off of a public alley. Street curb cuts are prohibited unless the applicant can demonstrate the necessity for any proposed curb cut. Visible facades of parking structures shall be designed to be compatible with the architecture of the surrounding structures. The sidewalk level should contain commercial and/or retail space. Where commercial/retail uses are not feasible, other architectural features are encouraged along the street wall, such as murals, display panels, bas-relief, and masonry patterning.

7. Waiver of Design Provisions.

The Planning Commission may waive design provisions of this subsection, if requested in writing by the developer, when the Planning Commission is satisfied that an alternative proposed by the applicant meets the intent of this subsection. Documentation of and justification for any requested deviation from these standards shall be provided. The site plan for the proposed development and the buildings as constructed shall substantially conform with the sketch plan approved by the Planning Commission in cases where a sketch plan is required.

8. Additional Requirements for Destination Retail Uses in the CR District and Multi-Family Developments in the RH, RO, N-MU, CC-MU and PUD Districts and all Development in the CC-MU and N-MU Districts.

a. Preliminary Consultation and Sketch Plan.

A preliminary consultation shall be held between the Planning Commission and the applicant or developer of a proposed multi-family or destination retail use development (see references to amenities in Subsection I.6.b) and all development in the CC-MU and N-MU Districts. The application shall be accompanied by a sketch plan prepared by a registered professional engineer, registered architect or landscape architect, or registered land surveyor. The sketch plan shall be to scale and contain sufficient information to establish the identity of proposed uses, grades and general dimensions and locations of proposed structures, streets, parking areas, walkways, easements and property lines. The sketch plan shall include a layout of the proposed development of the entire site (including out parcels) and preliminary sketches of the exterior treatment of the shopping center or destination retail use building, or multi-family dwelling buildings.

b. Remodeling and Renovation of Existing Retail Centers and Multi-Family Developments.

All provisions of this subsection shall apply to renovation plans for existing retail centers and/or multi-family developments that are improved to 1) introduce a destination retail use to the site and/or 2) result in an increase in the number of dwelling units. This includes circumstances when there is little to no ground disturbance. A site plan will be required. Depending upon the nature and arrangement of existing site improvements, the Planning Commission may treat such proposed renovation plans with leniency when reviewing plans submitted in accordance with this subsection.

9. Individual Site Design Within Nonconforming Subdivisions in POM Zoning Districts.

When a property that is located in the POM district is the subject of a development plan for subdivision that was approved prior to January 1, 2009, the design standards found in the chart in Subsection 6.b. shall be applied on a lot-by-lot basis. Site plans submitted for developments with

multiple buildings on one lot shall be subject to these standards. All other general design guidelines relating to materials, outdoor uses, location of parking and other standards shall continue to apply.

10. Design Standards in the I-MU Zoning District.

a. Orientation.

Structures should be located at the front of the site, oriented along the public street frontage.

b. Parking.

It is preferred that off-street parking spaces be located towards the rear of the lot, behind any buildings and structures. In cases where parking is provided beneath an elevated structure, either underground or in parking decks, the street side portion of the building shall be available for usable office/commercial space excluding driveway and lobby areas.

c. Amenities.

Projects containing groups of buildings to be devoted primarily to office and/or retail activities shall incorporate amenity areas into the site design. Amenity areas include, but are not limited to, public plazas, courtyards, squares or small parks on the site. Design elements to be included in the amenity areas are seating walls, benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas. Since the purpose of these amenity areas is to serve as pocket recreational areas and to help foster a sense of community, additional elements shall be considered if the applicant shows the design meets the intent of this section.

d. Facade Orientation.

The facade of a building shall present a public view to the street or pedestrian corridor. It should be architecturally compatible with the existing structures. The exterior wall surfaces of each individual building shall be similar in architectural treatment and materials. For large buildings, modulation shall be incorporated in building designs to reduce overall bulk and mass, with planes of exterior walls not running in one continuous direction more than 100 feet without an offset or setback. All rooftop equipment shall be shielded so that it is fully screened from public view.

e. Lighting.

Lights illuminating buildings, off-street parking or loading areas shall be arranged and installed so that no material glare or direct light shall spill over into adjacent parcels. Light standards shall not exceed 20 feet in height (including base) and shall be of a directional type capable of shielding the light source from direct view. Lighting of building facades shall be via units mounted at the cornice line, directed downward.

f. Outdoor Storage.

There shall be no outside storage of any equipment, materials or supplies. Trash receptacle enclosures shall be architecturally compatible with the building(s) on site and constructed of the same building material.

11. Design Standards for Mixed Use Buildings in the CG and CR Zoning Districts:

The improvements shall be designed so that:

- a. The building(s) shall be adjacent to and oriented towards an exterior public street, or line both sides of a site's principal interior driveway. Buildings shall be constructed as close to the front setback line or the interior driveway it faces as possible. However, the Planning Commission may take into consideration proposed site design elements and amenities that will be located between the building and the street or driveway, the location of which may require locating the building farther from the street or driveway.
- b. The residential areas of the building(s) shall have a separate entrance (or entrances) from the ground level commercial uses.
- c. A minimum of two-hundred (200) square feet of open space and/or balcony area shall be provided per unit. This shall be in addition to whatever normal open use areas that would have otherwise been designed for the building's ground level commercial uses. This open space may be a mixture of green space and amenity-providing hardscape areas subject to the Planning Commission's determination that the proposed design meets the intent of this subsection to provide outdoor living area and recreational opportunities for residents of the building(s).
- d. Public spaces shall be required and may include, but are not limited to, outdoor areas such as plazas, outdoor dining areas, rooftop gardens, and landscaped areas designed for active or passive use. Pedestrian walk ways shall be installed in such a way to connect to existing on and off-site pedestrian connections. Consideration should be given to the creation of outdoor space for the first floor businesses.
- e. Building standards are as follows:
 - (1) The vertical plane of the building facade shall be broken up with a high level of articulation (e.g., projecting entry or window features, recessed elements, transparent storefronts, identifiable retail spaces, and awning entrance canopies). The ground level facade for a multi-level structure should have a distinct appearance from the facade or the floor levels above.
 - (2) Buildings shall include three hundred sixty (360) degree architectural design elements.
 - (3) Building materials shall be high quality, durable, and be earth tone in appearance as regulated elsewhere in this Chapter.
 - (4) Extended awnings, canopies or large umbrellas shall be permitted and located to provide shade. Colors shall complement building colors.
 - (5) Tables, chairs, planters, trash receptacles and other elements of street furniture shall be compatible with the architectural character of the building where the establishment is located.
 - (6) To allow for pedestrian circulation, a minimum of five (5) feet of sidewalk along the curb

and leading to the entrance to the establishment shall be maintained free of tables or other encumbrances.

- f. Near-final building elevations shall be included in the site plan for the development of a mixed-use building under these provisions, and the final construction shall be in substantial conformance with the elevations included in the site plan.

12. Design Standards For PUD-R Overlay Developments.

In addition to the special design standards set forth in Article 4 for PUD-R Developments, the following shall apply:

- a. Traffic circles, containing landscaping and/or public art, shall be located in the design of the Regional Streetscape Focal Point (RSFP), either at the edge of or central to the RSFP for the purpose of aesthetics as well as traffic calming.
- b. Front setbacks for exclusively residential uses adjacent to the RSFP shall be consistent with the setbacks of the RSFP, or provide a transition between the RSFP on one side, and other exclusively residential areas on the other.
- c. The streetscape of the RSFP shall include ornamental walls, other masonry features, and open space of both green and hardscape natures. They may also contain awning covered seating areas for adjacent businesses, and such awning covered areas are not required to meet building setback requirements.
- d. Mid-block pedestrian connections to parking areas, residential access to buildings, etc. shall be considered. While the main axis of the RSFP by nature will be characterized by longer blocks in most cases, cross streets shall be characterized by shorter blocks. Modified rectilinear street grids shall be the standard.
- e. The identified open space area(s) in the streetscape shall be improved with amenities that are practical for use by both visitors to the commercial spaces as well as the residents of the upper floors of the building and residents of nearby homes.
- f. Except for single-family detached dwelling exclusive areas, residential areas shall have some dedicated open space. Blocking off a large area –usually in conjunction with floodplains, that is remote from the development, does not meet the intent of this subsection.
- g. Sufficient buffers will be provided between more intensive and solely light industrial and commercial use areas and nearby residential and mixed use areas, utilizing ornamental fencing, landscaping or combinations of both.
- h. Subject to permission provided by the Planning Commission, single family, semi-detached, two-family and townhouse dwellings on fee-simple lots may be relieved of the requirement that they front on a public street, provided that:
 - (1) They front on a village green style open space that is accepted by the Mayor and City Council as a City Park or maintained in perpetuity by a property owner’s association consisting of all properties within the PUD; and

- (2) No dwelling is more than 200 feet from a public street; and
- (3) Parking for the dwellings is provided to the rear of the dwellings via an alley system.
- i. A notation shall be required on the subdivision plat that will be recorded which states that for lots that are less than RMED lot area and setback requirements, the creation of this development in itself is a self-created hardship, invalidating any argument for later variances.
- j. Buildings shall not be oriented such that loading areas, rear, or unfinished portions of façade faces public streets.
- k. There shall be no residential through lots fronting on two public streets.
- l. To the greatest extent practical, all parking for all uses shall be located to the side and rear of principal buildings.

13. Outdoor Storage of Inventory, Merchandise and Supplies.

All outdoor storage of inventory, merchandise and supplies in the CL, CG, CR, INST, IR, IG, I-MU and Conversion districts shall, at minimum, be located at least 10 feet from adjacent property lines and street rights of way, and buffered in accordance with the provisions of the section pertaining to the buffering of parking areas.

This provision shall also be applied to properties and uses where a site plan is not required for a new or expanded use which introduces outdoor storage to an area, regardless of whether a site plan is required for the proposed use.

14. Crime Prevention Through Environmental Design Principles.

All commercial and residential development should be designed to incorporate CPTED principles as a means of reducing opportunities for criminal activity to occur. Simple measures can be taken that will provide greater visibility through natural surveillance onto public spaces and areas, controlled access to private areas, and creating a sense of ownership of space. Through such measures, the built environment can be designed and managed to make it an undesirable place for criminal activity. Site engineers and building architects should consider the following CPTED design strategies when developing site plans and architectural plans for commercial and residential development in Hagerstown:

- a. Allow natural observation from public and neighboring areas by orienting the building entrance towards the street, making landscape and fence materials near entrances and parking lots visibly permeable, and locating open space areas near streets or other areas visible to the public;
- b. Prepare a lighting plan in accordance with Illuminating Engineering Society of America Standards and ensure that parking lots, pedestrian routes and building entrance areas are well lit;
- c. Avoid blind corners and hidden recesses along pathways and beside building entrances;
- d. Avoid placement of large trees, garages, utility structures, fences, and gutters next to second story windows or balconies;

- e. Limb up trees and keep shrubs to 24 inches or lower around play areas and within street edge and driveway edge buffer areas to allow visibility into the site from public areas;
- f. Where large expanses of parking are proposed, provide surveillance such as security cameras.

J. Reserved.

This page intentionally left blank.

K. Land Development Protection of Human Burial Sites.**1. Purpose.**

This section is for the purpose of fostering the preservation of human burial sites in the City of Hagerstown. Cemeteries are intrinsic landscape features that should be considered for retention when practical during the design of new developments. This section also serves as a means of protecting human burial sites from destruction or removal in preparation for the development review process. Nothing in this section shall be interpreted to regulate, govern or interfere with the ongoing maintenance, use and enlargement of any existing public, private or commercial cemetery.

2. Establishment of Inventory and Map.

The Planning and Code Administration Department, in cooperation with the Human Burial Sites Preservation Advisory Board, shall maintain an inventory of:

- a. all known human burial grounds in the city;
- b. all sites containing suspected human remains based on the preponderance of information and evidence available, and
- c. all sites of former human burial sites previously removed or relocated.

The inventory shall include a description of the site, references to documentary evidence, geographical location of each, and a record of the owners of each location. The Planning and Code Administration Department shall maintain a current map which depicts the location of all known existing, suspected, and former human burial sites in the city based on the above inventory.

3. Plan Requirements.

All development plans shall state whether, to the best knowledge of the owner or developer, any human burial site is known to or believed to exist on the property. If a human burial site is known or believed to be present, its location shall be identified on the plan and copies of any available documentation shall be submitted as an addendum to the plan.

4. Development of Properties Containing a Human Burial Site.

When a property owner proposes to develop a property, through submission of a subdivision plan or site plan, on which is located a human burial site which is shown on the inventory map, the property owner shall:

- a. Accommodate the human burial site with the development, by placing the human burial site in a non-buildable lot with a cemetery designation, by dedicating the lot to a homeowner's association or a preservation, conservation or religious organization, by providing that the human burial site be used as a cemetery in perpetuity, and by providing public access to the lot. Any land placed on a non-buildable human burial site lot designation pursuant to this section may be counted toward open space requirements. Alternatively, a property owner may leave the deed to the human burial site in the private ownership and care of descendants of those interred in the human burial site.

-
- b. Conduct a title search of the parcel extending back to the original patent to ascertain whether covenants, deed restrictions, or other instruments relating to the human burial site had been executed; and
 - c. Establish the boundaries of the human burial site as approved by the Planning and Code Administration Department whenever the human burial site boundaries are either not well defined or in dispute, using any or all of the following methods:
 - (1) Historical documentation;
 - (2) Professional archaeology;
 - (3) Ground-penetrating radar;
 - (4) Oral history, claims of descendants, vital records;
 - (5) Proton magnetometry; and/or
 - (6) Other approved nondestructive techniques.

5. Human Burial Site Relocation.

Should a human burial site, by its location, diminutive size in relationship to its location, or other factors, significantly impact the logical planning and development layout of a site or otherwise create practical difficulties or unnecessary hardships in complying with this section, a developer may propose to the Planning Commission to relocate the human burial site, provided:

- a. The relocation process shall be accomplished in accordance with all laws of the State of Maryland pertaining to the disinterment, removal and relocation of human remains;
- b. The cemetery burial site to which the remains shall be relocated shall be identified on the subdivision or site plan; and
- c. The developer shall permit, upon request, collegiate level or professional archeological study of the human burial site and the disinterment during the removal process.

All cost for relocation shall be borne by the developer, except the developer is not required to pay for professional archeological study of the site.

6. Discovery, Determination and Protection of Previously Unknown Cemeteries.

a. Discovery.

If any person discovers the existence of previously unknown human remains, tombstones, funerary objects, or other evidence of a human burial site which reasonably indicates the presence of a cemetery or human burial site in the course of grading, construction, or work of any kind, that person shall stop work immediately in the discovery area and shall give notice of its discovery within twenty-four (24) hours to the State's Attorney for Washington County, the County Health Officer, the Hagerstown Planning and Code Administration Department and the

Hagerstown City Engineer. All grading, site, zoning and building permits issued by the City shall be suspended and the property owner shall stop all work in the discovered area until a determination is made pursuant to Subsection b, below.

b. Determination.

The Planning and Code Administration Department, in consultation with the Human Burial Sites Preservation Advisory Board shall determine if the discovered area provided in Subsection a, above is a human burial site. In making this determination, the Planning and Code Administration Department, in consultation with the Human Burial Sites Preservation Advisory Board may require the property owner to comply with Subsection 4.b and c above. If it is determined that the area is not a human burial site, the stop work order shall be lifted and the suspended permits released by the City Engineer.

c. Protection.

If it is determined that the discovered area is a human burial site, the property owner shall comply with the requirements of Subsection 4. However, this shall not preclude the developer from petitioning the Planning Commission for permission to relocate the cemetery in accordance with Subsection 5. Development plans, site plans and plats, as necessary shall be revised to reflect the newly discovered human burial site and any plan revisions necessary to accommodate or relocate the human burial site.

7. Removal Prior to Development and Failure to Report Previously Unknown Cemeteries.

- a. If a property owner or developer removes human remains from a human burial site prior to entering the development or subdivision process, including the legal removal of a cemetery in accordance with the laws of the state of Maryland, any subsequent development of the area formerly occupied by the human burial site shall be placed in open space.
- b. If a property owner or developer removes human remains from a previously unknown human burial site prior to or during the development process and does not report the discovery of the human burial site in accordance with Subsection 6.a, above, in addition to any criminal and civil violations and penalties that otherwise exist in state and County law, any subsequent development of the area formerly occupied by the human burial site shall be placed in open space.

This page intentionally left blank.

Certifications

This page intentionally left blank.

Sketch Plan Signature Block

Reviewed by the Hagerstown Planning Commission on (insert date) and authorized to proceed to development plan or site plan phase of review, subject to any conditions set forth in the minutes of the Planning Commission and reflected in notations here-on. Review at this stage of development is conceptual. As such, approval of a sketch plan does not convey any vesting rights. The City of Hagerstown and other review agencies reserve the right to raise issues or concerns not detected in this sketch plan review.

FOR THE HAGERSTOWN PLANNING COMMISSION

Date

Name
Planning and Code Administration Department

Final Plat Certifications and Signature Blocks

The following certifications and related information shall appear on the Final Plat:

1. Certification of Individuals of Ownership and Dedication.

I (We) do hereby certify, for ourselves and our personal representatives, heirs and assigns, that I (We) are the legal and true owner(s) of the property shown and described on this plat, and that I (We) hereby adopt the plan of subdivision shown hereon, hereby establish the minimum building restriction lines shown hereon, hereby dedicates to public use all utility and drainage easement areas and alley rights-of-way, hereby agree to keep open all spaces and recreation areas shown hereon, and hereby agree that said dedications shall not impose any responsibility on the City of Hagerstown regarding the subjects of such dedications until legal acceptance thereof by said City.

I (We) hereby reserve the fee simple title to the land underlying said easements, rights-of-way, open spaces and recreation areas. I (We) hereby agree to convey the fee simple title for all public street rights-of-way to the City, without consideration, upon request.

There are no suits, actions at law, leases, liens, mortgages, trusts, easements or rights-of-way affecting the property included in this plan of subdivision except the following:

And all parties having an interest therein have hereunto affixed their signatures, including their assent to the plan of subdivision.

This Certification of Ownership and Dedication of dedication shall be binding upon my (our) grantees, assigns, successors, heirs, and personal representatives and all parties and interests thereto have hereunto affixed their signatures indicating their assent to this Plan of Subdivision.

WITNESS our hands and seals this _____ day of _____ 20____

WITNESS:

_____ (SEAL)

_____ (SEAL)
Owners

2. Certification of Entities of Ownership and Dedication.

_____ hereinafter called "entity"
by _____ its duly authorized _____
does hereby certify, that the entity is the legal and true owner of the property shown and described on this plat and that it hereby adopts the plan of subdivision shown hereon, hereby establishes the minimum building restriction lines shown hereon, hereby dedicates to public use all utility and drainage easement areas and alley rights-of-way, hereby agrees to keep open all spaces and recreation areas shown hereon, and hereby agrees that said dedications shall not impose any responsibility on the City of Hagerstown regarding the subjects of such dedications until legal acceptance thereof by said City.

This entity hereby reserves the fee simple title to the land underlying said easements, rights-of-way, open spaces and recreation areas. This entity hereby agrees to convey the fee simple title for all public street rights-of-way to the City, without consideration, upon request.

There are no suits, actions at law, leases, liens, mortgages, trusts, easements or rights-of-way affecting the property included in this plan of subdivision except the following:

This Certification of Ownership and Dedication shall be binding upon the entity's grantees, assigns, successors, heirs, and personal representatives and all parties and interests thereto have hereunto affixed their signatures indicating their assent to this Plan of Subdivision.

WITNESS our hands and seals this _____ day of _____, 20 ____.

WITNESS:

_____ (SEAL)

Owners (SEAL)

3. Certificate of Accuracy.

I hereby certify that the plan shown and described hereon is a true and correct survey to the accuracy required by the Hagerstown Planning Commission and that the monuments have been placed as shown here on to the specifications of the Hagerstown Subdivision and Land Development Ordinance.

_____, 20____
Date
Qualified Surveyor
Maryland Registration No. _____

4. Certification of Approval of Water and Wastewater System.

I hereby certify that the water supply and wastewater disposal utility systems installed, or proposed for installation, in the subdivision plat entitled _____ fully meet the requirements of the Maryland Health Department, and are hereby approved as shown.

_____, 20____
Date
County Health Officer or
Authorized Representative

5. Certification of Approval of Required Improvements.

I hereby certify that streets and other Required Improvements have been installed in an acceptable manner and according to the specifications of the Hagerstown Subdivision and Land Development Ordinance in the subdivision entitled _____.

_____, 20____
Date
City Engineer

NOTE: If the improvements have not been completed or installed, a performance bond to the Mayor and City Council is required. (Use Certification No. 6, below)

6. Certification of Performance Bond.

I, _____, City Clerk, do hereby certify that a performance bond in the amount of _____ (\$) _____ Dollars has been posted and is on file with the City of Hagerstown that guarantees completion of site development work, i.e., streets, water, wastewater, storm drainage, etc., in accordance with City of Hagerstown standards, and that said bond is written by an approved institution and that the amount of the bond is in accordance with City Engineer’s estimate of the cost of said proposed improvements.

_____, 20_____
Date City Clerk

7. Certification of Joint Responsibility for Utilities. (for Simplified Plats only)

The respective owners of _____ and _____ (street or address) shall be jointly and severally responsible for any and all expenses incurred in the operation and maintenance of common building sewers and/or any other utilities in common use. It is further agreed that this shall be considered and construed as a covenant running with the land.

_____, 20_____
Date Owner

Owner

8. Declaration of Intent of Subdivision. (for Simplified Plats only)

I hereby certify that the intent of the Simplified Plat for Subdivision shown hereon is for acquisition of additional acreage for property enlargement, readjustment of property lines, and/or correction of deed discrepancies, or conveyance of an existing structure for residential purposes only and not for the development of same. Any plan for development of this land will be submitted to the Planning Commission in accordance with the rules and regulations of the City of Hagerstown.

_____, 20_____
Date Owner

Owner

9. Certificate of Approval.

I do hereby certify that the Plan for Subdivision shown hereon complies with the Subdivision and Land Development Ordinance for the City of Hagerstown, Maryland, with the exception of such variances, if any, as noted on this Plat and in the minutes of the Hagerstown Planning Commission and is approved for recording in the Offices of the Register of Deeds.

HAGERSTOWN PLANNING COMMISSION

_____, 20____
Date Chair

Void if not recorded in the Land Records Office of Washington County within 180 days of the above signature. The Clerk of the Court shall not record this document more than 180 days after the above date.

10. Condominium Plat Signature Block. (for Staff)

This condominium plat conforms with current applicable zoning requirements and/or is confirmed as nonconforming to those requirements due to the creation of existing uses or conditions prior to the adoption of the Hagerstown City Zoning Ordinance, or subsequent applicable amendment thereto.

_____, 20____
Date Zoning Administrator

11. Fee Simple Dedication of Open Space and Other Facilities to be Owned and Maintained by Property Owners Association. If dedication of open space, storm water management facilities or other lands to a property owners' association is proposed, the developer shall provide documentation of the creation of the Property Owners' Association and submit an original deed to the City prior to recordation of the final plat, granting good and sufficient fee simple title to all open space required to be dedicated to the Property Owners' Association.

Property Owners Association Note:

A property owners' association named the _____ (proper name of the POA) _____ has been created and property owners association covenants have been approved by the City of Hagerstown and recorded in the Land Records of Washington County, Maryland at Liber _____ Folio _____ on _____ (insert date) _____. Such property owners association shall be responsible for the maintenance of all common areas and storm water management facilities depicted in the area included in this plat, or otherwise identified on the plat and/or other improvement referred to in the covenants.

_____ signature _____
Insert Name, President/Name of POA

Site Plan and Development Plan Signature Blocks

1. Commitment to Build in Accordance with Approved Plans.

This site plan (or development plan) is approved for the improvements and proposed use or uses shown on the plan presented to and approved by the Hagerstown Planning Commission on _____ .

These plans are approved plans of development. Deviation from this plan is a violation of the Land Management Code, which may result in a stop work order being placed on the development, issuance of notices of violation and civil citations, a request for injunctive relief in the courts, or any combination thereof.

Any desired deviation from this approved plan must be discussed with the City Planning Staff before implementing the change(s). Minor deviations may be administratively approved by the Planning Staff, but significant changes may require Planning Commission review and approval.

This commitment is binding upon grantees, assigns, successors and heirs.

_____, 20____
Date Owner/Developer

2. Maintenance of Landscaping.

As the developer/owner of this development, the undersigned agrees to install all landscaping in accordance with this approved plan (or any subsequent approved revision thereto) and binds himself and future owners, developers, successors and heirs to maintain said landscaping in substantial conformance with this approved landscaping plan. Failure to maintain landscaping in accordance with this approved plan (or subsequent approved amendment thereto) constitutes a violation of the approved site plan, subject to enforcement action, as allowed by law, to compel compliance with this plan.

_____, 20____
Date Owner/Developer

3. Site Plan Approval Signature Block.

Certificate of Approval. The site plan shown hereon complies with the Subdivision and Land Development Ordinance for the City of Hagerstown, Maryland, and other applicable provisions of the Land management Code, with the exception of such waivers or variances, if any, as noted on this Plat and in the minutes of the Hagerstown Planning Commission and/or Board of Zoning Appeals. This approval is valid for three years from date of signature, and may be renewed by the Planning Commission in accordance with the provisions of the Land Management Code. This plan shall be void should requisite permits not be obtained and substantial construction occur within three years of the date of signature.

All work shall be in accordance with this plan. Should the developer find need to deviate from this approved plan, the developer shall contact Planning staff for a determination whether the work is minor and can be approved by staff, or if the work is substantial enough to require revised plans and possible re-approval by the Planning Commission.

FOR THE HAGERSTOWN PLANNING COMMISSION

Date

Name
Planning and Code Administration Department

4. Development Plan Approval Signature Block.

Certificate of Approval. The Development Plan for Subdivision shown hereon complies with the Subdivision and Land Development Ordinance for the City of Hagerstown, Maryland, and other applicable provisions of the Land management Code, with the exception of such variances, if any, as noted on this Plat and in the minutes of the Hagerstown Planning Commission and/or Board of Zoning Appeals. This approval is valid for three years from date of signature, and may be renewed by the Planning Commission in accordance with the provisions of the Land Management Code. This plan shall be void should requisite permits not be obtained and substantial construction occur within two years of the date of signature.

All work shall be in accordance with this plan. Should the developer find need to deviate from this approved plan, the developer shall contact Planning staff for a determination whether the work is minor and can be approved by staff, or if the work is substantial enough to require revised plans and possible re-approval by the Planning Commission.

FOR THE HAGERSTOWN PLANNING COMMISSION

Date

Name
Planning and Code Administration Department

ARTICLE 6
Floodplain Management Ordinance
Table of Contents

Section	Page
A. General Provisions	6 - 3
B. Administration	6 - 7
C. Requirements in All Special Flood Hazard Areas	6 - 17
D. Requirements in All Flood Hazard Areas	6 - 23
E. Variances	6 – 31
F. Enforcement	6 – 35
G. Amendment and Effective Date	6 – 35

This page intentionally left blank.

ARTICLE 6
Floodplain Management Ordinance

A. General Provisions.

1. Findings.

The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Hagerstown. Special flood hazard areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. Structures that are inadequately elevated, improperly flood proofed, or otherwise unprotected from flood damage also contribute to flood losses.

The City of Hagerstown, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on April 17, 1978. As of that date all development and new construction as defined herein, are to be compliant with these regulations.

2. Statutory Authorization.

The Maryland General Assembly, in Md. Code Ann., Land use Article, Title 4, has established as policy of the state that the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning control, and that planning and zoning controls shall be implemented by local government in order to, among other purposes, secure the public safety, promote health and general welfare, and promote the conservation of natural resources. Therefore, the Mayor and City Council of the City of Hagerstown does hereby adopt the following floodplain management regulations.

3. Statement of Purpose.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- a. Protect human life, health and welfare;
- b. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- c. Minimize flooding of water supply and sanitary sewage disposal systems;
- d. Maintain natural drainage;
- e. Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;
- f. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- g. Minimize prolonged business interruptions;
- h. Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
- i. Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;
- j. Minimize the impact of development on adjacent properties within and near flood-prone areas;
- k. Provide that the flood storage and conveyance functions of floodplains are maintained;
- l. Minimize the impact of development on the natural and beneficial functions of floodplains;
- m. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- n. Meet the community participation requirements of the National Flood Insurance Program, as set forth in the Code of Federal Regulations (CFR) at 44 CFR, Section 59.22.

4. **Areas to Which These Regulations Apply.**

These regulations shall apply to all special flood hazard areas within the jurisdiction of the City of Hagerstown, and identified in Section A.5., below.

5. **Basis for Establishing Special Flood Hazard Areas and Base Flood Elevations.**

- a. **Minimum Basis.** For the purposes of these regulations, the minimum basis for establishing special flood hazard areas and base flood elevations is the Flood Insurance Study for Washington County, Maryland and Incorporated Areas dated August 15, 2017 or the most recent revision thereof, and the accompanying Flood Insurance Rate Map(s) (FIRMs) and all subsequent amendments and revisions to the FIRMs. The FIS and FIRMs are retained on file and available to the public at the office of the Zoning Administrator, who shall serve as the Floodplain Ordinance Administrator.
- b. **Special Flood Hazard Areas.** Where field surveyed topography or digital topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard on the FIRM, the area shall be considered as special flood hazard area.
- c. **Base Flood Elevations When Not on FIRM.** To establish base flood elevations in special flood hazard areas that do not have such elevations shown on the FIRM, the Floodplain Ordinance Administrator may provide the best available data for base flood elevations, may require the applicant to obtain available information from federal, state or other sources, or may require the applicant to establish special flood hazard areas and base flood elevations as set forth in Subsection B.3., Subsection B.4., and Subsection B.5 of this Article.

6. Abrogation and Greater Restrictions.

These regulations are not intended to repeal or abrogate any existing regulations and ordinances, including subdivision regulations, zoning ordinances, building codes, or any existing easements, covenants, or deed restrictions. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

7. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed to accomplish the intended purpose of these regulations; and,
- c. Deemed neither to limit nor repeal any other powers granted under state statutes.

Notes referencing publications of the Federal Emergency Management Agency refer to the most recent edition of those publications, are intended only as guidance, and do not bind or alter the authority of the Floodplain Administrator to interpret and apply these regulations.

8. Warning and Disclaimer of Liability.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage.

These regulations shall not create liability on the part of the City of Hagerstown, any officer or employee thereof, the Maryland Department of the Environment (MDE) or the Federal Emergency Management Agency (FEMA), for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

9. Definitions.

The terms, as defined herein, shall be those found in Article 3 of this Chapter that are followed by the administrative note “(Floodplain)”.

10. Severability.

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

This page intentionally left blank.

B. Administration.**1. Designation of the Floodplain Administrator.**

The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- a. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- b. Where in accordance with established City of Hagerstown procedures and standards, enter into a written agreement or written contract with another Maryland community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

2. Duties and Responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- a. Review applications for permits to determine whether proposed activities will be located in flood hazard areas.
- b. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
- c. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- d. Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular, permits from MDE for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the state.
- e. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities and MDE (NFIP State Coordinator), and have submitted copies of such notifications to FEMA.
- f. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- g. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.

- h. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
- i. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the City of Hagerstown, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations or boundaries.
- j. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - (1) Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
 - (2) Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood proofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- k. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
- l. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
- m. Administer the requirements related to proposed work on existing buildings:
 - (1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
 - (2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the noncompliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
- n. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance (ICC) coverage under NFIP flood insurance policies.
- o. Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Hagerstown have been modified and:

- (1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
 - (2) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place within six months of the date of annexation and a copy of the amended regulations shall be provided to MDE (NFIP State Coordinator) and FEMA.
- p. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

3. Use and Interpretation of FIRMs.

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- a. Where field surveyed topography indicates that ground elevations:
 - (1) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
 - (2) Are above the base flood elevation, the area shall be regulated as a special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
- b. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
- c. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
- d. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
- e. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

- (1) Upon the issuance of a Letter of Final Determination by FEMA, if the preliminary flood hazard data is more restrictive than the effective data, it shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
- (2) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Subsection A.5.c and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
- (3) Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations floodplain or floodway boundaries exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

4. Permits Required and Expiration.

- a. It shall be unlawful for any person to begin any development or construction which is wholly within, partially within, or in contact with any flood hazard area established in Subsection A.5., including but not limited to:

- (1) Filling; grading;
- (2) Construction of new structures;
- (3) The substantial improvement of buildings or structures, including repair of substantial damage;
- (4) Placement or replacement of manufactured homes, including substantial improvement or repair of substantial damage of manufactured homes;
- (5) Erecting or installing a temporary structure, or
- (6) Alteration of a watercourse,

until a permit is obtained from the City of Hagerstown. No such permit shall be issued until the requirements of these regulations have been met. This provision shall not prohibit work that involves the ongoing repair and maintenance of a building that does not meet the definition of “substantial improvement.”

- b. In addition to the permits required in Subsection a. above, applicants for permits in non-tidal waters of the state are advised to contact MDE. Unless waived by MDE, pursuant to Code of Maryland Regulations 26.17.04, Construction on Non-tidal Waters and Floodplains, MDE regulates the “100-year frequency floodplain of free-flowing waters,” also referred to as non-tidal waters of the state. To determine the 100-year frequency floodplain, hydrologic calculations are based on the ultimate development of the watershed, assuming existing zoning. The resulting flood hazard areas delineated using the results of such calculations may be different than the

special flood hazard areas established in Subsection A.5. of these regulations. A permit from the City of Hagerstown is still required in addition to any State requirements.

- c. A permit is valid provided the actual start of work is within 180 days of the date of permit issuance. Requests for extensions shall be submitted in writing and justifiable cause demonstrated. The Floodplain Administrator may grant, in writing, one or more extensions of time, for additional periods not exceeding 90 days each and provided there has been no amendment or revision to the basis for establishing special flood hazard areas and BFEs set forth in Subsection A.5.

5. **Application Required.**

Application for a permit shall be made by the owner of the property or the owner's authorized agent (herein referred to as the applicant) prior to the start of any work. The application shall be on a form furnished for that purpose.

a. **Application Contents.**

At a minimum, applications shall include:

- (1) Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the area in question, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.
- (2) Elevation of the existing natural ground where buildings or structures are proposed, referenced to the datum on the FIRM.
- (3) Delineation of flood hazard areas, designated floodway boundaries, flood zones, base flood elevations, and flood protection setbacks. Base flood elevations shall be used to delineate the boundary of flood hazard areas and such delineations shall prevail over the boundary of SFHAs shown on FIRMs.
- (4) Where floodways are not delineated or base flood elevations are not shown on the FIRMs, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from federal, state, or other sources, or to determine such information using accepted engineering practices or methods approved by the Floodplain Administrator. [Note: See "Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations" (FEMA 265).]
- (5) Determination of the base flood elevations, for development proposals and subdivision proposals, each with at least five lots or at least five acres, whichever is the lesser, in special flood hazard areas where base flood elevations are not shown on the FIRM; if hydrologic and hydraulic engineering analyses are submitted, such analyses shall be performed in accordance with the requirements and specifications of MDE and FEMA.
- (6) Hydrologic and hydraulic engineering analyses for proposals in special flood hazard areas where FEMA has provided base flood elevations but has not delineated a floodway; such

analyses shall demonstrate that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot or a lower increase if required by MDE.

- (7) For encroachments in floodways, an evaluation of alternatives to such encroachments, including different uses of the site or portion of the site within the floodway, and minimization of such encroachment.
- (8) If fill is proposed to be placed for a purpose other than to elevate structures, the applicant shall indicate the intended purpose for the fill.
- (9) For proposed buildings and structures, including substantial improvement and repair of substantial damage, and placement and replacement of manufactured homes, including substantial improvement and repair of substantial damage:
 - (a) The proposed elevation of the lowest floor, including basement, referenced to the datum on the FIRM and a signed Agreement to Submit an Elevation Certificate.
 - (b) The signed Declaration of Land Restriction (Non-conversion Agreement) that shall be recorded on the property deed prior to issuance of the Certificate of Occupancy, if the application includes an enclosure below the lowest floor or a crawl/underfloor space that is more than four feet in height.
 - (c) A written evaluation of alternative methods considered to elevate structures and manufactured homes, if the location is in non-tidal waters of the state and fill is proposed to achieve the elevation required in Section D.4.a or Section D.4.b.
- (10) For accessory structures that are 300 square feet or larger in area (footprint) but no larger than 600 square feet in area (footprint) and that are below the base flood elevation, a Declaration of Land Restriction (Non-conversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.
- (11) For temporary structures and temporary storage, specification of the duration of the temporary use.
- (12) For proposed work on existing buildings, structure, and manufactured homes, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement or repair of substantial damage, including but not limited to:
 - (a) If the existing building or structure was constructed after April 17, 1978, evidence that the work will not alter any aspect of the building or structure that was required for compliance with the floodplain management requirements in effect at the time the building or structure was permitted.
 - (b) If the proposed work is a horizontal addition, a description of the addition and whether it will be independently supported or structurally connected to the base building and the nature of all other modifications to the base building, if any.

- (c) Documentation of the market value of the building or structure before the improvement or, if the work is repair of damage, before the damage occurred.
 - (d) Documentation of the actual cash value of all proposed work, including the actual cash value of all work necessary to repair and restore damage to the before-damaged condition, regardless of the amount of work that will be performed. The value of work performed by the owner or volunteers shall be valued at market labor rates; the value of donated or discounted materials shall be valued at market rates.
- (13) Certifications and/or technical analyses prepared or conducted by a licensed professional engineer or licensed architect, as appropriate, including:
- (a) The determination of the base flood elevations or hydrologic and hydraulic engineering analyses prepared by a licensed professional engineer that are required by the Floodplain Administrator or are required by these regulations in: Subsection C.2 for certain subdivisions and development; Subsection D.3.a for development in designated floodways; Subsection D.3.c. for development in flood hazard areas with base flood elevations but no designated floodways; and Subsection D.3.e for deliberate alteration or relocation of watercourses.
 - (b) The Flood Proofing Certificate for nonresidential structures that are flood proofed as required in Subsection D.5.b.
 - (c) Certification that engineered flood openings are designed to meet the minimum requirements of Subsection D.4.c(3) to automatically equalize hydrostatic flood forces.
- (14) For nonresidential structures that are proposed with flood proofing, an operations and maintenance plan as specified in Subsection D.5.b.(3).
- (15) Such other material and information as may be requested by the Floodplain Administrator and necessary to determine conformance with these regulations.
- b. New Technical Data.**
- (1) The applicant may seek a Letter of Map Change by submitting new technical data to FEMA, such as base maps, topography, and engineering analyses to support revision of floodplain and floodway boundaries and/or base flood elevations. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant. A copy of the submittal shall be attached to the application for a permit.
 - (2) If the applicant submits new technical data to support any change in floodplain and designated floodway boundaries and/or base flood elevations but has not sought a Letter of Map Change from FEMA, the applicant shall submit such data to FEMA as soon as practicable, but not later than six (6) months after the date such information becomes available. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant.

6. Review of Application.

The Floodplain Administrator shall:

- a. Review applications for development in special flood hazard areas to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information that is required to support the application.
- b. Notify applicants that permits from MDE and the U.S. Army Corps of Engineers, and other state and federal authorities may be required.
- c. Review all permit applications to assure that all necessary permits have been received from the federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including permits issued by:
 - (1) The U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;
 - (2) MDE pursuant to COMAR 26.23 (Non-tidal Wetlands) and Section 401 of the Clean Water Act; and,
 - (3) MDE for construction on non-tidal waters of the State pursuant to COMAR 26.17.04.
- d. Review applications for compliance with these regulations after all information required in Subsection B.5 of these regulations or identified and required by the Floodplain Administrator has been received.

7. Inspections.

The Floodplain Administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

- a. Stake-out inspection, to determine location on the site relative to the flood hazard area and designated floodway.
- b. Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.
- c. Inspection of enclosures below the lowest floor, including crawl/underfloor spaces, to determine compliance with applicable provisions.
- d. Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.
- e. Final inspection prior to issuance of the Certificate of Occupancy.

8. **Submissions Required Prior to Final Inspection.**

Pursuant to the Agreement to Submit an Elevation Certificate submitted with the application as required in Subsection B.5.a(9), the permittee shall have an Elevation Certificate prepared and submitted prior to final inspection and issuance of a Certificate of Occupancy for elevated structures and manufactured homes, including new structures and manufactured homes, substantially improved structures and manufactured homes, and additions to structures and manufactured homes.

This page intentionally left blank.

C. Requirements in All Special Flood Hazard Areas.**1. Application of Requirements.**

The general requirements of this section apply to all development proposed within all special flood hazard areas identified in Subsection A.5.

2. Subdivision Proposals and Development Proposals.**a. In all flood zones:**

- (1) Subdivision proposals and site plan proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
- (2) Subdivision proposals and site plan proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) Subdivision proposals and site plan proposals shall have adequate drainage paths provided to reduce exposure to flood hazards and to guide floodwaters around and away from proposed structures.
- (4) Subdivision proposals and site plan proposals containing at least five lots or at least five acres, whichever is the lesser, that are wholly or partially in flood hazard areas where base flood elevation data are not provided by the Floodplain Administrator or available from other sources, shall be supported by determinations of base flood elevations as required in Subsection B.5 of these regulations.
- (5) Public and private streets designed and constructed as part of the subdivision review process shall have the driving surface at or above the base flood elevation **plus one foot**.
- (6) Private streets, driveways, alleys, other vehicular access and motor vehicle parking areas designed and constructed as part of the site plan review process shall have the driving surface at or above the base flood elevation, unless a variance to the provisions of this Ordinance is approved by the Board of Zoning Appeals.

b. In special flood hazard areas of non-tidal waters of the State:

- (1) Subdivision proposals shall be laid out such that proposed building pads are located outside of the special flood hazard area and any portion of platted lots that include land areas that are below the base flood elevation shall be used for other purposes, deed restricted, or otherwise protected to preserve it as open space.
- (2) Public and private streets designed and constructed as part of the subdivision review process shall have the driving surface at or above the base flood elevation plus one foot.
- (3) Private streets, driveways, alleys, other vehicular access and motor vehicle parking areas designed and constructed as part of the site plan review process shall have the driving

surface at or above the base flood elevation, unless a variance to the provisions of this Ordinance is approved by the Board of Zoning Appeals.

3. Protection of Water Supply and Sanitary Sewage Systems.

- a. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
- c. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.

4. Buildings and Structures.

New buildings and structures (including the placement and replacement of manufactured homes) and substantial improvement of existing structures (including manufactured homes) that are located, in whole or in part, in any special flood hazard area shall:

- a. Be designed (or modified) and constructed to safely support flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. Structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses, including hydrodynamic and hydrostatic loads and the effects of buoyancy, from flooding equal to the flood protection elevation or the elevation required by these regulations or the building code, whichever is higher.
- b. Be constructed by methods and practices that minimize flood damage.
- c. Use flood damage-resistant materials below the elevation of the lowest floor required in Subsection D.4.a or Subsection D.5.a.
- d. Have electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the elevation of the lowest floor required in Subsection D.4.a. or Subsection D.5.a. Electrical wiring systems are permitted to be located below elevation of the lowest floor provided they conform to the provisions of the electrical part of the building code for wet locations. If replaced as part of a substantial improvement, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section.
- e. As an alternative to Subsection d, above, electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the lowest floor provided they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to that elevation.

- f. Have the electric panelboard elevated at least three feet above the BFE.
- g. Comply with the specific requirements of Section D.
- h. Comply with the requirements of the most restrictive designation if located on a site that has more than one flood zone designation (A Zone, designated floodway).

5. Placement of Fill.

- a. Disposal of fill, including but not limited to earthen soils, rock, rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.
- b. Fill proposed to be placed to elevate structures in flood hazard areas shall comply with the floodways requirements in Subsection D.3.a, Subsection D.3.b, and Subsection D.3.c and the limitations of Section D.4.b.

6. Historic Structures.

Repair, alteration, addition, rehabilitation, or other improvement of historic structures shall be subject to the requirements of these regulations if the proposed work is determined to be a substantial improvement, unless a determination is made that the proposed work will not preclude the structure's continued designation as a historic structure. The Floodplain Administrator may require documentation of a structure's continued eligibility and designation as a historic structure.

7. Manufactured Homes.

- a. New manufactured homes shall not be placed or installed in floodways.
- b. For the purpose of these regulations, the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).
- c. New manufactured homes located outside of floodways, replacement manufactured homes in any flood hazard areas, and substantial improvement (including repair of substantial damage) of existing manufactured homes in all flood hazard area, shall:
 - (1) Be elevated on a permanent, reinforced foundation in accordance with Section D. of this Article;
 - (2) Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications; and
 - (3) Have enclosures below the lowest floor of the elevated manufactured home, if any, including enclosures that are surrounded by rigid skirting or other material that is attached to the frame or foundation, that comply with the requirements of Section D. of this Article.

For more information, see FEMA P-85 "Protecting Manufactured Homes from Floods and Other Hazards: A Multi-Hazard Foundation and Installation Guide."

8. Recreational Vehicles.

Recreational vehicles shall:

- a. Meet the requirements for manufactured homes in Subsection C.7.; or
- b. Be fully licensed and ready for highway use; or
- c. Be on a site for less than 180 consecutive days.

9. Critical and Essential Facilities.

Critical and essential facilities shall be elevated to the higher of elevation required by these regulations plus one foot, the elevation required by the building code, or the elevation of the 0.2 percent chance (500-year) flood.

10. Temporary Structures and Temporary Storage.

In addition to the application requirements of Subsection B.5., applications for the placement or erection of temporary structures and the temporary storage of any goods, materials, and equipment, shall specify the duration of the temporary use. Temporary structures and temporary storage in floodways shall meet the limitations of Subsection D.3.a of these regulations. In addition:

- a. Temporary structures shall:
 - (1) Be designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic loads and hydrostatic loads during conditions of the base flood;
 - (2) Have electric service installed in compliance with the electric code; and
 - (3) Comply with all other requirements of the applicable state and local permit authorities.
- b. Temporary storage shall not include hazardous materials.

11. Gas or Liquid Storage Tanks.

- a. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- b. Above-ground tanks in flood hazard areas shall be anchored to a supporting structure and elevated to or above the base flood elevation, or shall be anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- c. In flood hazard areas, tank inlets, fill openings, outlets and vents shall be:

- (1) At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

12. **Functionally Dependent Uses.**

Applications for functionally dependent uses that do not conform to the requirements of these regulations shall be approved only by variances issued pursuant to Section E. If approved, functionally dependent uses shall be protected by methods that minimize flood damage during the base flood, including measures to allow floodwaters to enter and exit, use of flood damage-resistant materials, and elevation of electric service and equipment to the extent practical given the use of the building.

This page intentionally left blank.

D. Requirement in All Flood Hazard Areas

1. General Requirements.

In addition to the general requirements of Section C., the requirements of this section shall:

- a. Apply in flood hazard areas, including special flood hazard areas along non-tidal waters of the State.
- b. Apply to all development, new construction, substantial improvements (including repair of substantial damage), and placement, replacement, and substantial improvement (including repair of substantial damage) of manufactured homes.

2. Flood Protection Setbacks.

Within areas defined by flood protection setbacks along non-tidal waters of the State:

- a. No new buildings, structures, or other development shall be permitted unless the applicant demonstrates that the site cannot be developed without such encroachment into the flood protection setback and the encroachment is the minimum necessary after consideration of varying other siting standards such as side, front, and back lot line setbacks.
- b. Disturbance of natural vegetation shall be minimized and any disturbance allowed shall be stabilized with vegetation.
- c. Public works and temporary construction may be permitted.

3. Development that Affects Flood-Carrying Capacity of Non-Tidal Waters of the State.

a. Development in Designated Floodways.

For proposed development that will encroach into a designated floodway, Subsection B.5.a.(7) requires the applicant to submit an evaluation of alternatives to such encroachment, including different uses of the site or the portion of the site within the floodway, and minimization of such encroachment. This requirement does not apply to fences that do not block the flow of floodwaters or trap debris.

Proposed development in a designated floodway may be permitted only if:

- (1) The applicant has been issued a permit by MDE; and
- (2) The applicant has developed hydrologic and hydraulic engineering analyses and technical data prepared by a licensed professional engineer reflecting such changes, and the analyses, which shall be submitted to the Floodplain Administrator, demonstrate that the proposed activity will not result in any increase in the base flood elevation; or

- (3) If the analyses demonstrate that the proposed activities will result in an increase in the base flood elevation, the applicant has obtained a Conditional Letter of Map Revision or Letter of Map Revision from FEMA upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.

b. Development that Includes the Placement of Fill in Non-Tidal Waters of the State.

For proposed development that includes the placement of fill in non-tidal waters of the State, other than development that is subject to Subsection 3.d., below, a hydraulically-equivalent volume of excavation is required. Such excavations shall be designed to drain freely.

c. Development in Areas with Base Flood Elevations but No Designated Floodways.

For development in special flood hazard areas of non-tidal waters of the State with base flood elevations but no designated floodways:

- (1) The applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such technical data to the Floodplain Administrator as required in Subsection B.5.a.(6). The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.
- (2) The proposed development may be permitted if the applicant has received a permit by MDE and if the analyses demonstrate that the cumulative effect of the proposed development, when combined with all other existing and potential flood hazard area encroachments will not increase the base flood elevation more than 1.0 foot at any point.

d. Construction of Roads, Bridges, Culverts, Dams and In-Stream Ponds.

Construction of roads, bridges, culverts, dams, and in-stream ponds in non-tidal waters of the State shall not be approved unless they comply with this section and the applicant has received a permit from MDE.

e. Alteration of a Watercourse.

For any proposed development that involves alteration of a watercourse not subject to Subsection 3.c. above, unless waived by MDE, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes, including the floodway analysis required in Subsection B.5.a., and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by MDE and by FEMA for a Conditional Letter of Map Revision and a Letter of Map Revision upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.

Alteration of a watercourse may be permitted only upon submission, by the applicant, of the following:

- (1) A description of the extent to which the watercourse will be altered or relocated;

- (2) A certification by a licensed professional engineer that the flood-carrying capacity of the watercourse will not be diminished;
- (3) Evidence that adjacent communities, the U.S. Army Corps of Engineers, and MDE have been notified of the proposal, and evidence that such notifications have been submitted to FEMA; and
- (4) Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the applicant to enter into an agreement with the City of Hagerstown specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

4. **Residential Structures and Residential Portions of Mixed Use Structures.**

New residential structures and residential portions of mixed-use structures, and substantial improvement (including repair of substantial damage) of existing residential structures and residential portions of mixed-use structures shall comply with the applicable requirements of Section C. and this subsection. See Subsection D.6 for requirements for horizontal additions.

a. **Elevation Requirements.**

- (1) Lowest floors shall be elevated to or above the flood protection elevation.
- (2) In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus one foot, or at least three feet if a depth number is not specified.
- (3) Enclosures below the lowest floor shall meet the requirements of Subsection 4.c., below.

b. **Limitations on Use of Fill to Elevate Structures.**

Unless otherwise restricted by these regulations, especially by the limitations in Subsection D.3.a., Subsection D.3.b., and Subsection D.3.c., fill placed for the purpose of raising the ground level to support a building or structure shall:

- (1) Consist of earthen soil or rock materials only.
- (2) Extend laterally from the building footprint to provide for adequate access as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency;
- (3) Comply with the requirements of the building code and be placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling;
- (4) Be sloped no steeper than one vertical to two horizontal, unless approved by the Floodplain Administrator;

- (5) Be protected from erosion associated with expected velocities during the occurrence of the base flood; unless approved by the Floodplain Administrator, fill slopes shall be protected by vegetation if the expected velocity is less than five feet per second, and by other means if the expected velocity is five feet per second or more; and
- (6) Be designed with provisions for adequate drainage and no adverse effect on adjacent properties.

c. **Enclosures Below the Lowest Floor.**

- (1) Enclosures below the lowest floor shall be used solely for parking of vehicles, building access, crawl/underfloor spaces, or limited storage.
- (2) Enclosures below the lowest floor shall be constructed using flood damage-resistant materials.
- (3) Enclosures below the lowest floor shall be provided with flood openings which shall meet the following criteria: [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures."]
 - (a) There shall be a minimum of two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.
 - (b) The total net area of all flood openings shall be at least one square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.
 - (c) The bottom of each flood opening shall be one foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.
 - (d) Any louvers, screens or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.
 - (e) If installed in doors, flood openings that meet requirements of paragraphs (a) through (d), are acceptable; however, doors without installed flood openings do not meet the requirements of this section.

5. **Nonresidential Structures and Nonresidential Portions of Mixed Use Structures.**

New nonresidential structures and nonresidential portions of mixed-use structures, and substantial improvement (including repair of substantial damage) of existing nonresidential structures and nonresidential portions of mixed-use structures shall comply with the applicable requirements of Section C. and the requirements of this section. See Subsection D.6 for requirements for horizontal additions.

a. Elevation Requirements.

Elevated structures shall:

- (1) Have the lowest floor (including basement) elevated to or above the flood protection elevation; or
- (2) In areas of shallow flooding (Zone AO), have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus one foot, or at least three feet if a depth number is not specified; and
- (3) Have enclosures below the lowest floor, if any, that comply with the requirements of Subsection D.4.c.; or
- (4) If proposed to be elevated on fill, meet the limitations on fill in Subsection D.4.b.

b. Flood Proofing Requirements.

- (1) Flood proofing of new nonresidential buildings is not allowed in non-tidal waters of the State (COMAR 26.17.04.11(B)(7)).
- (2) Flood proofing for substantial improvement of nonresidential buildings is allowed in non-tidal waters of the State.
- (3) If flood proofing is proposed, structures shall:
 - (a) Be designed to be dry flood proofed such that the building or structure is watertight with walls and floors substantially impermeable to the passage of water to the level of the flood protection elevation plus 1.0 foot, or
 - (b) If located in an area of shallow flooding (Zone AO), be dry flood proofed at least as high above the highest adjacent grade as the depth number specified on the FIRM plus two feet, or at least four feet if a depth number is not specified; and
 - (c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - (d) Have flood proofing measures that are designed taking into consideration the nature of flood-related hazards; frequency, depth and duration of flooding; rate of rise and fall of floodwater; soil characteristics; flood-borne debris; at least 12 hours of flood warning time from a credible source; and time necessary to implement any measures that require human intervention;
 - (e) Have at least one door above the applicable flood elevation that allows human ingress and egress during conditions of flooding;
 - (f) Have an operations and maintenance plan that is filed with local emergency management officials and that specifies the owner/occupant's responsibilities to

monitor flood potential; the location of any shields, doors, closures, tools, or other goods that are required for implementation; maintenance of such goods; methods of installation; and periodic inspection; and

- (g) Be certified by a licensed professional engineer or licensed architect, through execution of a Flood proofing Certificate that states that the design and methods of construction meet the requirements of this section. The Flood proofing Certificate shall be submitted with the construction drawings as required in Subsection B.5.a(13).

6. Horizontal Additions.

- a. A horizontal addition proposed for a building or structure that was constructed after the date specified in Subsection A.1 shall comply with the applicable requirements of Subsection D.4 and this section.
- b. In non-tidal waters of the State that are subject to the regulatory authority of MDE, all horizontal additions shall comply with the applicable requirements of Subsection D.4. and this section and:
 - (1) If the addition is structurally connected to the base building, the requirements of Subsection c., below, apply.
 - (2) If the addition has an independent foundation and is not structurally connected to the base building and the common wall with the base building is modified by no more than a doorway, the base building is not required to be brought into compliance.
- c. For horizontal additions that are structurally connected to the base building:
 - (1) If the addition combined with other proposed repairs, alterations, or modifications of the base building constitutes substantial improvement, the base building and the addition shall comply with the applicable requirements of Subsection D.4 and this section.
 - (2) If the addition constitutes substantial improvement, the base building and the addition shall comply with all of the applicable requirements of Subsection D.4 and this section.
- d. For horizontal additions with independent foundations that are not structurally connected to the base building and the common wall with the base building is modified by no more than a doorway, the base building is not required to be brought into compliance.
- e. A horizontal addition to a building or structure that is not substantial improvement, and is not located in nontidal waters of the State, is not required to comply with this section.

[Note: See “Substantial Improvement/Substantial Damage Desk Reference”) (FEMA P-758).]

7. Accessory Structures.

- a. Accessory structures shall be limited to no more than 300 square feet in floor area.

- b. Accessory structures shall comply with the elevation requirements and other requirements of Subsection D.4., the flood proofing requirements of Subsection D.5.b., or shall:
- (1) Be useable only for parking of vehicles or limited storage;
 - (2) Be constructed with flood damage-resistant materials below the base flood elevation;
 - (3) Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
 - (4) Be anchored to prevent flotation;
 - (5) Have electrical service and mechanical equipment elevated to or above the base flood elevation; and
 - (6) Have flood openings that meet the requirements of Subsection D.4.c.

This page intentionally left blank.

E. Variances.**1. General.**

The Board of Zoning Appeals shall have the power to consider and authorize or deny variances from the strict application of the requirements of these regulations. A variance shall be approved only if it is determined to not be contrary to the public interest and where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the Board of Zoning Appeals may attach such conditions to variances as it deems necessary to further the purposes of these regulations.

No variance shall be granted for an accessory structure exceeding 600 square feet. A signed Declaration of Land Restriction (Non-conversion Agreement) is required as a condition of receiving a variance. The Agreement must be recorded with the Deed. If a variance is granted and the accessory structure is not elevated or dry flood proofed, the conditions in Subsection D.7 apply.

The Board of Zoning Appeals shall notify, in writing, any applicant to whom a variance is granted to construct or substantially improve a building or structure with its lowest floor below the elevation required by these regulations that the variance is to the floodplain management requirements of these regulations only, and that the cost of Federal flood insurance will be commensurate with the increased risk, with rates up to \$25 per \$100 of insurance coverage.

A record of all variance actions, including justification for issuance shall be maintained pursuant to Subsection B.2.j. of this Article.

2. Application for a Variance.

- a. The owner of property, or the owner's authorized agent, for which a variance is sought shall submit an application for a variance to the Floodplain Administrator.
- b. At a minimum, the application shall contain the following information: name, address, and telephone number of the applicant and property owner; legal description of the property; parcel map; description of the existing use; description of the proposed use; site map showing the location of flood hazard areas, designated floodway boundaries, flood zones, base flood elevations, and flood protection setbacks; description of the variance sought; and reason for the variance request. Variance applications shall specifically address each of the considerations in Subsection E.3.
- c. If the application is for a variance to allow the lowest floor of a building or structure below the applicable minimum elevation required by these regulations, the application shall include a statement signed by the owner that, if granted, the conditions of the variance shall be recorded on the deed of the property.

3. Considerations for Variances.

The Floodplain Administrator shall request comments on variance applications from MDE (NFIP State Coordinator) and shall provide such comments to the Board of Zoning Appeals.

In considering variance applications, the Board of Zoning Appeals shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

- a. The danger that materials may be swept onto other lands to the injury of others.
- b. The danger to life and property due to flooding or erosion damage.
- c. The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- d. The importance of the services to the community provided by the proposed development.
- e. The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
- f. The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
- g. The compatibility of the proposed use with existing and anticipated development.
- h. The relationship of the proposed use to the comprehensive plan and hazard mitigation plan for that area.
- i. The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- k. The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- l. The comments provided by MDE (NFIP State Coordinator).

4. Limitations for Granting Variances.

The Board of Zoning Appeals shall make an affirmative decision on a variance request only upon:

- a. A showing of good and sufficient cause. Good and sufficient cause deals solely with the physical characteristics of the property and cannot be based on the character of the improvement, the

- personal characteristics of the owner/inhabitants, or local provision that regulate standards other than health or public safety.
- b. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
 - c. A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
 - d. A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.
 - e. A determination that the building, structure or other development is protected by methods to minimize flood damages.
 - f. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

This page intentionally left blank.

F. Enforcement.

Enforcement provisions of this Article shall be set forth in Article 8.

G. Subsequent Amendments and Effective Date.

1. Subsequent Amendments.

All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency. This ordinance shall be amended as required by the Federal Emergency Management Agency, Title 44 Code of Federal Regulations. All subsequent amendments to this ordinance are subject to the approval of the Federal Emergency Management Agency and the Maryland Department of the Environment.

2. Effective Date.

This Floodplain Management Ordinance was adopted on April 3, 1978 to be effective on the same day, as subsequently amended.

This page intentionally left blank.

ARTICLE 7
Forest Conservation Ordinance
Table of Contents

Section	Page
A. General Provisions	7 - 3
B. General Requirements	7 - 9
C. Forest Stand Delineation	7 - 11
D. Forest Conservation Plan	7 - 13
E. Express Procedures	7 - 17
F. Afforestation and Retention	7 - 19
G. Reforestation	7 - 21
H. Sequence, Priorities and Time Requirements for Afforestation and Reforestation	7 - 23
I. Payment-in-Lieu of Afforestation and Reforestation	7 - 25
J. Recommended Tree Species	7 - 27
K. Financial Security for Afforestation and Reforestation	7 - 29
L. Standards for Protecting Trees from Construction Activities	7 - 31
M. Variance, Appeals, and Penalties	7 - 33
N. Annual Report, Biennial Review by the Maryland Department of Natural Resources Effective Date and Subsequent Amendments	7 - 35

This page intentionally left blank.

ARTICLE 7
Forest Conservation Ordinance

A. General Provisions.

1. Title.

This Article shall be known as the Forest Conservation Ordinance of the City of Hagerstown.

2. Definitions.

Article 3 of the Land Management Code shall govern all definitions as they apply to this Article.

3. Application, Exemption, Declaration of Intent and Consideration of Non-City Forest Conservation Plans Affecting Lands Within City Jurisdiction.

Except as provided in Subsection A.3.b of this Article, this Article applies to:

a. **Application.** A regulated activity as defined in Article 3 of this Code.

b. **Exemptions.** This Article does not apply to:

(1) Highway construction activities under Natural Resources Article, Section 5-103, Annotated Code of Maryland.

(2) Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax-Property Article, §8-211, Annotated Code of Maryland, that are completed:

(a) before July 1, 1991; or

(b) after July 1, 1991, on property which:

(i) has not been the subject of application for a grading permit for development within five (5) years after the logging or harvesting operation, and

(ii) is the subject of a declaration of intent as provided for in Subsection A.3.c of this Article, approved by the Planning and Code Administration Department.

(3) Agricultural activities not resulting in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, except that a person engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a one- (1-) year period, may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in Subsection A.3.c of this Article which includes:

- (a) a statement that the landowner or landowner's agent will practice agriculture on that portion of the property for five (5) years from the date of the declaration; and
 - (b) a sketch map of the property which shows the area to be cleared.
- (4) The cutting or clearing of public utility rights-of-way licensed under Sections 1-101 and 2-101, et seq. Of the Public Utilities Companies Article of the Annotated Code of Maryland if:
- (a) required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and
 - (b) cutting or clearing of the forest is conducted to minimize the loss of forest.
- (5) Routine maintenance or emergency repairs of public utility rights-of-way licensed under Sections 1-101 and 2-101, et seq. of the Public Utilities Companies Article of the Annotated Code of Maryland
- (6) Except for a public utility subject to Subsection A.3.b.6 of this Article, routine maintenance or emergency repairs of a public utility right-of-way if:
- (a) the right-of-way existed before the effective date of this ordinance; or
 - (b) the right-of-way's initial construction was approved under this ordinance.
- (7) Residential construction activity that is constructed on a single lot of any size or a linear project if the activity:
- (a) does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest;
 - (b) does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this ordinance; and
 - (c) is the subject of a declaration of intent filed with the Planning and Code Administration Department, as provided for in Subsection A.3.c of this Article, stating that the lot will not be the subject of a regulated activity within five (5) years of the cutting, clearing, or grading of forest.
- (8) Strip or deep mining of coal regulated under Natural Resources Article, Title 7, Subtitle 5 or 5A, Annotated Code of Maryland.
- (9) Non-coal surface mining regulated under Natural Resources Article, Title 7, Subtitle 6A, Annotated Code of Maryland.
- (10) An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child of the owner, if the activity:

- (a) does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest; and
 - (b) is the subject of a declaration of intent filed with the Planning and Code Administration Department, as provided for in Subsection A.3.c of this Article, which states that transfer of ownership may result in a loss of exemption.
 - (11) A preliminary plan of subdivision or a grading or sediment control plan approved before July 1, 1991.
 - (12) A planned unit development that, by December 31, 1991, has:
 - (a) met all requirements for planned unit development approval; and
 - (b) obtained initial development plan approval by the City of Hagerstown.
 - (13) A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if:
 - (a) the transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and
 - (b) both the grantor and grantee file a declaration of intent, as provided for in Subsection A.3.c of this Article.
 - (14) An activity on a previously developed area covered by impervious surface and located in the Priority Funding Area.
 - (15) A stream restoration project, as described in Article 3 of this Land Management Code, for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least five (5) years with the affected property owner or owners, or
 - (16) Maintenance or retrofitting of a storm water management structure that may include clearing of vegetation or removal and trimming of trees, so long as the maintenance or retrofitting is within the original limits of the disturbance for construction of the existing structure, or within any maintenance easement for access to the structure.
- c. **Declaration of Intent.**
- (1) The purpose of the declaration of intent is to verify that the proposed activity is exempt under this Article.
 - (2) A person seeking an exemption under Subsections 2, 3, 7, 10, or 13 of Subsection A.3.b above, shall file a declaration of intent with the Planning and Code Administration Department.
 - (3) The existence of a declaration of intent does not preclude:

-
- (a) an exempted activity on the property subject to a declaration of intent, if the activity:
 - (i) does not conflict with the purpose of any existing declaration of intent, and
 - (ii) complies with the applicable requirements for an exempted activity;
 - (b) a regulated activity on the area covered by the declaration of intent, if the activity occurs within five (5) years of the effective date of the declaration of intent, in which case:
 - (i) there shall be an immediate loss of exemption, or
 - (ii) there may be a noncompliance action taken by the Planning and Code Administration Department, as appropriate, under this Article; or
 - (c) a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Article are satisfied.
- (4) The Planning and Code Administration Department may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
 - (a) meet the retention, afforestation and reforestation requirements established in this Article;
 - (b) pay a noncompliance fee of \$0.50 per square foot of forest cut or cleared under the declaration of intent;
 - (c) be subject to other enforcement actions appropriate under this Article; or
 - (d) file a declaration of intent with the Planning and Code Administration Department.
 - (5) In its determination of appropriate enforcement action, the Planning and Code Administration Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Article.
 - (6) The declaration of intent is effective for five (5) years from date of Planning Commission approval and shall be recorded immediately among the land records of Washington County.
- d. **Consideration of Non-City Forest Conservation Plans affecting Lands Within City Jurisdiction.**
- (1) When a development that is outside of the City is proposed to include dedication of lands within the corporate limits of the City of Hagerstown for forest conservation retention or reforestation, the plan shall be submitted to the Hagerstown Planning Commission for review and approval. The Planning Commission may reject the proposal if it finds that the proposal will interfere with the logical development of the balance of the property or surrounding lands, will not be the highest and best use of land, will be inconsistent with the policies and goals of the Hagerstown Comprehensive Plan, or it will remove from potential

development lands the City views as valuable for economic development purposes. The Planning Commission may solicit the comments and opinions of adjacent property owners, the Department of Community and Economic Development and any other agency or organization the Commission identifies as having potential pertinent views on the proposal. Should the Commission approve such a plan, it may impose conditions necessary to protect the public interest from the City's perspective.

- (2) Should the County or State propose a public works project that will impact a property that is subject to a City-approved forest conservation plan, the new plan shall be submitted to the Hagerstown Planning Commission for review and approval. The plan shall contain proposals to offset any forest conservation measures lost by the proposal. Should the Planning Commission approve the proposal, the forest conservation plan file for the subject property shall be updated to reflect the approved change.

This page intentionally left blank.

B. General Requirements.

1. **General.** A person making application after the effective date of this Article, for a regulated activity shall:
 - a. Submit to the Planning and Code Administration Department a forest stand delineation and a forest conservation plan for the lot or parcel on which the development is located; and
 - b. Use methods approved by the City of Hagerstown, as provided in the City of Hagerstown Forest Conservation Technical Manual, to protect retained forests and trees during construction.

2. **Government Agency or Funding.** If a local agency or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D-G apply.
 - a. The plans for the regulated activity shall be submitted to the Planning and Code Administration Department; and
 - b. The Planning and Code Administration Department shall notify the Department of Natural Resources within 15 days of receipt of this plan or application.
 - c. Within 15 days of receipt of notice from the local authority, the Department of Natural Resources shall:
 - (1) determine whether the regulated activity has impact on significant forest resources; and
 - (2) notify the local authority whether the regulated activity is subject to the state program.
 - d. If the Department of Natural Resources determines that the regulated activity is subject to the state program, the:
 - (1) time limit for approval of the forest stand delineation and preliminary and final forest conservation plans shall begin when the Department of Natural Resources receives the necessary documents from the local authority; and
 - (2) local authority may not approve a regulated activity until the local authority receives notice from the Department of Natural Resources that the standards and requirements of the state program have been satisfied.
 - e. If the Department of Natural Resources determines the regulated activity need not be reviewed under the state program, the time limit from approval of the forest stand delineation and forest conservation plan under the local program begins when the local authority receives notice from the Department of Natural Resources.

This page intentionally left blank.

C. Forest Stand Delineation.

1. Criteria.

- a. **When Submitted.** A forest stand delineation shall be submitted before subdivision development plan or site plan approval, and before the issuance of any grading permit, sediment control plan approval or any other permit is issued for a regulated activity.
- b. **Qualified Professional.** The delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional, as specified in COMAR 08.19.06.01A.
- c. **Components.** The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall be considered complete if it includes the following components:
 - (1) a topographic map delineating intermittent and perennial streams, and steep slopes over 25%;
 - (2) a soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more;
 - (3) forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types;
 - (4) location of 100-year floodplains;
 - (5) information required by the City of Hagerstown Forest Conservation Technical Manual; and
 - (6) other information the City of Hagerstown determines is necessary to implement this Article.
- d. **Simplified Delineation.** If approved by the Planning and Code Administration Department, a simplified forest stand delineation may be submitted for an area:
 - (1) when no forest cover is disturbed during a regulated activity; or
 - (2) all forest on the site is designated to be under a long-term protective agreement.
- e. **Components of Simplified Delineation.** A simplified forest stand delineation shall be considered complete if it includes:
 - (1) all requirements under Subsection C.1.c (1), (2), (4), (5) and (6) of this Article (above);
 - (2) a map showing existing forest cover as verified by field inspection by City of Hagerstown personnel; and

- (3) other information required by this Article.
- f. **Expiration of Plan.** An approved forest stand delineation may remain in effect for a period not longer than five (5) years from the date of approval by the Planning and Code Administration Department.
- g. **Time for Submittal.**
 - (1) Within 30 calendar days after receipt of the complete forest stand delineation, the Planning and Code Administration Department shall notify the applicant whether the forest stand delineation is complete and correct.
 - (2) If the Planning and Code Administration Department fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
 - (3) The Planning and Code Administration Department may require further information or provide for an additional 15 calendar days under extenuating circumstances.
 - (4) The 30-day review period may be extended in 15-day increments by the Planning and Code Administration Department upon appropriate notification of the applicant.

D. Forest Conservation Plan.**1. General Provisions.**

- a. **Priorities.** In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.
- b. **Plan Strategy.** Except when using the Express Procedures described in Section E if existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Planning Commission:
 - (1) how techniques for forest retention have been exhausted;
 - (2) why the priority forests and priority areas specified in Subsection F.2 of this Article cannot be left in an undisturbed condition;
 - (a) if priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Section H of this Article; and
 - (b) where on the site in priority areas afforestation or reforestation will occur in compliance with Section H of this Article.
 - (3) How the disturbance to the priority forests and priority areas as specified in Subsection F.2 of this Article qualifies for a variance.
- c. **Fee Contribution.** Except when using the Express Procedures as described in Section E, the applicant shall demonstrate to the satisfaction of the Planning Commission that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.
- d. **Discretion of the Planning Commission.** The Planning Commission shall have the authority to determine if a payment instead of afforestation or reforestation is permitted and appropriate.
- e. **Non-Tidal Wetlands.** A regulated activity under the local program is subject to the following requirements:
 - (1) For the purposes of delineation, permitting, and mitigation, areas determined to be non-tidal wetlands under Environmental Article, Title 9, Annotated Code of Maryland shall be regulated under Environmental Article, Title 9, Annotated Code of Maryland or this Article, whichever is more stringent.
 - (2) For the purpose of calculating reforestation mitigation under this Article, a forested non-tidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 08.05.04 shall be shown on the forest conservation plan and subtracted on an acre-for-acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

- (3) Non-tidal wetlands shall be considered to be priority areas for retention and replacement.
- (4) Forested non-tidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the non-tidal wetlands and to avoid delay in the approval process.
- f. **On-site Compliance Spanning Residential Lots Discouraged.** This Article discourages compliance plans that reserve portions of residential building lots for easements for retention, afforestation or reforestation in order to meet the requirements of this Article. Such proposals result in long-term conflicts with homeowners desiring to make reasonable use of their yard areas for customary residential accessory uses. This provision shall not prevent the Planning Commission from considering such concepts on a case-by-case basis.

2. **Preliminary Forest Conservation Plan.**

- a. **Qualified Professional.** A preliminary forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
- b. **Components.** A preliminary forest conservation plan shall be submitted with the subdivision development plan or plan for a regulated activity and shall be considered complete if it includes the following components:
 - (1) The approved forest stand delineation for the site;
 - (2) Include a table that lists the proposed values of the following, in square feet:
 - (a) net tract area,
 - (b) area of forest conservation required, and
 - (c) area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas;
 - (3) Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;
 - (4) An explanation of how the provisions of Subsection D.1 of this Article have been met;
 - (5) In the case of afforestation or reforestation, a proposed afforestation or reforestation plan;
 - (6) A proposed construction timetable showing the sequence of forest conservation procedures;
 - (7) The proposed limits of disturbance;
 - (8) The proposed stockpile areas;

- (9) A proposed two- (2-) year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment;
 - (10) Information required in the City of Hagerstown Forest Conservation Technical Manual; and
 - (11) Other information the City of Hagerstown determines is necessary to implement this Article.
- c. **When Submitted.** The review of the preliminary forest conservation plan shall be concurrent with the review of the site plan or subdivision development plan.
- d. **Modification During Staff Review.** During the different stages of the review process, the preliminary forest conservation plan may be modified, as required by the Planning and Code Administration Department, prior to approval by the Planning Commission.
3. **The Final Forest Conservation Plan.**
- a. **Qualified Professional.** A final forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
 - b. **Components.** A final forest conservation plan shall be submitted with a final plan of subdivision, or plan for a regulated activity, and shall be considered complete if it includes the following components:
 - (1) Proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
 - (2) In the case of afforestation or reforestation, an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
 - (3) A binding two- (2-) year maintenance agreement specified in Section K of this Article and COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - (a) Watering, and
 - (b) A reinforcement planting provision if survival rates fall below required standards, as provided in the City of Hagerstown Forest Conservation Technical Manual;
 - (4) A long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
 - (a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention, and

- (b) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
 - (5) The substantive elements required under Subsection D.2.b (1) through (4), (6) through (8), and (10) of this Article, as finalized elements of the forest conservation plan; and
 - (6) Other information the Planning and Code Administration Department determines is necessary to implement this Article.
- c. **Time for Submittal.**
 - (1) Within 45 calendar days after receipt of a complete final forest conservation plan, the Planning Commission shall notify the applicant whether the forest conservation plan is approved.
 - (2) If the Planning Commission fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
 - (3) The Planning Commission may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.
 - (4) At the request of the applicant, the Planning Commission may extend the deadline under extenuating circumstances.
- d. **Concurrent with Final Plat.** The Planning Commission's review and approval of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control plan approval associated with the project. The final forest conservation plan shall be approved prior to the issuance of any permits.
- e. **Revocation of Plan.** The City of Hagerstown may revoke an approved forest conservation plan if it finds that:
 - (1) a provision of the plan has been violated;
 - (2) approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
 - (3) changes in the development or in the condition of the site necessitate preparation of a new or amended plan.
- f. **Stop Work Order.** The City of Hagerstown may issue a stop work order against a person who violates a provision of this Article or a regulation, order, approved forest conservation plan, or maintenance agreement.
- g. **Notification.** Before revoking approval of a forest conservation plan, the City of Hagerstown shall notify the violator in writing and provide an opportunity for a hearing.

E. Express Procedures.**1. Purpose and Intent.**

- a. **Purpose.** The purpose of an Express Procedure is to provide an alternate review and approval mechanism which will allow certain development activities to meet the intent of the Forest Conservation Ordinance through a review and approval process that is proportionate to the impact on forest resources.
- b. **Process.** The Express Procedure allows the combination of the various steps in the review process that are described as separate in this Article. It will not require documentation of a progression through the sequence of priorities for afforestation and reforestation.
- c. **Intent.** Certain development activities, such as those described in the eligibility standards contained in this Article, result in small afforested or reforested areas that may not be located in priority areas and provide little or no real benefit to improvements in water quality. The goal of the Express Procedure is to create significant-sized forest stands in priority areas where they will provide real benefits to improvements in water quality. This will occur through the aggregation and accumulation of payment-in-lieu of fees. The funds are expended by the City of Hagerstown on a schedule and in locations that will more closely meet the intent and purpose of this Article.

2. Eligibility to Use Express Procedure. An application must meet the following criteria in order to use the Express Procedure.

- a. Subdivisions of five lots or less when the afforestation or reforestation requirement as calculated from the worksheet is two acres or less; or
- b. Where no subdivision is proposed, when the afforestation or reforestation requirements as calculated from the worksheet is two acres or less; and
- c. There is no disturbance proposed in those priority areas described in Subsection F.2 and Subsections H.1.c, (1), (2), (4), (5), (6) and, (7).

3. The Express Procedure.

- a. **Discretion of the Applicant.** If the eligibility criteria are met, the applicant may choose to use the Express Procedure without prior approval by the Planning Commission.
- b. **Non-Exclusive.** Nothing in this section shall prevent the applicant from using the procedures described elsewhere in this Article.
- c. **Simplified Format.** The Forest Stand Delineation may be prepared in the simplified format as described in Subsection C.1.d. In addition, the Forest Stand Delineation shall identify those areas described in Subsection E.2.c.
- d. **Concurrence with Subdivision or Site Plan.** The Forest Stand Delineation and Forest Conservation Plan may be submitted, reviewed and approved concurrently with the applicable subdivision or site plan.

- e. **Area Affected.** The net tract area as requested on the worksheet and upon which calculations are based to determine afforestation and reforestation requirements shall be equal to the area of the proposed subdivided lots or the area of the entire parcel to be developed when no subdivision is proposed.
 - f. **Discretion of the Applicant.** The applicant may select the payment-in-lieu of fee to meet the requirements of afforestation or reforestation without prior approval by the Planning Commission.
 - g. **Timing of Payment-in-Lieu.** The payment-in-lieu of fee shall be paid prior to the issuance of a permit to begin construction activity.
4. **Additional Guidelines.**
- a. **Remaining Lands Not Eligible for Express Procedure.** After an applicant has chosen to use the Express Procedure for an eligible subdivision, the remaining land of the original parcel is not eligible to use the procedure again. It shall be subject to the requirements of this Article as if the Express Procedure did not exist.
 - b. **When in Variation with Other Provisions.** Where the Express Procedures described in this Article vary from those described elsewhere in this Article, the Express Procedures may be followed without violation of the Article as long as the subdivision or site development proposal meets the eligibility requirements.

F. Afforestation and Retention.

1. **Afforestation Requirement.** Except for linear projects that involve no change in land use, a person making application for a regulated activity after the effective date of this Article shall:

a. **Threshold Ratios.** Conduct afforestation on the lot or parcel in accordance with the following:

	Category of Use	Afforestation Threshold Percentage
(1)	Agricultural and resource areas	20%
(2)	Medium density residential areas	20%
(3)	Institutional development areas	15%
(4)	High-density residential areas	15%
(5)	Mixed-use and planned unit development areas	15%
(6)	Commercial and industrial use areas	15%

b. **Cutting Below Ratios.** Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Subsection F.1.a of this Article:

- (1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
- (2) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 2 to 1 ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

2. **Retention – Priority.** The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Planning Commission, that reasonable efforts have been made to protect them and the project plan cannot be reasonably altered:

- a. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes, non-tidal wetlands, and critical habitats;
- b. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

3. **Retention – Priority – Need for Variance.** The following trees, shrubs, plants and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the

applicant has demonstrated to the satisfaction of the Planning Commission that the applicant qualifies for a variance in accordance with Section M of this Article:

- a. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - (1) The Federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 through 1544 and in 50 CFR Part 7;
 - (2) The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01 through 10-2A-09, Annotated Code of Maryland; and
 - (3) COMAR 08.03.08;
- b. Trees that:
 - (1) Are part of an historic site,
 - (2) Are associated with a historic structure, or
 - (3) Have been designated by the state or the City of Hagerstown as a national, state, county or city champion tree; and
- c. Any tree having a diameter measured at four and five tenths (4.5) feet above the ground of:
 - (1) 30 inches or more; or
 - (2) 75% or more of the diameter, measured at four and five tenths (4.5) feet above the ground, of the current state champion tree of that species as designated by the Department of Natural Resources.

G. Reforestation.

1. Forest Conservation Threshold.

- a. **Threshold.** There is a forest conservation threshold established for all land use categories, as provided in Subsection b of this Section. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of one quarter (1/4) acre planted for each acre removed above the threshold to a ratio of two (2) acres planted for each acre removed below the threshold.
- b. **Reforestation for Cutting Below Threshold.** After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a regulated activity and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or at the option of the Planning Commission, payment into the forest conservation fund, according to the formula set forth in this Article and consistent with Subsection D.1 of this Article, and the following forest conservation thresholds for the applicable land use category:

	Category of Use	Conservation Threshold Percentage
(1)	Agricultural and resource areas	50%
(2)	Medium density residential areas	25%
(3)	Institutional development areas	20%
(4)	High-density residential areas	20%
(5)	Mixed-use and planned unit development areas	15%
(6)	Commercial and industrial use areas	15%

c. Calculations.

- (1) For all existing forest cover measured to the nearest one tenth (1/10) acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of one quarter (1/4) acre planted for each acre removed.
- (2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the City of Hagerstown Forest Conservation Technical Manual.
- (3) For all existing forest cover measured to the nearest one tenth (1/10) acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two acres planted for each acre removed below the threshold and at a ratio of one quarter (1/4) acre planted for each acre removed above the threshold.

This page intentionally left blank.

H. Sequence, Priorities and Time Requirements for Afforestation and Reforestation.**1. Sequence for Afforestation and Reforestation.**

- a. **Sequence.** After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the this Article, is as follows:
 - (1) Forest creation in accordance with a forest conservation plan using one or more of the following:
 - (a) Transplanted or nursery stock,
 - (b) Whip and seedling stock, or
 - (c) Natural regeneration where it can be adequately shown to meet the objective of the State Forest Conservation Technical Manual;
 - (2) Planting street trees for afforestation or reforestation with a mature canopy coverage may be granted full credit as a mitigation technique;
 - (3) Acquisition of an off-site protection easement on existing forested areas not currently protected in perpetuity as a mitigation technique, provided that two square feet of off-site existing forest is protected by easement for every one square foot of obligation toward compliance with this Ordinance is being met;
 - (4) When all other options, both on-site and off-site, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of area.
- b. **Alternative Sequences.** A sequence other than the one described in Subsection a. above may be used for a specific project, if necessary, to achieve the objectives of the City's forest conservation policies or to take advantage of opportunities to consolidate forest conservation efforts.
- c. **Priority.** The following are considered a priority for afforestation and reforestation.
 - (1) Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
 - (2) Establish forest or enhance non-forested areas on 100-year floodplains, when appropriate;
 - (3) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
 - (4) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - (5) Establish plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;

- (6) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;
 - (7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
 - (8) Use native plant materials for afforestation or reforestation, when appropriate.
- d. **Time Frames for Planting.** A person required to conduct afforestation or reforestation under this Article shall accomplish it following development project completion within one year or two growing seasons, whichever is a greater period of time.

I. Payment-In-Lieu of Afforestation and Reforestation.**1. Forest Conservation Fund.**

- a. **Fund Created.** There is established a forest conservation fund in the local program that meets the requirements of the Natural Resources Article, SS5-1610(h – 1), Annotated Code of Maryland.
- b. **Fee Rate.** If a person subject to this Article demonstrates to the satisfaction of the Planning Commission that requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished and appropriate credits generated by a forest mitigation bank in the same county or watershed are not available, or if the person is eligible to use the Express Procedure as described in Section E, the person shall contribute money into the City of Hagerstown forest conservation fund at a rate of:
 - (1) \$0.30 per square foot of the area of required planting until December 31, 2013, and
 - (2) adjusted for inflation as determined by the Planning and Code Administration Department annually after December 31, 2013.

Nothing in this provision shall prohibit the City of Hagerstown from setting a fee rate that exceeds that set by the Department of Natural Resources for the State equivalent of this Article, and at no time shall the fee be set lower than the rate set by the State of Maryland. Planning Commission approval of the use of fee-in-lieu contribution shall be identified and measured in the amount of area subject to compliance. Payment of fee-in-lieu contributions will be made based on the amount of area approved by the Planning Commission and the rate in effect at the time the applicant remits payment.

- c. **Authority of the Planning Commission.** The Planning Commission shall have the authority to determine if a payment instead of afforestation or reforestation is permitted and appropriate.
- d. **Discretion of Applicant When Using Express Procedure.** When an applicant is eligible to use the Express Procedure described in Section E, the decision to select the payment-in-lieu of afforestation or reforestation shall not require prior approval by the Planning Commission.
- e. **Timing of Fee Payment.** Money contributed instead of afforestation or reforestation under this Article shall be paid prior to the issuance of a permit to begin the construction activity. Planning Commission approval of the use of fee-in-lieu contribution shall be identified and measured in the amount of area subject to compliance. Payment of fee-in-lieu contributions will be made based on the amount of area approved by the Planning Commission and the rate in effect at the time the applicant remits payment.
- f. **Time Frame for Planting.** Money contributed under this Article shall remain in the fund for a period not to exceed two years or three growing seasons, whichever is greater, after receipt of payment. The City shall accomplish the reforestation or afforestation for the equivalent number of acres for which the money is deposited. Money deposited in the local conservation fund may only be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, preparation, maintenance of existing forests and achieving urban canopy goals, and shall be deposited in a separate forest conservation fund and may not revert to the general fund.

- g. **Extensions.** The time period specified in Subsection f above may be extended one time for an additional one year or two growing seasons by the Planning Commission with appropriate notification to the person who contributed the money.
- h. **When Planting Outside of City Limits.** Except as provided in Subsection d. of this section, sites for the reforestation or afforestation requirement using fund money contributed under this Article shall occur in the city or, if outside the city, on any property owned by the City of Hagerstown.

J. Recommended Tree Species.

1. Native Species Preferred.

Tree species used for afforestation or reforestation shall be native to the area, unless approved by the City, and selected from a list of approved species established by the City of Hagerstown.

2. Tree Species List.

The City of Hagerstown shall adopt a list of tree species to be used for any required afforestation or reforestation and incorporate it into the Forest Conservation Technical Manual.

This page intentionally left blank.

K. Financial Security for Afforestation and Reforestation.**1. Performance Bond or Other Acceptable Surety.**

- a. **Security Required.** A person required to conduct afforestation or reforestation under this Article shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Planning Commission. The surety shall:
 - (1) assure that the afforestation, reforestation, and the associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan;
 - (2) be in an amount equal to the estimated cost, as determined by the City of Hagerstown, of afforestation and reforestation; and
 - (3) be in a form and of a content approved by the City of Hagerstown.
- b. **Reduction of Security.** After one growing season, the person required to file a bond under Subsection K.1.a of this Article may request reduction of the amount of the bond or other financial security by submitting a written request to the Planning and Code Administration Department with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure afforestation or reforestation requirements are met.
- c. **City Review of Alternate Bond Amounts.** The City of Hagerstown shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
 - (1) the number of acres,
 - (2) the proposed method of afforestation or reforestation,
 - (3) the cost of planting materials or replacement materials,
 - (4) the cost of maintenance of the afforestation or reforestation project, and
 - (5) other relevant factors.
- d. **Release of Security.** If, after one year or two growing seasons, whichever is greater, the plantings associated with the afforestation or reforestation meet or exceed the standards of the City of Hagerstown Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released. If the planted area does not meet survival requirements, the maintenance period shall be extended by an additional term.

This page intentionally left blank.

L. Standards for Protecting Trees from Construction Activities.

1. Standards Adopted.

The City hereby adopts standards for the protection of trees from construction activity that are included in the City of Hagerstown Forest Conservation Technical Manual.

2. Installation of Protective Devices Required.

Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this Article, the applicant shall demonstrate to the City of Hagerstown that protective devices have been established.

This page intentionally left blank.

M. Variances, Appeals, Enforcement and Penalties.

1. Variance Procedure.

- a. **Hardship.** A person may request that a variance from this Article be granted by the Planning Commission if the person demonstrates that enforcement would result in unwarranted hardship.
- b. **Requirements.** An applicant for a variance shall:
 - (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - (2) describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
 - (3) verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
 - (4) verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
 - (5) verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
 - (6) verify that the granting of a variance will not adversely affect water quality.
- c. **Findings.** The Planning and Code Administration Department shall make findings that the applicant has met the requirements in Subsections a. and b. of this Section before the Planning Commission may grant a variance.
- d. **Notice.** Notice of a request for a variance shall be given to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.
- e. **Department of Natural Resources.** There is established by this Article the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the state concerning an approval of a variance under Natural Resources Article, §§5-1601 through 5-1612, Annotated Code of Maryland, or this Article.

2. Appeals.

The appeal procedure as applies to this Article shall be in accordance with the provisions of Article 8 of this Code.

3. Enforcement and Penalties.

Enforcement of the provisions of this Article, and penalties for violation thereof shall be in accordance with the provisions of Article 8 of this Code.

This page intentionally left blank.

N. Annual Report, Biennial Review by the Department of Natural Resources and Effective Date and Subsequent Amendments.

1. Annual Report.

On or before March 31 of each year, the Planning and Code Administration Department shall submit to the Maryland Department of Natural Resources Forest Service a report on:

- a. The number, location, and type of projects subject to the provisions of this Article;
- b. The amount and location of acres cleared, conserved, and planted in connection with a development project;
- c. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended, the number of acres for which the fees were collected, and the number of acres reforested, afforested, or conserved using the fees; and
- d. The costs of implementing the Forest Conservation Program;
- e. The size, location and protection of any local forest mitigation banks which are created under a local or State program, the number of acres debited from which each forest mitigation bank since the last annual report and the number of forest mitigation banks inspected since the last annual report;
- f. The number, location and type of violations and type of enforcement activity conducted in accordance with this subtitle; and
- g. To the extent practicable, the size and location of all conserved and planted forest areas, submitted in an electronic geographic information system or computer aided design format.

2. Biennial Review.

The Planning and Code Administration Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

3. Effective Date and Subsequent Amendments.

This Article is hereby enacted and becomes effective May 21, 1999. This Article may be amended as required. All amendments to this Article are subject to the approval of the Department of Natural Resources.

This page intentionally left blank.

ARTICLE 8
Appeals, Violations, and Penalties

A. General Provisions and Penalties.

1. General.

Appeals of decisions made in the administration of this Chapter shall be as outlined herein, unless specific appeals procedures and penalties are enumerated in the individual Articles of this Code. In such cases, the procedure enumerated in that Article/Ordinance shall control.

2. Interference with City Employees or Agents.

It shall be unlawful for any person to interfere with, impede, hinder, or obstruct in any manner the servants, employees, officers, or agents of the City of Hagerstown while engaged in assigned duties. Any person violating this section, on conviction thereof, will be guilty of a misdemeanor as stated in Article II of the City Code and be punishable in accordance with the provisions thereof.

3. Municipal Infractions and Penalties.

In accordance with the Municipal Infractions Ordinance provided for under the City Code, the fine for violation of this Chapter shall be up to \$500 dollars for each initial violation and \$500 dollars for each day thereafter that the violation continues. Unless otherwise provided, each day a violation continues shall constitute a separate and distinct violation. Each violation of this Chapter shall constitute a separate and distinct violation.

4. Misdemeanor Offense for Unauthorized Demolition in an Historic District and Violation of the Floodplain Management Ordinance.

Any demolition performed in an historic district or at a designated landmark without first obtaining a Certificate of Appropriateness or a Certificate of Hardship, or demolition of a potential landmark as identified in the Comprehensive Plan without first obtaining a demolition permit, shall be deemed a misdemeanor as stated in Article II of the City Code.

Any person who fails to comply with any or all of the requirements or provisions of Article 6 (Floodplain Management) shall be guilty of a misdemeanor as stated in Article II of the City Code. Any person responsible for a violation shall comply with the notice of violation or stop work order. Failure to comply shall be in accordance with Subsection A.3 above. Each day a violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Hagerstown from taking such other lawful action as is necessary to prevent or remedy any violation.

5. Noncompliance with Forest Conservation Article.

- a. **Assessment of Penalty.** In addition to the municipal infraction provisions of Subsection A.3. above, a person found to be in noncompliance with Article 7, regulations adopted under this Article, the forest conservation plan, or the associated two-year maintenance agreement, shall be assessed by the City of Hagerstown the penalty of 50 cents per square foot of the area found to be in noncompliance with required forest conservation.

- b. **Requirement for Use of Penalty Funds.** Money collected under Subsection a of this Subsection shall be deposited in the forest conservation fund as required by Article 7, Section I. of this Chapter, and may be used by the City of Hagerstown for purposes related to implementing Article 7.
- c. **Injunctive Relief.** In addition to the above-enumerated sanctions, the City of Hagerstown may seek an injunction requiring the person to cease violation of this Article and take corrective action to restore or reforest an area.

6. Noncompliance with Floodplain Management Article.

a. **Compliance Required.**

- (1) No building, structure, or development shall hereafter be located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged, or altered without full compliance with these regulations and all other applicable regulations.
- (2) Failure to obtain a permit shall be a violation of these regulations and shall be subject to penalties in accordance with Subsections A.3 and A.4 of this Article.
- (3) Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that are contrary to that authorization shall be deemed a violation of these regulations.

b. **Notice of Violation and Stop Work Order.**

If the Floodplain Administrator determines that there has been a violation of any provision of these regulations, the Floodplain Administrator shall give notice of such violation to the owner, the owner's authorized agent, and the person responsible for such violation, and may issue a stop work order. The notice of violation or stop work order shall be in writing and shall:

- (1) Include a list of violations, referring to the section or sections of these regulations that have been violated;
- (2) Order remedial action which, if taken, will effect compliance with the provisions of these regulations;
- (3) Specify a reasonable period of time to correct the violation;
- (4) Advise the recipients of the right to appeal; and
- (5) Be served in person; or
- (6) Be posted in a conspicuous place in or on the property and sent by registered or certified mail to the last known mailing address, residence, or place of business of the recipients.

7. Revocation of Zoning Approval.

Per Article 1, Section J and Article 2, Section E.2, the Zoning Administrator shall have the authority to revoke a zoning certificate or other zoning approval in accordance with the requirements of Article 4, Section S.1.g.

This page intentionally left blank.

B. Judicial Appeal.

- 1. Parties and Judicial Appeal.** Any person or persons or any taxpayer or any officer, department or board of the City, jointly or severally aggrieved by any decision of the Planning Commission, Historic District Commission, Board of Zoning Appeals, or by an action of the Mayor and Council in the administration of this Chapter may appeal the same to the Circuit Court of Washington County, Maryland. Such appeal shall be taken according to the Land Use Article, Section 4-401 to 4-406 of the Annotated Code of Maryland as then in force, within 30 days of the date of the decision appealed. The decision of the Circuit Court may be appealed to the Court of Special Appeals.
- 2. Issues Under this Chapter Have Preference.** All issues in any proceeding under this Chapter shall have preference over all other civil actions and proceedings.
- 3. Costs Not Allowed Against Board; Exception.** Costs shall not be allowed against the Board of Zoning Appeals, Planning Commission, Historic District Commission, the Mayor and City Council, or any City agency unless it shall appear to the Circuit Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.
- 4. Decision of Circuit Court; Appeal to Court of Special Appeals; Costs.** Upon its determination of the case, the Circuit Court shall file a formal order embodying its final decision. An appeal may be taken to the Court of Special Appeals of Maryland during the period and in the manner prescribed by rules of the Court of Appeals from any decision of the Circuit Court. In such cases, the award of costs shall be subject to the discretion of the Court of Special Appeals.

This page intentionally left blank.